
BBC Three television channel competition assessment

Final determination

[X] Redacted for publication

[BBC Three television channel competition assessment: final determination](#) – Welsh overview

STATEMENT:

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1. Overview

The BBC has proposed to launch a BBC Three broadcast channel. It has consulted and subsequently carried out a public interest test ('PIT') on its plans.

As required by the BBC Charter and Agreement, we have carried out a competition assessment. We have reviewed how the BBC has developed its proposals and its assessment of their public value, as well as assessed the impact of the BBC's proposals on competition. We consulted on our provisional determination that the BBC could go ahead with its plans, and have taken account of feedback from stakeholders in response.

In this document we explain our final determination 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 our final determination. We set out how we will hold the BBC to account for the delivery of the public value identified in its proposals, as well as setting conditions in the Operating Licence to secure the contribution of the BBC Three broadcast channel to the delivery of the BBC's Mission and Public Purposes.

Separately, today we are [publishing our decision](#) that BBC Three should be given a minimum level of prominence at slot 24 in the electronic programme guide, and that platform providers should have 18 months to implement the change.

Our decisions

We have decided the BBC may proceed with its plans to relaunch BBC Three as a broadcast television channel. We have concluded that the public value of the proposal justifies the likely market impact that we have identified, and therefore that the BBC may proceed. In reaching our final conclusions, we have exercised our judgement and considered the available evidence from the BBC's public interest test, our own information and analysis, and relevant evidence provided by stakeholders.

We consider that the proposals could deliver additional public value to a key audience. These proposals are designed to reach an audience that is currently underserved by the BBC. Although the proposed channel's target audience is relatively small, we consider it to be a particularly important one. The new channel will offer audiences on linear television increased access to BBC Three content, including a high proportion of original content with a UK focus across a range of genres including news, current affairs and factual content, as well as drama, entertainment and comedy.

Our view remains that the impact on other broadcasters is likely to be relatively small. There could be a maximum impact of less than 1% of total advertising revenues in 2022 for ITV and Channel 4, and 0.4% of the total combined advertising revenues of all other commercial broadcasters. Given the relatively small overall impact on the revenues of commercial TV broadcasters, we do not consider that the BBC's proposal is likely to significantly affect the incentives of commercial broadcasters to invest and innovate, or to have an impact on the choice of services offered to audiences. We recognise that a potential loss of younger audiences is likely to affect commercial broadcasters, because younger audiences represent a key target demographic. However, we

consider that broadcasters will remain incentivised to invest and innovate in content for this group and will continue to compete to retain younger audiences.

We will hold the BBC to its proposals through changes to the Operating Licence and through enhanced monitoring and reporting. We have decided to place Operating Licence conditions on the new BBC Three channel for news and first-run content and to require 75% of all broadcast hours to be UK originations. These conditions will come into force when the BBC launches the channel. We have also set out our expectation that the BBC will articulate transparently in its next Annual Plan how it will deliver what it has committed to in the proposals and subsequently report on its performance.

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

2. Background

The purpose of BBC competition assessments

- 2.1 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.¹ 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.
- 2.2 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. 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 significant changes to the BBC's TV, radio and online public services.
- 2.3 Ofcom's BBC competition assessment ('BCA') role includes:
- a) a review of the procedures the BBC has followed in its public interest test (including consultation with third parties);
 - b) a review of the BBC's assessment of public value, testing the BBC's analysis and the range of evidence relied upon to demonstrate the additional public value that the proposal will deliver over and above its existing services;
 - c) our own assessment of whether the changes that would result from the BBC's proposal would have an adverse impact on fair and effective competition, gathering additional evidence and considering matters raised by other stakeholders as appropriate; and
 - d) a concluding assessment of whether, based on the specific facts of the case and taking into account all of our relevant duties and obligations, the public value of the proposal justifies any adverse impact it may have on fair and effective competition.
- 2.4 At the end of a BCA process, we can reach one of four possible decisions:
- a) that the BBC may carry out the proposal in the form submitted to us;
 - b) that the BBC may not carry out the proposal;
 - c) that the proposal may go ahead, subject to any conditions or modifications that we require; or
 - d) that the BBC must reconsider elements of its public interest test, or follow any further procedures that we consider appropriate.

¹ [BBC Royal Charter and Framework Agreement](#). Referred to as "Charter" and "Agreement".

The BBC's final proposals for BBC Three

- 2.5 The BBC is proposing to relaunch² BBC Three as a television channel on 1 February 2022 to better meet the needs of 16-34 year old audiences who watch broadcast TV on a weekly basis but are light users of the BBC. The BBC considers that these viewers tend to be from C2DE socio-economic backgrounds, live outside London and the south-east and have less access to on-demand services.
- 2.6 As well as being a way of distributing scheduled programming to young people, the BBC believes that the channel would give them a new lever to “build awareness and change perceptions of what BBC iPlayer (and the BBC) has to offer” among harder to reach younger audiences.³
- 2.7 The BBC's plan for the channel is:
- a) Broadcast hours from 7pm until 4am every day.
 - b) An annual content budget of £72.5m. There is no additional budget for the proposed BBC Three broadcast channel.⁴
 - c) A mix of genres, including factual entertainment, drama, UK and international current affairs, comedy, live sport, live music and films.
 - d) A news bulletin to be broadcast every weekday.
 - e) Original BBC productions (i.e. programmes commissioned by the BBC including first-run and repeats) to make up 70% of broadcast hours, with the rest being acquisitions.
- 2.8 As part of the proposal, the BBC has also said that:
- a) BBC Three will broadcast pre-watershed programming that will appeal to both 13-15 year olds and 16-34 year olds.
 - b) Two-thirds of BBC Three's programme spend will be outside of London.
- 2.9 The BBC has proposed that the new BBC Three channel should appear within the top 24 slots of electronic programme guides ('EPGs'). It proposes that the channel will be available on the main terrestrial, satellite and cable platforms in all the nations of the UK. The BBC is planning to launch the channel on 1 February 2022 in standard definition ('SD') and high definition ('HD') on Freeview, except in Scotland where the HD capacity is used for the BBC

² We note that many stakeholder responses to the BBC's consultation argued that the BBC's previous decision to close BBC Three as a broadcast channel, and the reasoning given by the BBC at the time, meant that it shouldn't be allowed to relaunch it. However, we consider that it is important to assess the BBC's proposal to relaunch BBC Three as a broadcast channel based on the BBC's reasoning and objectives as outlined in its PIT, and within current market circumstances, and we do not consider the previous decision taken by the BBC Trust to be directly relevant to our consideration and analysis in this BCA.

³ [A new BBC Three channel: Public Interest Test](#), 24 June 2021 (hereafter referred to as 'BBC PIT').

⁴ In its previous Annual Plan in May 2020, the BBC set out that as part of its strategy to attract and retain younger audiences, it was going to “more than double” investment in BBC Three content by 2022/23. In March 2021 it reconfirmed this in its Annual Plan 2021/22.

Scotland channel, and in Wales where the HD capacity is used by S4C. On all other platforms, the channel would launch in SD and HD.

- 2.10 To accommodate BBC Three within current distribution capacity, the BBC is proposing to reduce the operating hours of CBBC so that broadcast ends at 7pm instead of 9pm.

The BBC's public interest test

- 2.11 Under the terms of the Agreement, the BBC must assess whether any proposed change to its UK public services is "material".⁵ If it decides that a change is material, the BBC is then obliged to carry out a further assessment known as a 'public interest test' ('PIT') which is reviewed by the BBC Board. The PIT is a process used to assess the public value of a change and its impact on competition.
- 2.12 To meet the criteria set out in a PIT, the BBC Board must be satisfied that:
- the proposed change contributes to the fulfilment of the BBC's Mission and the promotion of at least one of the Public Purposes;
 - reasonable steps have been taken to ensure that the proposal will have no unnecessary adverse impacts on fair and effective competition; and
 - the public value of the proposed change justifies any adverse impact on fair and effective competition.
- 2.13 The BBC published a [consultation](#) on its proposals for a new BBC Three broadcast channel ('the BBC's consultation') on 5 March 2021, indicating that it intended to launch a new BBC Three TV channel in January 2022 and seeking input from stakeholders.⁶
- 2.14 The BBC published the [results of its PIT](#) on 24 June 2021 which set out its proposals in more detail and responded to stakeholder comments on its consultation. This document confirmed the BBC Board's view "that the Public Interest Test is clearly met".⁷

Ofcom's review of the proposal

Initial assessment

- 2.15 Upon publication of the BBC's proposal, we began an initial assessment to determine whether the BBC's proposals were material and whether we should launch a BCA. The Charter and Agreement explicitly state that the introduction of a new public service will always be "material". Launching BBC Three as a television channel involves a new public service, and we therefore found the change to be material. As part of this initial assessment, we also considered which aspects of the BBC's proposal could have an adverse impact on competition and required further analysis. We published an [Invitation to](#)

⁵ Agreement, Clause 7(5). As we set out in Annex 2, the Agreement defines a material change as the carrying out of any activity as a new UK Public Service; and any change to a UK Public Service which may have a significant adverse impact on fair and effective competition. Clauses 7(6) and 7(7) of the Agreement.

⁶ Responses from stakeholders to the BBC's consultation are published on the [BBC's website](#).

⁷ [A new BBC Three channel: Public Interest Test](#), 24 June 2021, p.7.

[Comment](#) inviting stakeholders to comment on how they thought the proposed launch of a new BBC Three broadcast channel could affect them. Subsequently, on 20 July 2021 we published a [letter to the BBC](#) confirming that we were satisfied the proposal was material, and concluding that it would be appropriate to conduct a BCA.

Consultation on our provisional determination

- 2.16 On 16 September 2021 we published [a consultation](#) on our provisional determination that the public value of the proposed launch of a BBC Three broadcast channel justified the adverse impact on fair and effective competition that we had identified. We therefore reached the provisional conclusion that the BBC could proceed with its proposals.
- 2.17 Our analysis found that the proposals could deliver additional public value by increasing the availability and reach of BBC Three content, including to those who do not, or cannot, currently watch it on the BBC iPlayer. Although we pointed out that the BBC's proposals were targeted at a particular audience, i.e. 16-34s, and particularly those 16-34s who are watching linear television, we explained that this demographic is important to the BBC's future, and its need to deliver to all audiences, and therefore we considered that the proposals could contribute to the BBC's long-term sustainability.
- 2.18 Our analysis also showed that the proposals were unlikely to have a significant adverse impact on competition. BBC Three is anticipated to be a relatively small linear channel with an estimated viewing share (linear and BVoD)⁸ of up to 1.5% in 2022 for all individuals aged 4+. Although we identified the potential for a relatively small impact on ITV and Channel 4, and a smaller impact on other commercial broadcasters in aggregate, we considered that it was unlikely to significantly change their incentives to innovate or to invest in new content.
- 2.19 We welcomed the increased choice on linear television that the new channel could offer to audiences, particularly if it delivered on the BBC's aims to do more for the younger underserved audiences it had identified: audiences outside London and the south-east, from lower socio-economic groups, from minority ethnic groups, and those with less access to on-demand services.⁹ As such, we provisionally concluded that the proposals had the potential to form an important part of the BBC's overall strategy to cater to younger audiences.
- 2.20 In undertaking our competition assessment we drew on the evidence in the BBC's PIT, the BBC's economic modeling, research that it had commissioned from MTM¹⁰ which included focus groups and a survey ('the survey'), and a summary of roundtables that the BBC conducted during the PIT with youth organisations and young people. We also took account of the responses to the BBC's PIT consultation and our own initial consultation.¹¹

⁸ By BVoD we mean broadcaster video-on-demand services such as BBC iPlayer, ITV Hub, All4, STV Player and My5.

⁹ BBC PIT, p.10.

¹⁰ [BBC Three Public Interest Test: Audience Research](#).

¹¹ Responses to our consultation are available on our website: [Statement: Ofcom review of proposed BBC Three television channel](#).

- 2.21 We also consulted on proposed changes to the [Operating Licence](#) that we considered it would be appropriate to impose in relation to BBC Three, in the light of our duties, if we approved the proposals in our final BCA determination.¹²
- 2.22 We received 11 responses to our consultation of which four were from individuals and the rest from organisations. We have published all the non-confidential responses on our website.¹³

Related consultation on proposed changes to the EPG Code

- 2.23 Alongside our BCA consultation we [consulted separately](#) on proposed changes to Ofcom's EPG code and an appropriate timeframe for EPG providers to implement the changes in the event that we ultimately approved the BBC's proposal to relaunch BBC Three. For the reasons set out in the rest of this statement, we are approving the BBC's proposal to relaunch BBC Three as a broadcast television channel. BBC Three will therefore become a designated channel under the provisions of the Communications Act 2003.¹⁴ For the reasons set out in a [separate statement](#) explaining our decision on EPG prominence for BBC Three, we have determined that BBC Three should have a minimum level of prominence of slot 24 and that EPG providers should have a maximum of 18 months to implement this.

¹² Ofcom's function of setting conditions in the Operating Licence is set out in the BBC Charter at Article 46(3).

¹³ Consultation responses are published on the [Ofcom website](#).

¹⁴ Section 310(2) of the Communications Act 2003.

3. Public value

- 3.1 In the BCA consultation, we carried out a review of the BBC’s public value assessment, as set out in its PIT. We examined the BBC’s case for the benefits of the proposal against:
- a) personal value;
 - b) social value;
 - c) industry value; and
 - d) the cost of the proposal and foregone public value.
- 3.2 The BBC’s PIT concluded that launching a new BBC Three broadcast television channel would result in both “high” personal and “high” social value, as well as “significant potential” industry value. The BBC defined social value principally as “how well the proposals will help the BBC to better deliver its Mission and Public Purposes”.¹⁵ In the consultation we considered and tested the evidence and analysis that the BBC had put forward in reaching these conclusions. We also identified the main factors that we had considered in reviewing the public value likely to be generated by the BBC’s proposal, as well as our overall view on the case that the BBC had made.
- 3.3 We provisionally concluded that the BBC’s view of public value was reasonable and that its assessment in its proposal reflected in greater detail, and with greater evidence, the potential public value of its proposals than in previous PITs. Overall, our view was that the proposal had the potential to contribute significant public value, notably in terms of personal value and social value. Although the viewing projections suggested that the channel would reach a relatively small audience group, we noted that this group was particularly important for the BBC to reach, and we gave weight to that in our assessment.
- 3.4 We also explained in the consultation that there were some areas of the BBC’s assessment where we did not agree fully with the BBC’s conclusions: where we considered that there was less consensus from the cited evidence than implied by the BBC; and where we considered that the value was likely to be relatively limited. We also set out areas in which we considered that there was a lack of detail provided by the BBC and where it should set out more detail in its next Annual Plan.
- 3.5 In this section we summarise stakeholder responses to our review of the BBC’s public value assessment and we explain the final conclusions we have reached in the light of those responses.
- 3.6 Only a small number of stakeholders provided comments on our review of the BBC’s assessment of public value. Of those stakeholders who responded to this question, overall, the BBC, Directors UK and the Writers’ Guild of Great Britain (‘WGGB’) were broadly supportive of our assessment while ITV and Channel 4 disagreed with our views in several ways, as set out below.

¹⁵ [BBC PIT](#), p.38.

Personal value

Our provisional findings

- 3.7 We agreed with the BBC's assessment that the proposed introduction of a broadcast channel for BBC Three would increase personal value. We said that the proposals would create an additional way for audiences to access BBC Three content, which had the potential to deliver high personal value for those viewers such as C2DE audiences, minority ethnic audiences, people outside metropolitan centres and people with less access to digital on-demand services who do not, or cannot, currently access BBC Three content on BBC iPlayer, but who do use linear services.
- 3.8 We noted that the projected increase in BBC Three viewing was a reasonable indicator of the size of the likely increase in personal value from the proposals. However, we considered that the target audience of the proposals was particularly important because it is currently not well served by the BBC, and because it is important for the BBC to reach all audience to ensure its future sustainability. We also noted that the BBC's [research and modelling](#) suggested that there could be some personal value derived by people outside the direct target audience, for example older audiences interested in topical issues.
- 3.9 It was also our view that the personal value directly relating to watching the broadcast channel could be relatively short term, as the overall trend of declining linear viewing is likely to continue, and we do not expect it to be reversed.¹⁶ We also agreed with the BBC that if the proposals were successful in establishing a connection to the BBC Three brand and the BBC brand in general, by driving greater viewing to the BBC iPlayer, they would be likely also to deliver longer-term benefits for the BBC's ability to deliver its Mission and Public Purposes.

Stakeholder responses

- 3.10 Channel 4 disagreed with our view of the BBC's assessment of personal value and considered that we had overestimated it. It disagreed that our analysis should be based on the public value delivered to the entire 16-34 year-old audience as opposed to the targeted subset of that audience that the BBC had identified. Channel 4 cited the BBC's claim that it already does better with the 16-34 year-old audience "than any other brand in media", and argued that our assessment should therefore have been based only on the additional value being provided for the specific audience the BBC had used as a justification for its proposals – those who do not have access to the internet, are from lower socio-economic groups, or who live in Northern Ireland, Scotland, or the North and Midlands of England.¹⁷

¹⁶ The BBC's estimate suggests a decline in reach to the broadcast channel amongst 16-34s of 1.2 percentage points (4.8% - 3.6%) between 2022 and 2024. In our Media Nations 2021 report, we referenced findings from Ampere Analysis conducted in Q1 2021 which found that 42% of SVoD users said they could envisage not watching broadcast TV at all in five years' time, with the proportion highest among 18-34 year-olds of whom almost half (46%) agreed with this statement.

¹⁷ [Channel 4 consultation response](#), p.4.

3.11 Channel 4 believed that those “in the group the BBC has identified, who watch TV but not the BBC, were more likely to have made that choice due to a lack of awareness or appeal, not because BBC Three was not currently available on a linear channel”.¹⁸ It cited our view that the public value generated by the relaunch of BBC Three “could be relatively short term” given shifting viewing habits, in comparing the potential benefits of the channel for audiences against what Channel 4 believes is a greater impact of the channel on other broadcasters.¹⁹ COBA also cautioned “that any benefit may be temporary”.²⁰

Our response

- 3.12 In response to Channel 4’s point about the scope of our analysis, we consider that the BBC’s public value assessment made a distinction between its aims of broadening the BBC’s awareness and appeal to the 16-34 cohort in general, while also focusing on providing for what it described as a “significant and relatively stable cohort of young people who maintain a strong broadcast TV habit but are very light users of BBC TV”.²¹
- 3.13 As such, our assessment considered both aspects. Although we acknowledge Channel 4’s concerns that we have overestimated the personal value of the BBC’s proposals, our view remains that if the BBC’s proposals are successful in widening access to, and the appeal of, BBC content to younger audiences in general, and, in particular, to the specific groups within that cohort that the BBC has identified, they could create significant personal value.
- 3.14 We note Channel 4’s view that the reason why people who watched linear television did not watch BBC channels was due to a lack of awareness or appeal, not because BBC Three was not available as a linear channel. However, we consider that a primary driver behind the BBC’s proposals, and its case for personal value, is to address the lack of awareness of BBC Three content among younger audiences, in particular those who do not watch online content. The BBC’s PIT stated that “at present [audiences] are not necessarily discovering BBC Three content. As such, the BBC Three TV channel will be a key route to discovering BBC Three programming.”²² We agree with this and remain of the view that a BBC Three television channel would be a key route for the target audiences to discover BBC Three programming and also to raise awareness of the BBC brand. This is why even if the direct impact of the proposals were to be relatively short-term, we still consider that the potential ‘shop window’ effect of increasing viewing of BBC Three content, and other BBC content, on BBC iPlayer will contribute to personal value.
- 3.15 In conclusion, we continue to agree with the case that the BBC has made for the personal value associated with the proposals and our assessment is that the proposed introduction of a broadcast channel for BBC Three would deliver high personal value for younger audiences who watch the channel, and in particular audiences from lower socio-economic

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ [COBA consultation response](#), p.3, paragraph 5.

²¹ BBC PIT, p.14, 3.1.3.

²² BBC PIT, p.32, 4.2.2.

backgrounds, minority ethnic backgrounds, those who live outside of London and the South-East, and those less able to access on-demand content.

Social value

Our provisional findings

- 3.16 We agreed with the BBC that the likely increased reach and viewing of BBC Three content, through the new television channel and BBC iPlayer, had the potential to deliver social value and support delivery of the Mission and Public Purposes. However, we noted that the extent of the public value delivered would depend on the quality and range of the content that the BBC commissioned and made available for the BBC Three channel.
- 3.17 We considered that, if the proposed broadcast channel was successful in increasing positive awareness of the BBC brand among younger and harder to reach audiences, it could play an important part in contributing to the BBC's future sustainability. However, we did not share the BBC's conclusion that the proposed changes would, in and of themselves, "safeguard [its] ability to deliver the Mission and Public Purposes to all audiences".²³
- 3.18 We welcomed the BBC's commitment, following its consultation, to include a nightly news bulletin in the schedule for the new broadcast channel. We considered that it could deliver high social value for audiences against Public Purpose 1 (providing impartial news and information) as well as supporting the channel's overall distinctiveness.
- 3.19 We also thought that the opportunity presented by the new channel to show live sport and music coverage could contribute positively to Public Purposes 2, 3 and 4, although as the BBC did not set out specific plans for this in its PIT, it was hard for us to make a judgement on the likely impact of this.²⁴
- 3.20 We noted that a key part of the social value delivered by the proposals was the extent to which the BBC Three broadcast channel would be genuinely distinctive from other services in the market, and therefore the extent to which it would contribute to the delivery of Public Purpose 3. We said that we did not expect that the BBC's output across a service or series of services must be wholly distinct from content provided by other broadcasters but that the BBC would need to ensure that it delivered a mix of content on BBC Three that was both distinctive from other comparable services and genuinely representative of diverse and under-represented groups of young people. As part of this, we noted that the BBC had put particular weight on the fact that what would distinguish BBC Three from similar services was the amount of factual content and documentaries in prominent peak-time slots.

²³ BBC PIT, p.38, 4.3.

²⁴ Public Purpose 2 is "to support learning for people of all ages". Public Purpose 3 is "to show the most creative, highest quality and distinctive output and services. Public Purpose 4 is "to reflect, represent and serve the diverse communities of all the United Kingdom's nations and regions and, in doing so, support the creative economy across the UK".

- 3.21 Our assessment also put weight on the importance, in terms of distinctiveness, of original BBC content and first-run UK content on the channel. We highlighted a lack of clarity of how and when the BBC planned to deploy acquired content in the schedule, and the extent to which the BBC would use high-profile content previously acquired for other BBC services within the BBC Three schedule.
- 3.22 Finally, we considered that the BBC made a good case for how the proposal could generate social value through contributing to the delivery of Public Purpose 4. We agreed with the BBC that the channel had the potential to engage underserved and under-represented audience groups by providing content that reflects and portrays different young voices and experiences, and by making it more widely available and easier to discover.

Stakeholder responses

- 3.23 Directors UK²⁵ and ITV²⁶ agreed with our views on social value and distinctiveness. Directors UK said that it was important for ensuring the delivery, and assessment, of public value of the channel that the BBC should set out its intentions for delivering certain types of content for BBC Three through its annual reporting.²⁷ However, ITV noted that if our conclusions were “based (as they are) on particular features of the BBC’s proposals, that it was crucial that the BBC was under an obligation to deliver those specific features”. ITV said that “if these features were not hard-wired into delivery obligations in the regulatory framework for the channel, they should not form part of Ofcom’s assessment since it is perfectly possible that they may not be delivered”.²⁸
- 3.24 One individual thought that BBC Three would provide better socioeconomic diversity in media, “as well as ethnic diversity and media opportunities for coming generations”.²⁹

Our response

- 3.25 We agree with the points raised here about the importance of the channel being genuinely distinctive, the importance of UK originated content on the channel and that it is important to hold the BBC to account for the delivery of that. As we set out in the consultation, our assessment of the public value case that the BBC has made was based on what it had committed to in its PIT. We agree with ITV’s view that the public value realised by the proposals will depend to a large extent on the content that the BBC commissions for BBC Three, and how it balances new content, archive content and acquired content to deliver a genuinely distinctive offering that delivers the Mission and Public Purposes to the target audience group. For the reasons set out below, we continue to agree with the BBC that the channel has the potential to contribute to the delivery of the Mission and Public Purposes and thereby deliver social value.

²⁵ [Directors UK consultation response](#), p.1, paragraph 3.

²⁶ [ITV consultation response](#), p.1.

²⁷ Directors UK consultation response, paragraphs 3,4, 5 and 6.

²⁸ ITV consultation response, p.4.

²⁹ [Name withheld 1’s consultation response](#).

- 3.26 We think that the BBC's proposals for a nightly news bulletin in the schedule for the new broadcast channel could deliver high social value for audiences against Public Purpose 1, as well as support the channel's overall distinctiveness.³⁰ The BBC has also committed to current affairs and factual content as part of the overall mix of genres on the channel. We think that this content could deliver social value, particularly when it highlights topical issues that could help them to inform young people about the world around them, as well as help to deliver social cohesion. As described in section 6, we have imposed an Operating Licence condition on the channel which will require the BBC to ensure that the channel shows news programmes every weekday (except on public holidays) that are intended to appeal to 16 to 34 year-olds.
- 3.27 We note ITV's argument that we shouldn't take into account aspects of the BBC's proposals as part of our public value assessment where we are not going to place specific requirements on the BBC to deliver these aspects (e.g. through Operating Licence conditions). ITV's view appears to be based on the premise that if the BBC is not subject to specific regulatory obligations to deliver these aspects of its proposals which provide social value, then Ofcom cannot be sufficiently certain that the BBC will do so, and this therefore calls into question the public value associated with the proposals. As explained in our published procedures,³¹ our role in relation to this BCA is to review and test the credibility and robustness of the public value case that the BBC has made in its PIT in relation to its proposals, and present our view on the case that the BBC has made based on the evidence it has put forward. This is distinct from our role in relation to setting conditions in the Operating Licence that we consider appropriate for requiring the BBC to fulfil its Mission and promote the Public Purposes, and separate from our role in connection with monitoring and assessing the performance of the channel. We cover our approach to the Operating Licence conditions for BBC Three and performance monitoring in sections 6 and 7 of this statement.
- 3.28 We still believe that the BBC has made a reasonable case for how the channel could be distinctive from comparable services and that the difference between the projected range of output on the proposed BBC Three channel and on similar services suggests that the service will be distinctive³², in line with Public Purpose 3. The range of programming shown on the channel is key to the BBC demonstrating that it is delivering additional public value beyond what audiences can get elsewhere. We note that the BBC has told us that, if we were to approve the service, at the channel's launch it would amend the list of services that it maintains within Schedule 1 of the Agreement to include BBC Three with the following definition: "BBC Three: a mixed-genre channel aimed at younger audiences (16-34) across the UK, with a particular focus on innovative entertainment, comedy, drama and factual programmes." We think this helps give assurance as to the BBC's commitment to

³⁰ As set out in the consultation, our research consistently shows that high-quality trustworthy and accurate news is one of the most important aspects of public service broadcasting on both a personal and societal level. [BBC Three television channel preliminary determination: consultation](#), paragraph 4.41.

³¹ See Ofcom, [Assessing the impact of proposed changes to the BBC's public service activities](#), March 2017, paragraphs 5.21-5.24.

³² See paragraphs 4.46 to 4.47 of the consultation which describe this in detail.

ensuring that the BBC Three channel will be a multi-genre channel focused on innovative content. In addition, as described in section 6, we have put Operating Licence conditions on the service to ensure that the BBC delivers a range of high quality original British programming, including first-run content, focused on the target audience of 16-34s, to help secure the distinctiveness of the channel.

3.29 We think that the channel could also benefit the representation and portrayal of audience groups more widely in line with findings from recent reviews.³³ We think that social value could be generated through the focus that the channel will have in accurately reflecting and authentically portraying young people and underserved audience groups such as young people from C2DE socio-economic backgrounds and minority ethnic backgrounds, thereby contributing to the delivery of Public Purpose 4.

3.30 Therefore, in conclusion, we still agree with the basis of the case that the BBC made in its PIT that if more people watch BBC Three content, the societal value derived from the content will be amplified, and as such, we remain of the view that there is the potential for significant social value to be delivered through increased viewing of BBC content that contributes to the delivery of its Mission and Public Purposes.

Industry value

Our provisional findings

3.31 We welcomed the BBC's proposal to increase the percentage of programming made outside London on BBC Three to two-thirds. However, we did not agree with the BBC's position that it would be unable to deliver more BBC Three programming made outside London if these proposals were not accepted, and we therefore thought that the public value of this was overstated.

3.32 We considered that the proposals were unclear about the creation of industry value to independent producers. We agreed with the BBC that some additional value could accrue to independent producers from the greater exposure and increased reach generated for BBC Three content by the proposals. However, we noted that the BBC had not provided any evidence to substantiate how exactly, and by how much, this would increase the value of secondary or ancillary rights.

3.33 We thought that the BBC made a stronger case that a BBC Three broadcast channel could give greater exposure to talent contributing to BBC Three commissions, and that this could deliver public value. Although we considered that the schemes and partnerships that the BBC referenced were already happening, we agreed with the premise that the channel would provide a bigger platform for BBC Three content which should increase the reach and exposure of talent.

³³ Our [recent review of Public Service Media](#) found that programming that accurately reflects the diversity of the UK was identified as one of the main contributions of public service broadcasting in our audience research, particularly among younger viewers. In our 2018 [thematic review of representation and portrayal on the BBC](#), content analysis found that BBC Three represented a wider range of people than BBC One and Two.

Stakeholder responses

- 3.34 Directors UK noted that the proposals “wouldn’t necessarily lead to more investment in the production industry”, but the BBC’s commitment to additional commissioning outside London would “result in more investment in the nations and regions” and thought this should be implemented whether we approved the proposals or not.³⁴
- 3.35 Directors UK also highlighted the importance of the outcome of trade negotiations with the BBC in relation to the BBC’s argument that BBC Three’s bigger ‘shop window’ could increase the value of potential commercial secondary rights, and noted that residual payments to creators are an important part of their income.³⁵ It welcomed and looked forward to engaging on behalf of its members with the BBC on the use of works on the channel.³⁶
- 3.36 Pact was keen to ensure that if the BBC Three television channel were approved, that “terms of trade would apply to both digital and linear commissions, and that any nations and region commissions were applied at a network rate”.³⁷ Pact also thought “commissioners should be offered a new rights package that allowed producers to retain and exploit rights following an initial primary window” to enable independent producers to raise capital to reinvest.³⁸
- 3.37 In relation to the BBC’s commitment to commissioning two-thirds of productions outside London, the WGGB said it “would strongly recommend that the increased regional spending is accompanied by increased regional commissioning and decision making”.³⁹

Our response

- 3.38 As stakeholders were broadly in agreement with our assessment of the BBC’s case for industry value we remain of the view that the industry value directly attributable to the proposals (as opposed to the increase in commissioning budget for BBC Three) is unlikely to be significant. However, we do still believe that the greater exposure through increased reach generated by the proposals contains the potential for some additional value to accrue to independent producers and to talent contributing to BBC Three commissions.
- 3.39 We note Pact’s and Directors UK’s views on terms of trade with producers and underlying rights holders. We acknowledge that the amount of additional value for independent producers and talent contributing to BBC Three commissions will depend on the terms they can negotiate with the BBC.

³⁴ Directors UK, paragraph 7.

³⁵ Directors UK, paragraphs 9 and 10

³⁶ Directors UK consultation response, paragraph 10

³⁷ [Pact consultation response](#), paragraph 1.2

³⁸ Pact consultation response, paragraph 1.4

³⁹ [WGGB consultation response](#), Question 1

Costs of the proposals and potential foregone public value

Our provisional findings

- 3.40 We agreed with the BBC's assessment that the scale of the ongoing operational costs of the channel (c.£2m a year) appeared unlikely to lead to material foregone public value across the BBC's services.
- 3.41 We considered that there could be some lost public value due to a reduction of CBBC's transmission hours, which was a requirement of the BBC's plans. However, following an analysis of CBBC's output and viewing between 7 and 9pm, we noted that most of the content shown during that time was repeats and the size of the audience watching at that time and likely to be affected was relatively small. CBBC live viewing between 7pm and 9pm comprised 16% of CBBC's live viewing in 2020, and less than 0.1% of total BBC viewing (including BBC iPlayer).⁴⁰ Therefore, we concluded that the reduced public value was likely to be small, and we agreed with the BBC's argument that this was justified by the wider additional public value of the proposal.
- 3.42 We also agreed with the BBC's position that if audiences choose to spend more time with BBC Three because of the proposed changes, then it must offer them greater personal value than whatever their alternative was, whether BBC or non-BBC services. However, we noted that, beyond its assessment of personal value, the BBC had not fully considered the impacts of its plans on the potential public value generated by other broadcasters.

Stakeholder responses

- 3.43 Channel 4 thought that, "given the BBC's role as a publicly funded PSB ['public service Broadcaster'], it had a unique responsibility to work to strengthen the wider public service ecology, and should have properly considered the impact of its actions on the wider market and especially on other providers of public service".⁴¹ It argued that "where the BBC's actions were likely to be detrimental to the wider provision of public service broadcasting, the BBC should be obliged to consider alternative means of delivering the same public value while minimising that negative impact".⁴²
- 3.44 Channel 4 concluded that "whilst there may be public value generated by the relaunch of BBC Three as a linear channel, the key question was whether this value was additional or substitutional for activities already undertaken by other PSBs, and whether that same public value could be generated in a way which is longer lasting and less damaging to those organisations which compete with the BBC for viewers".⁴³
- 3.45 Channel 4 also noted that neither the BBC nor Ofcom had considered whether the BBC could have delivered the same public value through alternative means. Given that, it said it

⁴⁰ BBC PIT, p.61.

⁴¹ Channel 4 consultation response, p.5.

⁴² Channel 4 consultation response, p.3.

⁴³ Channel 4 consultation response, p.4.

considered that “the lack of consideration of how to minimise the disruptive nature of the BBC’s activities, especially when it directly impacts on other public service provision, is a fundamental flaw in the process of considering this and other BBC’s proposals”.⁴⁴

3.46 Channel 4 also noted the fact that we had picked up that the BBC had not considered the impact of its proposals on the public value generated by others, despite our guidance.⁴⁵

3.47 The BBC disagreed with our view that it had not considered the impact on public value generated by other broadcasters in its PIT, citing a passage from its PIT⁴⁶ in support of this. It also said it “would welcome to discuss this issue further, as part of the process of continuing to improve the quality and comprehensiveness of the BBC’s public interest tests”.⁴⁷

Our response

3.48 In relation to Channel 4’s point on whether the BBC should have been compelled to consider alternative proposals, we reiterate that it is for the BBC to devise its strategy to meet the Mission and Public Purposes, and our role here is to assess the public value and potential adverse market impacts of the BBC’s proposal, as submitted to us and decide whether it may proceed on the basis that the public value justifies those adverse impacts, taking into account their scale and likelihood.⁴⁸

3.49 As our guidance sets out, the BBC should consider the *additional* public value created by its proposals.⁴⁹ In doing so, the BBC should acknowledge that a reduction in revenues, even if not substantial, could impact the ability of others to invest in content, and therefore there could be a reduction in the public value provided by others as a result of its proposals. This could affect audiences either because the impact on revenues of other broadcasters leads to changes in programming, or through their reduced viewing of content from other broadcasters. In terms of the BBC’s consideration of the impact of public value delivered by others in this case, as the BBC had estimated that the market impact of the new BBC Three channel would be relatively low, it considered that it was unlikely to have an adverse impact on other broadcasters’ incentives to invest in content and services that may provide viewers and industry with public value. While we agree that the market impact of the BBC’s proposals is unlikely to be significant (as explained in the following sections of this document), as we pointed out in our consultation, there could still be *an* impact on other broadcasters. In our view, the public value generated by other providers is realised both

⁴⁴ Channel 4 consultation response, p.6.

⁴⁵ Channel 4 consultation response, p.5.

⁴⁶ BBC PIT, p.62.

⁴⁷ [BBC consultation response](#), p.2.

⁴⁸ While we may require the BBC to reconsider elements of the public interest test and/or only allow the proposal to proceed subject to modifications or conditions, we would expect to do this where we consider this to be needed to address adverse impacts on fair and effective competition that we have identified (e.g. to remove or reduce the scale and likelihood of those impacts) and where this might be done without having a disproportionately negative impact on the public value. See [Assessing the impact of proposed changes to the BBC’s public service activities](#): Ofcom’s procedures and guidance, paragraphs 4.62-4.66.

⁴⁹ [Assessing the impact of proposed changes to the BBC’s public service activities](#): Ofcom’s procedures and guidance, para 5.23.

through the content they commission and make available to audiences and through the viewing of that content, and we think that the BBC should have acknowledged this more clearly.

- 3.50 We recently consulted more widely on our forthcoming periodic review of the BBC and how we can ensure that our regulation remains fit for purpose, in our document, [How Ofcom regulates the BBC](#). In this consultation we indicated that in this review we would be looking at how we assess public value in the round, and that the themes raised in our competition assessments will inform this work.⁵⁰ We acknowledge the challenges to the BBC in carrying out an assessment of foregone public value in other broadcasters. As part of this work, we plan to examine further the issue of foregone public value and whether we can provide more guidance for stakeholders on how the BBC should articulate this.

Our final conclusions on public value

- 3.51 Having considered stakeholder responses we remain of the view that the BBC's assessment of the public value generated by the proposal is reasonable, most notably in relation to its assessment of personal and social value. Although viewing is projected to be relatively small, the target audience is a particularly important group for the BBC to reach, and we have given this due weight in our conclusions. The channel will deliver increased choice on linear TV for audiences, and if the proposals are successful in widening access to BBC content among younger audiences, and in particular the specific groups that the BBC had identified,⁵¹ they could create both significant personal and social value. As such, the proposals have the potential to form an important part of the BBC's overall strategy for engaging younger audiences.
- 3.52 As set out above, our assessment of the public value of the proposal has been based on the commitments the BBC has made in its PIT. We note the concerns that have been raised by stakeholders about ensuring that the BBC is held to the commitments that it has made. We have proposed to impose conditions in the Operating Licence, as set out in section 6. We have also explained in section 7 what monitoring and reporting we expect to secure BBC Three's contribution to the BBC's delivery of its Mission and Public Purposes.

⁵⁰ See paragraphs 3.8 to 3.10.

⁵¹ C2DE audiences, minority ethnic audiences, people outside of metropolitan centres and people with less access to digital on-demand services.

4. Market impact

- 4.1 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.
- 4.2 In the consultation, we assessed the market impact by first estimating the increase in total BBC viewing as a result of relaunching BBC Three as a linear channel.⁵² We then examined where this additional viewing of the BBC was likely to come from, which enabled us to estimate the impact on viewing and revenue of rival commercial broadcasters (i.e. the static impacts). We also assessed whether the relaunch could have dynamic impacts and considered how rivals might respond to the relaunch of BBC Three (for example, if the relaunch affected their incentives to invest and innovate).
- 4.3 Our provisional view was that the market impact of the proposed changes was unlikely to have a significant adverse impact on fair and effective competition. We estimated a loss in viewing for commercial broadcasters and translated this into a range for the expected loss in advertising revenues. We considered that the estimated revenue loss was relatively small compared to total advertising revenues. For ITV the estimated revenue loss was 0.4% to 0.8% of total advertising revenues in 2022, and for Channel 4 the respective figures were 0.4% to 0.9%. For all other commercial broadcasters combined the estimated revenue loss was 0.2% to 0.4% of total combined advertising revenues. We considered that the proposals were unlikely to significantly affect the incentives of commercial broadcasters to invest and innovate, or to have an impact on the choice of services offered to consumers.
- 4.4 We also contemplated the potential impacts for pay-TV and subscription video-on-demand (SVoD) services. We considered that a BBC Three linear channel was unlikely to result in a material number of households altering their SVoD or pay-TV subscription purchasing decisions. Our view was that the impact on these services was likely to be minimal.
- 4.5 Finally, we considered whether the linear relaunch of BBC Three would result in significant adverse impacts elsewhere in the vertical value chain. Focusing on acquisitions, we did not consider that the BBC's procurement of content to develop the BBC Three linear channel would significantly harm rival broadcasters' ability to acquire content.
- 4.6 The BBC, WGGB and Directors UK were broadly supportive of our assessment.⁵³ Directors UK considered that "it seems a fair assessment of the impact on fair and effective competition."⁵⁴
- 4.7 ITV and Channel 4 disagreed with our provisional conclusions. Both argued that we had understated the impact of the proposals on commercial broadcasters.⁵⁵ ITV and Channel 4

⁵² Our assessment of the impact on commercial broadcasters considers the combined linear TV, PVR and VoD viewing.

⁵³ BBC consultation response, p.2 and WGGB response, p.2.

⁵⁴ Directors UK consultation response, paragraph 8.

⁵⁵ ITV consultation response, p.1 and Channel 4 consultation response, p.4-5.

also argued that we had not taken fully into account the impact of the proposals with respect to the acquisition market.⁵⁶ We discuss these points in more detail below.

4.8 The rest of this section is structured as follows:

- Impact on BBC viewing
- Assessment of static impact on commercial broadcasters
- Assessment of dynamic impact on commercial broadcasters
- Impact on SVoD and pay-TV services
- Wider impacts
- Our conclusions on market impact

Impact on BBC viewing

Our provisional finding

4.9 In the consultation we estimated that the BBC's proposals would increase the BBC portfolio viewing share by 0.5 percentage points for all individuals aged 4+, and by 1.06 percentage points for 16-34s. The forecast viewing share for BBC Three is relatively modest for all individuals aged 4+ (up to 1.5%), and somewhat higher for the 16-34 target audience (up to 4.6%).

Stakeholder responses

4.10 ITV questioned whether the forecast for BBC Three BBC iPlayer viewing in the counterfactual⁵⁷ was correct, based on the cross-checking calculations it had performed using BARB data. ITV suggested that this called into question the credibility of the impact analysis.⁵⁸ There were no further comments from stakeholders on our estimates for BBC viewing.

Our response

4.11 We address ITV's point in detail at A1.31 to A1.34. In summary, we consider that the BARB data used by ITV does not provide a complete measure of BBC iPlayer viewing. Our model is based on actual BBC iPlayer viewing supplied by the BBC which we consider to be accurate, and we have maintained our counterfactual forecasts for BBC iPlayer viewing. Our forecasts remain the same as the consultation, as follows:⁵⁹

⁵⁶ ITV consultation response, p. 6 and Channel 4 consultation response, p. 4-5.

⁵⁷ The counterfactual represents the status quo i.e. the situation without the BBC's proposals.

⁵⁸ ITV consultation response, p. 4-5.

⁵⁹ Where modelling assumptions are uncertain, we have tended to lean towards overestimating BBC Three's impact rather than underestimating it. This is a conservative approach as it means that the projected impact on rivals will tend to be higher. The result is that in our modelling, BBC Three is expected to account for a higher share of total viewing than it had previously achieved in 2015. This is likely to be an overstatement of the viewing it is likely to receive in practice.

Figure 1: Projected BBC Three viewing share in 2022

	All individuals 4+		16-34s	
	With linear channel	Without linear channel	With linear channel	Without linear channel
Ofcom estimate	1.5%	0.7%	4.6%	2.9%
BBC estimate	1.3%	0.7%	4.3%	2.9%

Source: Ofcom and BBC analysis. Notes: Share of all UK broadcast linear and BVoD viewing (i.e. excludes subscription video on demand). This includes all BBC Three viewing on BBC iPlayer (which differs from BARB C7 shares since it includes all BBC iPlayer content irrespective of its broadcast date, viewed through any device).

- 4.12 We estimate that relaunching BBC Three as a linear channel will increase BBC Three's linear plus BVoD viewing share in 2022 by 0.8 percentage points for all individuals aged 4+, and by 1.7 percentage points for 16-34s.
- 4.13 We incorporated in our estimate the reduction in CBBC viewing due to the CBBC broadcast ending at 7pm rather than 9pm to accommodate BBC Three. The loss of CBBC viewing due to ending the CBBC broadcast earlier is relatively small; about 1 billion minutes (~0.1% of total BBC viewing) in 2022 for all individuals (aged 4+) and 0.06 billion minutes for 16-34s.
- 4.14 In total, we estimate that the BBC's proposals will increase the BBC portfolio viewing share by 0.5 percentage points for all individuals aged 4+, and by 1.06 percentage points for 16-34s.

Figure 2: Projected BBC portfolio viewing share in 2022

	All individuals 4+		16-34s	
	With linear channel	Without linear channel	With linear channel	Without linear channel
Ofcom estimate	32.3%	31.8%	30.4%	29.3%

Source: Ofcom analysis. Notes: Share of all UK broadcast linear and BVoD viewing (i.e. excludes subscription video on demand).

Assessment of static impact on commercial broadcasters

Our provisional finding

- 4.15 In the consultation we provisionally concluded that BBC Three would have a relatively small overall impact on the viewing and revenues of commercial broadcasters. We estimated that for all individuals, viewing would fall by 0.8% and 0.9% for the ITV and Channel 4 portfolios, and by 0.4% for other commercial broadcasters.
- 4.16 For commercial broadcast channels the loss in viewing is likely to translate into a loss in advertising revenues. We estimated that the total loss in revenues could be between £15m and £30m in 2022. We said that this was relatively small compared to total advertising revenues of over £4 billion. We noted that the impact was largest for ITV and Channel 4,

each of which might lose 0.4% to 0.8% and 0.4% to 0.9% of their advertising revenues (~£8-15m and ~£5-10m) respectively.⁶⁰

Stakeholder responses⁶¹

- 4.17 ITV queried our estimate of the financial impact of the BBC's proposals and provided its own estimates of the revenue impact on the ITV portfolio and ITV2 specifically as a result of the BBC's proposals. [§<]. ITV also raised concerns about the approach of looking at market impact in aggregate across ITV's portfolio of channels. It noted the importance of channels like ITV2 aimed at high value younger audiences.⁶²
- 4.18 Channel 4 considered it likely that the BBC would swap the EPG slots of BBC Three and BBC Four to achieve a higher EPG slot for BBC Three. Based on its understanding of our model, it considered that the loss of advertising revenues for Channel 4 would be [§<] in total if the EPG swap was enacted.⁶³

Our response

- 4.19 It seems there are two main reasons why there is a difference in the revenue impacts estimated by us and by ITV.⁶⁴

Difference in approach to diversion

- 4.20 The BBC's proposal is anticipated to divert viewing from other services to BBC Three, which we assume ultimately results in lower advertising revenues for commercial broadcasters. As explained in the consultation at A1.93 to A1.103, we based our diversion estimates on a consumer survey which we cross-checked against the actual viewing patterns of BBC Three viewers when it was previously a linear channel.
- 4.21 We understand that ITV's approach to modelling diversion assumes that all incremental BBC Three viewing would come from a limited set of relatively smaller channels which it considered to be similarly targeted.⁶⁵ ITV's approach assumes all additional BBC Three viewing coming from commercial broadcast channels, with no viewing coming from SVoD or BBC channels. This results in a much larger impact on certain commercial broadcast

⁶⁰ These estimates are based on our modelling of a plausible range where the percentage change in revenues would fall by one-third to two-thirds of the estimated percentage change in viewing (see A1.106 to A1.111).

⁶¹ As a consequence of the BBC's proposals some commercial channels will move EPG slot. COBA considered that the change of EPG slot meant disproportionate costs and disruption for broadcasters (COBA consultation response, p.3-4). We discuss this point in the separate statement on the EPG code changes.

⁶² ITV consultation response, p.5-6.

⁶³ Channel 4 consultation response, p.4.

⁶⁴ ITV's consultation response did not explain how it derived the revenue impacts. However, ITV had previously supplied its confidential modelling on an informal basis following a meeting with Ofcom. The revenue impacts in ITV's consultation response align with the model and from what we can tell these appear to be two of the main reasons for the difference.

⁶⁵ i.e. Sky 1, ITV2, ITV2+1, Quest, ITVBe, ITVBe+1, Really, E4, E4+1, C4+1, Dave, Dave ja vu, 4Seven, 4Music, ITV+1, Comedy Central, Comedy Central +1, Comedy Central Extra, TLC, Fox and MTV. ITV said it cross checked the result using an alternative methodology which yielded similar results. Discussed at meeting between ITV and Ofcom, 29 July 2021 (ITV provided further information in a confidential model). We note that Fox closed its linear channel in the UK on 30 June 2021.

channels than our approach to diversion. For example, our approach, based on the consumer survey, implies that nearly 50%⁶⁶ of BBC Three viewing is drawn from other BBC channels⁶⁷ and SVoD, with no resulting impact on advertising revenues. The remaining additional BBC Three viewing is also drawn from a wider set of channels compared to ITV's approach.

- 4.22 We explained in the consultation that we do not consider that ITV's diversion assumption is realistic as it does not reflect actual audiences' viewing patterns.⁶⁸ It is highly unlikely that incremental BBC Three viewing will be drawn solely from the limited set of channels that it identified. ITV has not provided any further comments on our approach to diversion.

Relationship between viewing and advertising revenues

- 4.23 As explained in A1.108 to A1.118 of the consultation, translating the anticipated fall in viewing into a revenue impact is not straightforward. While the BBC will draw audiences away from commercial broadcasters, it does not directly compete for advertising with commercial broadcasters. Because it is difficult to determine the precise relationship between viewing and revenue, we modelled a plausible range and assumed that revenue would fall by one-third to two-thirds⁶⁹ of the estimated decline in viewing.
- 4.24 We understand that ITV's approach to estimating the advertising revenue impact assumes that advertising revenues fall proportionately to the reduction in viewing, [§<.] ITV has not provided any evidence to support its approach, nor commented on the reasoning set out in the consultation explaining why we consider advertising revenues will change by proportionally less than the fall in viewing. No other stakeholders disagreed with our approach. We remain of the view that modelling a plausible range based on the percentage change in revenues falling by one-third to two-thirds of the percentage change in viewing is appropriate. Our reasoning remains as set out in the consultation and is set out at A1.103 to A1.114.
- 4.25 Overall, we do not agree with key elements of the methodology that ITV has used to estimate the revenue impact of the BBC's proposals and we have maintained our approach as set out in the consultation. Our estimates for the commercial impact on broadcasters are summarised below:

⁶⁶ For all individuals aged 4+. For 16-34s 54% of viewing gained by BBC Three comes from other BBC channels and SVoD.

⁶⁷ For example, for all individuals aged 4+, 11% of BBC Three viewing comes from BBC One, 8% BBC Two, 4% BBC Four, 4% BBC iPlayer and 5% other BBC channels.

⁶⁸ For example, the most-watched channels by BBC Three heavy viewers in 2015 were BBC One (20% of broadcast viewing) and ITV (14%), followed by Channel 4 (7%) and BBC Two (6%). Further, across 16-34s the most widely viewed channels in 2020 were BBC One and ITV (14% of viewing each).

⁶⁹ The scenario where revenue falls by one-third corresponds to the price offset scenario of 67%, while the scenario where revenue falls by two-thirds corresponds to the price offset of 33%. This range is consistent with the approach that was adopted in the 2015 Market Impact Assessment which considered proposed changes to BBC Three, BBC iPlayer, BBC One and CBBC, as well as in the 2018 BBC Scotland Competition Assessment with respect to regional advertising.

Figure 3: Impact on commercial broadcasters, 2022⁷⁰

	Change in viewing	2022 TV and VoD advertising revenue (£m)	£m revenue impact (low) ⁷¹	£m revenue impact (high)	Impact as a % of advertising revenues (low)	Impact as a % of advertising revenues (high)
ITV portfolio ⁷²	-0.8%	1904	-8	-15	-0.4%	-0.8%
Channel 4 portfolio	-0.9%	1102	-5	-10	-0.4%	-0.9%
Other commercial	-0.4%	1461	-3	-5	-0.2%	-0.4%
Total		4467	-15	-30	-0.3%	-0.7%

Source: Ofcom analysis, ITV annual reports, STV annual reports, Channel 4 annual reports, Group M TV advertising revenue forecasts.

- 4.26 The largest impacts are for ITV and Channel 4, which might lose 0.4% to 0.8% (~£8-15m per annum), and 0.4% to 0.9% (~£5-10m per annum) of their advertising revenues in 2022.⁷³ This is relatively small in comparison to content spend – in 2020 ITV’s network scheduling costs were £935m⁷⁴ and Channel 4’s total content spend was £522m.⁷⁵
- 4.27 We note that in the PIT the BBC has stated that it has no current plans to swap BBC Three and BBC Four’s EPG slots, and therefore we did not reflect this scenario in our base case. However, we recognise (as noted by Channel 4) the possibility that in future the BBC might want to swap the EPG slots of BBC Four and BBC Three, to gain a more prominent position for BBC Three. We performed a sensitivity analysis which suggests this would have a small positive impact on BBC Three’s viewing share – increasing it by 0.1 percentage point to 1.6% for all individuals aged 4+ in 2022, and by 0.2 percentage points to 4.8% for 16-34s. We estimate that the impact on ITV and Channel 4’s advertising revenues could be around £2m and £1m higher respectively (i.e. up to £17m and up to £11m in total) in this scenario in 2022.⁷⁶ We do not consider that this affects our conclusions on market impact.
- 4.28 ITV was concerned that we had looked at the market impact across the aggregate ITV portfolio (rather than considering the impact on individual channels). We recognise that

⁷⁰ ITV portfolio includes ITV, ITV2, ITV3, ITV4, ITVBe, CITV, ITV Hub and +1 and HD variants are included where applicable. This includes STV and UTV. Channel 4 portfolio includes Channel 4, E4, E4, More4, Film4, 4Music, 4seven, All4 and 1+ and HD variants are included where applicable. Other commercial includes all other channels not included in the BBC, ITV or Channel 4 portfolios.

⁷¹ Note, however, that this is not necessarily the best-case scenario as this does not reflect the possibility that a fall in commercial impacts could theoretically lead to no revenue impact or even an increase in revenues (where the increase in price more than offsets the fall in impacts). We do not consider this to be a likely outcome – see A1.109 to A1.111.

⁷² STV holds the Channel 3 licences in North and Central Scotland and operates the STV Player across the UK. BARB measurement includes STV viewing within ITV viewing. Therefore, the changes in viewing for STV arising due to the linear relaunch of BBC Three are included in the ITV portfolio.

⁷³ Even in the unlikely worse-case scenario where advertising revenue falls in proportion to the fall in viewing, we note that this would not change our conclusion. In this scenario, total revenue would fall by £45m per annum for all commercial broadcasters combined which remains relatively small in the context of national TV advertising revenues.

⁷⁴ ITV, [ITV annual report and accounts](#) for the year ended 31 December 2020, p.181 [accessed 17 November 2021].

⁷⁵ Channel 4, [Channel Four Television Corporation Report and Financial Statements 2020](#), p.218 [accessed 17 November 2021].

⁷⁶ We note that Channel 4 suggested that its revenue impact would be [£<] if the EPG positions of BBC Three and BBC Four were swapped. We understand that Channel 4 used our modelling assumptions to derive its impact and we do not consider the difference to be significant.

within broadcaster portfolios, those channels that attract younger audiences are likely to be more affected. In the consultation we considered the impact on some specific channels that are likely to be closer competitors to BBC Three.⁷⁷ We have estimated the viewing minutes that each channel could lose to BBC Three in 2022 (based on the diversion ratios from the consumer survey) and compared these to total viewing minutes for each channel in 2019.⁷⁸

Figure 4: Estimated lost viewing minutes, by channel

	All individuals aged 4+		16-34s	
	Mins lost to BBC Three (2022) (billion)	As % of total 2019 viewing mins	Mins lost to BBC Three (2022) (billion)	As % of total 2019 viewing mins
ITV2	1.5	1.6%	0.3	1.1%
E4	0.9	1.5%	0.2	1.0%
Sky One	0.9	3.0%	0.2	2.1%

Source: BARB data and Ofcom analysis.

4.29 The largest proportional impact is for Sky One, which is predicted to lose 0.9 billion viewing minutes to BBC Three, representing 3% of its total minutes in 2019 (all individuals aged 4+). The impact on ITV2 and E4 is smaller, ranging from 1.0%-1.6% of 2019 viewing minutes. We have not presented a revenue impact because we do not have information on advertising revenues for each individual channel. However, based on the relatively small potential reduction in viewing minutes, the impact on advertising revenues is likely to be relatively small. Further, for Sky, advertising revenues are a relatively small part of total revenues.⁷⁹

Assessment of dynamic impact on commercial broadcasters

Our provisional finding

4.30 In order for the launch of BBC Three to harm fair and effective competition, it would need to lead rivals to reduce their investment and offerings to audiences. Our view was that significant harmful impacts on investment and fair and effective competition in the long run were unlikely. We noted that the dynamic effects flow from the static impacts, and the revenue impacts were anticipated to be small in relative terms. To the extent that revenue impacts do affect incentives to invest, we considered that any impact was unlikely to be significant. We also noted that BVoD was a priority area for ITV and Channel 4, and a

⁷⁷ No stakeholders commented specifically on this analysis in the consultation.

⁷⁸ This is based on seven-day consolidated viewing from BARB. We did not use 2020 viewing minutes as these may have been affected by the Covid-19 pandemic.

⁷⁹ Sky's UK & Ireland revenues in 2018 show that advertising revenues only make up 6% of Sky's total revenue. Source: [Sky annual report 2018](#), p 91 [accessed 17 November 2021]. We discuss the impact on pay-TV subscriptions below (see 4.50).

BBC Three linear relaunch was unlikely to undermine commercial broadcasters' long-term strategic aspirations to increase BVoD revenues.

- 4.31 Overall, we considered that the BBC's proposal was not likely to have an impact on the viability of commercial TV services, significantly affect the incentives of commercial broadcasters to invest and innovate, or reduce the choice of services offered to audiences.

Stakeholder comments

- 4.32 Channel 4 disagreed with our assessment. It considered that a £10m loss in advertising revenues was a material sum and told us that this represented 40% of its news or film budgets. It noted that we acknowledged in the consultation that Channel 4's advertising revenues are more likely to have a direct impact on its content investment than for other commercial public service broadcasters. It argued that the relaunch of BBC Three as a linear channel would directly impact the ability of Channel 4 to innovate and invest in new content for younger audiences, affecting the diversity and breadth of content available for this audience.⁸⁰
- 4.33 ITV submitted that assessing whether commercial channels would cease to be viable as a result of the BBC proposal was "setting the bar of significant adverse market impact unacceptably high." It also considered that attracting younger audiences that drive higher advertising revenues was strategically important for the future sustainability of TV services. It noted that, particularly for younger audiences, brands increasingly want the ability to create campaigns for a specific audience segment which is harder to deliver via multi-genre, broad-reach TV channels. As a result, it considered that channels aimed at niche high-value audiences, such as ITV2, are crucial.⁸¹

Our response

- 4.34 The assessment of dynamic impacts considers how affected rivals might respond over the longer-term to the relaunch of BBC Three (for example, by affecting their incentives to invest and innovate).
- 4.35 ITV suggested that the focus of our assessment was whether commercial channels would cease to be viable, and this set the bar too high. We disagree with this interpretation of our assessment. As noted in the consultation (paragraph A1.130), we are concerned about impacts that could harm audiences by reducing choice, quality or innovation. If a channel ceased to exist primarily due to the BBC's proposals, that would reduce choice and would be a relevant concern. However, it is not the only outcome that we are potentially concerned about. An impact that resulted in lower investment, thereby affecting quality or innovation, to the detriment of audiences, would also be a relevant consideration.

⁸⁰ Channel 4 consultation response p.5.

⁸¹ ITV consultation response, p.5-6.

- 4.36 We discussed in the consultation that it is difficult to predict the longer-term dynamic impacts of the relaunch of a BBC Three linear channel. This will depend on how rival providers respond to BBC Three's relaunch.
- 4.37 Rivals affected by the relaunch of BBC Three may invest more in affected channels to reduce any viewing shift to the BBC (e.g. by raising their programming budgets to increase the attractiveness of their channels). This could mitigate their lost advertising revenues, but their profits may fall due to the increased programming costs, and/or this may divert investment from elsewhere. Where net investment increases, this would tend to benefit audiences. Alternatively, commercial broadcasters may respond by producing fewer programmes to reduce their costs and limit the impact on their profitability. For example, content or channels that would no longer attract a large enough audience to justify their costs may be taken off as a result. This could have a negative impact on audiences if it reduces overall choice and quality.
- 4.38 Another possibility is that commercial rivals reposition themselves to provide greater differentiation relative to BBC Three. This could affect audiences differently, with some having more programmes that suit their tastes and some having less.
- 4.39 It is difficult to know which (if any) of these approaches commercial broadcasters will follow; indeed, different broadcasters may adopt different approaches. We explain below why we consider that significant dynamic impacts that harm audiences in the long run are unlikely.

The revenue impacts are relatively small and so the scale of any impact on incentives to invest is unlikely to be significant

- 4.40 The dynamic effects flow from the static impacts we have estimated. As set out above (at 4.26), we consider that the revenue impacts are small in relative terms. While it is possible that revenue reductions could affect incentives to invest, in general, we consider the scale of any impact is unlikely to be significant given the relatively small decline in revenue.
- 4.41 BBC Three targets younger audiences (i.e. 16-34s) who tend to watch less free-to-air-broadcast TV (and more online video services). This is making it more challenging for both the BBC and commercial broadcasters to reach younger audiences. Younger audiences represent an important demographic for broadcasters, and are more valuable to advertisers (as noted by ITV).⁸² While we recognise that a further loss of younger audiences to BBC Three from free-to-air-commercial broadcasters is likely to impact commercial broadcasters, because younger audiences represent a key target demographic and are important for future sustainability, we consider that broadcasters will be incentivised to invest and will continue to compete to retain younger audiences.⁸³ We have also reflected

⁸² ITV commented that the 16-34 demographic is an important audience for ITV services (and TV services more generally). ITV confidential response to the Invitation to Comment, p.9 and ITV consultation response p. 5.

⁸³ Channel 4 in particular has a public service remit to serve younger audiences and champion diversity. We consider that the relatively small scale of any reduction in advertising revenue is unlikely to affect Channel 4's overall incentive and strategy to invest in content that attracts younger audiences.

the fact that 16-34s are a more valuable demographic to advertisers compared to all audiences in our modelling of the revenue impacts (see A1.112).

- 4.42 We have looked specifically at the impact on channels that are closer competitors to BBC Three (e.g. E4, ITV2 and Sky One) and so may be impacted to a greater extent. Figure 4 shows that the viewing impact of relaunching a BBC Three channel is relatively small compared to each channel's total minutes. Based on the relatively small potential reduction in viewing minutes, the impact on advertising revenues is likely to be relatively small, and we therefore consider it unlikely that the relaunch of BBC Three would significantly reduce the ability and incentives to invest in these channels.
- 4.43 With respect to Channel 4, we recognise that a fall in its portfolio advertising revenues is more likely to have a direct impact on its content investment than for other commercial broadcasters. This is because Channel 4 is unique as a commercial PSB in that it operates on a not-for-profit basis, such that net of any running costs, all revenues are generally returned into content investment. Channel 4 is also more reliant on advertising revenues than other commercial PSBs because it does not generate revenues through production.
- 4.44 Channel 4 suggested that the BBC's proposals would affect the diversity and breadth of its content available for younger audiences. We recognise that Channel 4 may have invested the advertising revenues earned in the absence of the BBC Three linear channel to generate content that provides public value. However, we remain of the view that the scale of any impact is unlikely to be significant, based on the estimated £5-10m reduction in revenues, compared to total predicted revenue of over £1 billion in 2022. We note that Channel 4 appears to assume the maximum revenue loss that we have modelled (i.e. £10m in 2022) will occur. But, as discussed above, we have modelled a range and £10m is the upper bound (which is not necessarily the most likely outcome).

Competitive dynamics are likely to continue to drive incentives to invest as commercial PSBs shift focus to on-demand services

- 4.45 We note that commercial TV broadcasters have successfully increased their advertising revenues from video-on-demand services (e.g. ITV Hub and All4).⁸⁴ BVoD viewing is seen as important to help drive future advertising revenues, and commercial TV broadcasters are strengthening their digital strategies and putting increased emphasis on their on-demand services to make this happen.⁸⁵ Expanding BVoD services is a priority area for ITV and Channel 4 as audiences increasingly shift to consuming content online.
- 4.46 For example, in 2020 Channel 4 launched its Future4 strategy, which aims to accelerate Channel 4's transformation to digital by driving online viewing and new revenues. The strategy specifically notes prioritising digital growth above linear ratings.⁸⁶ ITV has restructured its broadcast business by positioning a new on-demand unit as its vehicle for

⁸⁴ Ofcom 2021 Media Nations Report, p. 56.

⁸⁵ Ofcom 2021 Media Nations Report, p. 44-46.

⁸⁶ See [Channel 4 annual report 2020, Strategic pillars](#) [accessed 17 November 2021].

growth, to cater for audiences who do most or all of their viewing online, and including original productions commissioned specifically for ITV Hub.⁸⁷

- 4.47 We expect that BVoD providers are likely to continue to invest in content to increase their online revenues, and that this will remain a driving force for investment.⁸⁸ These strategic changes by broadcasters reflect the changing market context and are a competitive response to the growing popularity of online video services (in particular SVoD). We consider that competition from online video services⁸⁹ will continue to drive future investment and innovation by broadcasters.
- 4.48 Relaunching BBC Three as a linear channel takes a different strategic direction, compared to the move by BBC's main rivals to a more BVoD focus. BBC Three's relaunch would not undermine commercial broadcasters' long-term strategic aspirations to increase BVoD revenues, or materially impact the customer base of the BVoD providers. Although we anticipate that some BBC Three viewing will be diverted from the three main commercial PSB BVoD services (ITV Hub, All4 and My5), this is a small part (less than 5%) of BBC Three's estimated viewing gain. We do not consider that the relaunch of a BBC Three channel will significantly slow take-up of BVoD services, which represents a growing source of advertising revenue for commercial broadcasters.

Summary

- 4.49 We recognise that there are limitations to the dynamic impact analysis. This reflects the inherent uncertainty in predicting long-term effects, and how rival providers will respond to the relaunch of BBC Three. Overall, we consider that the scale of any impact on the ability and incentives to invest is unlikely to be significant, given the relatively small decline in advertising revenues that is estimated. We also consider that the broader competitive market dynamics, including competition from online video services, imply that the BBC's proposals are unlikely to substantially affect the incentives of commercial broadcasters to invest and innovate. Ultimately, given the relatively small static impacts, we do not consider the potential for long-term harm to effective and fair competition to be significant.

Impact on SVoD and pay-TV services

- 4.50 In the consultation we did not consider that a BBC Three linear channel was likely to result in a material number of households altering their SVoD or pay-TV subscriptions, therefore the impact on revenues was likely to be minimal. For this reason, we did not anticipate that the ability and incentives of SVoD and pay-TV services to invest and innovate would be

⁸⁷ See [Our strategy – ITV](#) [accessed 17 November 2021].

⁸⁸ With respect to Channel 4, we recognise that fall in its advertising revenues is more likely to have a direct impact on its ability to invest in content.

⁸⁹ This includes BVoD and SVoD, and other online services such as YouTube and TikTok.

materially affected by the relaunch of the BBC Three linear channel.⁹⁰ No stakeholders commented on our findings and we remain of the view that the impact on SVoD and pay-TV subscriptions is likely to be minimal.

Wider impacts

Our provisional finding

- 4.51 We considered that the relaunch of BBC Three as a linear channel was unlikely to result in significant adverse impacts elsewhere in the vertical value chain.
- 4.52 We noted that the BBC is subject to obligations under the Charter and the Agreement in relation to its distribution activities, which restrict it from acting in a way which adversely affects competition. These would also apply to the distribution of BBC Three.
- 4.53 We did not think that the BBC's procurement of content to develop the BBC Three linear channel would significantly harm rival broadcasters' ability to acquire rights to content, for a number of reasons:
- The increase in BBC Three's content budget is not contingent upon BBC Three relaunching as a broadcast TV channel. Therefore, any impact in the input market may not be directly attributable to the proposal, but instead reflect the higher content budget.
 - We noted that the BBC had proposed that UK originations should be a minimum of 70% of output, and we proposed imposing an Operating Licence condition that would require the BBC to ensure that 75% of output were UK originations. This would limit the number of hours available for acquisitions.
 - A large amount of popular international content is available for acquisition by commercial broadcasters. Even if the BBC acquires international content, thereby denying it to its rivals, commercial operators will be able to acquire other popular content to fill their programming schedule.

Stakeholder responses

- 4.54 No stakeholders suggested that the relaunch of BBC Three as a linear channel would result in adverse impacts in relation to how the BBC distributes its content.
- 4.55 ITV and Channel 4 were concerned about the channel's potential impact on the acquisitions market. Channel 4 was concerned that bidding for acquisitions for BBC Three could inflate prices.⁹¹ It said there should be a high bar required for the BBC to justify acquisitions. In particular it suggested that, "the BBC must demonstrate that they have not unnecessarily inflated market pricing for content that could have found a home elsewhere"

⁹⁰ We note that Sky may also lose advertising revenues but as a subscription broadcaster, this represents a relatively small portion of total revenue. We consider that a limited loss in UK advertising revenue is unlikely to have an impact on its overall incentives to invest.

⁹¹ Channel 4 consultation response, p.4-5.

and “the BBC’s acquisition strategy for BBC Three must not be overtly commercial and should instead seek out programming which is high in public service value and would likely prove loss-making for commercially funded channels.”⁹²

- 4.56 While Channel 4 noted that there was a large amount of international content available for acquisition,⁹³ ITV challenged our view that there is a large amount of popular international content available for commercial broadcasters.⁹⁴ ITV argued that the amount of US content available for UK broadcasters is reducing as studios seek to distribute directly to consumers or via wider commercial arrangements. ITV noted that there are no restrictions on the proportion of the BBC Three budget that could be spent on acquisitions.⁹⁵
- 4.57 We also discuss the concerns about acquisitions raised by stakeholders in relation to the Operating Licence conditions that we are imposing on BBC Three in section 6.

Our response

- 4.58 We note the concerns raised by stakeholders about the wider impacts of the BBC’s proposals in relation to international acquisitions.
- 4.59 The change to BBC Three’s budget is not contingent on the relaunch of the linear channel. The BBC could therefore purchase acquired content for BBC Three irrespective of the proposals (indeed, there are currently no restrictions on the type of content shown on BBC Three as an online-only channel).
- 4.60 We recognise that there is uncertainty in trying to compare what would happen with and without the linear re-launch, and the re-launch could potentially lead to an increase in the acquisition of international content by the BBC. Even if the BBC’s proposal does lead to it making more international acquisitions (which could potentially lead to an increase in prices and make it more difficult for rivals to acquire this content), we do not consider that, in this case, any increase in acquisitions by the BBC would significantly harm a rival broadcaster’s ability to acquire rights to international content.⁹⁶
- 4.61 This is because there are limitations to how much international content the BBC can feasibly acquire for the new BBC Three channel. According to the BBC, the key focus of the new BBC Three channel will be high-quality original British programming.⁹⁷ The BBC PIT stated that at least 70% of the BBC Three’s broadcast hours will be original productions, the vast majority of which are produced in the UK.⁹⁸ It estimated that scripted and unscripted originations will make up about 93% of the new channel’s content budget, with

⁹² Channel 4 consultation response, p.5.

⁹³ Channel 4 consultation response, p.4.

⁹⁴ ITV consultation response, p.6.

⁹⁵ Ibid.

⁹⁶ ITV suggested the amount of content available for acquisition had decreased due to a greater tendency for studios to distribute content directly to consumers. In contrast, we note that Channel 4 considers that there is a large amount of international content available for acquisition. Even if the amount of content available for acquisition has decreased, as has been suggested by ITV, we do not consider that the BBC’s proposals are going to materially affect the amount of content available for UK broadcasters to acquire given the limitations on the international acquisitions the BBC can make.

⁹⁷ BBC PIT, p.17.

⁹⁸ BBC PIT, p.48-49.

repeats and acquisitions accounting for about 7%. It indicated that £5m of the content budget will be spent on acquisitions and repeats.⁹⁹ Overall, we do not consider it would be feasible for the BBC to deliver its originations commitment while spending a sizeable portion of the BBC Three budget on acquisitions. Moreover, as explained in section 6, we are imposing an Operating Licence condition which will require 75% of the output on BBC Three to be UK originations, and which will specifically constrain the number of hours of acquisitions that can be shown on BBC Three, providing additional assurance on this.

- 4.62 Therefore, we think it is unlikely that the BBC's proposals will have a significant impact in terms of raising prices for acquisitions or limiting the availability of acquisitions for other broadcasters.
- 4.63 Channel 4 has suggested that the BBC must demonstrate that it has not unnecessarily inflated market pricing for acquisitions that could have found a home elsewhere, and should instead seek out programming which is high in public service value and would probably be loss-making for commercially-funded channels. We do not consider that these suggestions are necessary, as we consider that the BBC's proposals will not have a significant adverse impact on fair and effective competition in relation to the acquisition of international content.

Our conclusions on market impact

- 4.64 BBC Three is anticipated to be a relatively small linear channel. We estimate its viewing share (linear and BVoD) at up to 1.5% in 2022 for all individuals aged 4+, which represents a 0.8 percentage point increase in viewing share compared to the situation if BBC Three remains only on BBC iPlayer. We expect BBC Three to have a higher viewing share (up to 4.6%) within its target 16-34 audience (a 1.7 percentage point increase compared with BBC Three on BBC iPlayer only).
- 4.65 The increased viewing which BBC Three attracts due to the linear relaunch is likely to reduce viewing of other free-to-air-broadcast channels, BVoD, SVoD and pay TV channels. However, we consider that the market impact of the proposed changes is unlikely to have a significant adverse impact on fair and effective competition.
- 4.66 For commercial free-to-air broadcast channels the loss in viewing is likely to translate into a loss in advertising revenues. We estimate the total loss in revenues could be between £15m and £30m in 2022. This is relatively small compared to total advertising revenues of over £4 billion. The impact is largest for ITV and Channel 4, each of which might lose 0.4% to 0.8% and 0.4% to 0.9% of their advertising revenues (~£8-15m and ~£5-10m) respectively.
- 4.67 Given the relatively small overall effect on the revenues of commercial TV broadcasters and the broader competitive market dynamics, we do not consider that the BBC's proposal by itself is likely to have an impact on the viability of commercial TV services, significantly

⁹⁹ BBC PIT, Figure 4.

affect the ability and incentives of commercial broadcasters to invest and innovate, or affect the choice of services offered to audiences.

- 4.68 We recognise that the relaunch of BBC Three as a linear channel could potentially lead to an increase in the acquisition of international content than would otherwise be the case. However, we do not consider that the BBC's proposal will have a significant adverse impact on fair and effective competition in relation to the acquisition of international content, given that the BBC proposes to spend a relatively small proportion of the BBC Three budget on acquisitions, which will limit how much international content the BBC could feasibly acquire for the new channel. Further, there will also be specific limitations to how much acquired content the BBC can show on the new BBC Three channel, given the Operating Licence condition that will require 75% of the channel's output to be UK originations.

5. Final determination

5.1 In the previous sections of this document we have provided a summary of stakeholder responses and set out our final conclusions taking account of the issues raised. In this section, we set out our decision that the BBC may continue to progress its proposals to relaunch BBC Three as a broadcast channel.

Our provisional finding

5.2 In the consultation, we provisionally concluded that the additional public value created by the proposals justified the limited adverse impact on fair and effective competition. Therefore, we provisionally determined that the BBC could proceed with its proposals.

5.3 We explained that we agreed with the BBC that there could be personal and social public value associated with the proposals. We said that if the BBC could achieve the proposal's aims of providing underserved younger audiences with a deeper engagement with BBC content, we considered that it could have significant short- and long-term benefits. However, we also explained that we expected the BBC to set out more detail in its Annual Plan as to how the delivery of this public value would be ensured.

5.4 We acknowledged that there could be some loss in viewing for commercial broadcasters which could translate into a loss in advertising revenues. However, we did not consider that the market impact of the proposed changes would be likely to have a significant adverse impact on fair and effective competition. We noted our view that, given the relatively small overall effect on the revenues of commercial TV broadcasters, we did not consider the BBC's proposal by itself was likely to have an impact on the viability of commercial TV services, significantly affect the incentives of commercial broadcasters to invest and innovate, or affect the choice of services offered to consumers. We also explained that we did not consider that a BBC Three linear channel was likely to result in a material number of households altering their SVoD or pay TV subscription purchasing decisions, so the impact on these services was likely to be minimal.

Stakeholder responses

5.5 ITV and Channel 4 challenged the weight we had given to the potential for adverse impacts on competition as set out in our market impact assessment in our preliminary determination. As explained in section 4, both ITV and Channel 4 thought that we had understated the market impact. Channel 4 also considered that the loss in advertising revenue would impact on its ability to invest in new content, and therefore the public value it delivers. It felt that the BBC should be made to look at options that cause less harm to other PSBs' delivery to young audiences, and that we should reject the proposal because the BBC had not fully considered the impact on public value delivered by other broadcasters.

Our final determination

- 5.6 In reaching our final determination, 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, and the BBC Charter and Agreement, including those concerning protection of competition and support for public service broadcasting. We have also taken into account the importance to the BBC's future sustainability of building positive awareness of the BBC brand among younger and harder-to-reach audiences.
- 5.7 In reaching our final conclusions on the proposals, we have exercised our judgement in considering the available evidence from the BBC's public interest test, our own analysis, and information and views offered by stakeholders.
- 5.8 We have consistently highlighted in our Annual Reports into its performance, that the BBC has struggled to attract and retain younger audiences, pointing out that this poses a risk to its future sustainability and its ability to deliver its Mission and Public Purposes.¹⁰⁰ Although time spent consuming BBC content has been declining among all audiences, the decline is most evident among younger audiences where it is falling at a faster rate and is reflected in the increasing average age of audiences watching or listening to BBC broadcast services.¹⁰¹ Reaching younger people is therefore a vital part of the BBC's challenge to serve all audiences across the UK. To that extent, we welcome the steps that the BBC is taking to meet this challenge.
- 5.9 In our analysis, we have considered both the overall scale of the projected viewing and its target demographic. The channel is estimated to have a viewing share (linear and BVoD)¹⁰² of up to 1.5% in 2022 for all individuals aged 4+, and 4.6% for the target audience of 16-34 year-olds. However, we are of the view that the most important factor in this case in determining public value is not the overall size of the projected audience, but the nature of the audience that the BBC is trying to reach. These proposals are an attempt to reach an audience that is currently underserved by the BBC, therefore, although the proposed channel's target audience is a relatively small group, we consider it to be a particularly important one.
- 5.10 Whilst the proportion of time younger audiences spend watching BBC iPlayer has increased, overall they still spend significantly more time watching BBC TV live on a TV set.¹⁰³ This suggests that both broadcast TV and BBC iPlayer are important ways for the BBC to engage with this group. The BBC's PIT said that there remains a significant and relatively stable cohort of young people who maintain a strong broadcast TV habit but are very light users of BBC TV. It identified that some of this cohort have less access to on-demand services, and re-establishing BBC Three as a broadcast channel offers a means to connect with this group.

¹⁰⁰ Our [annual reports on the BBC](#) are available on our website.

¹⁰¹ [BBC Three television channel provisional determination: consultation](#), p.7-8.

¹⁰² By BVoD we mean broadcaster video on-demand services such as BBC iPlayer, ITV Hub, All4, STV Player and My5.

¹⁰³ [BBC Three television channel provisional determination: consultation](#), p.8 Figure 1.

- 5.11 The new channel will offer increased choice for audiences on linear television and provide access to a greater volume of BBC Three content, including original content with a UK focus across a range of genres such as news, current affairs and factual content as well as entertainment, comedy and drama. To that extent, we consider that the proposals have the potential to form an important part of the BBC's overall strategy for attracting and retaining younger audiences. If the proposals are successful in establishing a connection to the BBC Three brand, and the BBC brand and wider BBC portfolio in general, partly by driving greater viewing to content on the BBC iPlayer, they are likely to also deliver longer term benefits for the BBC's ability to deliver its Mission and Public Purposes.
- 5.12 As we have noted throughout our analysis, the amount of public value delivered to this audience will depend on the type and range of UK content that the BBC schedules on the channel and the extent to which the channel is genuinely distinctive. Therefore, we agree with stakeholders that it is important that the BBC is held to delivering the public value that the proposals could generate. The BBC's PIT has set out how it sees the channel to be distinctive from other services through the breadth of different genres and output which will be representative of diverse and under-represented young people. The BBC Board will need to ensure that its proposals as set out in the PIT are delivered. We will monitor the channel's performance closely, as explained further in section 7 below.
- 5.13 We continue to believe that these are relatively narrow proposals, which do not have any increased content budget associated with them. However, as set out in the previous section, it is likely there will be some market impact as a result of the BBC's proposals, particularly in relation to the ITV and Channel 4 portfolios, as a BBC Three broadcast channel is likely to attract viewing away from competing services. We also acknowledge that younger audiences – the target audiences for BBC Three – represent an important demographic for commercial broadcasters, not just for the BBC. Our view remains that the impact of the proposals on the revenues of commercial broadcasters is likely to be relatively small, with a maximum impact of a loss of less than 1% of total advertising revenues in 2022 for ITV and Channel 4, and 0.4% for the total combined advertising revenues of all other commercial broadcasters. Given the relatively small overall effect on the revenues of commercial TV broadcasters, we do not consider the BBC's proposal is likely to significantly affect the ability or incentives of commercial broadcasters to invest and innovate or impact on the choice of services, or the public value that they offer to audiences, and that they will continue to compete to retain these audiences.
- 5.14 We acknowledge the points raised by Channel 4 about the potential impact on its ability to invest in content for younger audiences if it loses viewing and advertising revenues as a result of the proposals, and its point that this has the potential to affect the public value that it delivers to its own audiences. We have taken this into account in reaching our final conclusions. However, it is not the case that the proposals should be able to proceed only if they would have no adverse impact on competition or public value provided by others. The assessment that we are required to consider in a BCA, is whether the public value resulting from the BBC's proposals, in our view, justifies the adverse impact on fair and

effective competition, including any potential impact on other broadcasters such as Channel 4.

- 5.15 While the Agreement makes clear that we have to consider the scale and likelihood of the public value of the proposals relative to the scale and likelihood of any adverse impact on fair and effective competition, it also recognises that this determination requires a qualitative assessment. Therefore, a direct comparison of factors relating to public value and relating to risks to fair and effective competition, may not be possible.¹⁰⁴ In line with this, and our [BCA guidance](#), we have undertaken a qualitative assessment of the additional public value we think may be generated by the proposals, as well as considering the risks to fair and effective competition as outlined above. In reaching our overall assessment of whether the proposals should be allowed to proceed, we have used our judgement, building on the evidence we have obtained from the BBC and our own analysis and research, as well as taking account of input and views from stakeholders. As described in this document, we have put particular weight on the fact that the target audience is a crucial one for the BBC to reach, in order for it to be able to deliver to all audiences.
- 5.16 Overall, in this case, we have concluded that the public value created by the proposals justifies the limited adverse impact on fair and effective competition that we have identified. The BBC is therefore permitted to proceed with implementing its proposals. We have reproduced the BBC's proposals in paragraphs 2.5-2.10. We do not consider that it is necessary to impose any specific conditions in relation to the proposals by way of a condition of approval.¹⁰⁵
- 5.17 Alongside this review we have also considered what Operating Licence conditions and performance monitoring would be appropriate for the channel. Sections 6 and 7 outline our considerations of stakeholders' responses to our proposals for Operating Licence conditions and performance monitoring and sets out our conclusions.

¹⁰⁴ Agreement, clause 12(4)

¹⁰⁵ However, in relation to paragraph 2.7 (v), as we explain in section 6, we are imposing an Operating Licence condition to ensure that the minimum level of BBC originated content on the BBC Three broadcast channel is 75%, for the reasons set out in that section.

6. Operating Licence conditions

Introduction: our proposals and decisions on Operating Licence conditions

- 6.1 Under the Charter and Agreement, Ofcom is required to set an Operating Licence for the BBC's UK public services. The Operating Licence contains a set of regulatory conditions that Ofcom considers appropriate for requiring the BBC to fulfil its Mission and promote the Public Purposes, to secure the provision of distinctive output and services and to secure that audiences across the UK are well served.¹⁰⁶ The Agreement creates obligations on Ofcom to set certain licence conditions for the BBC, and confers a wide discretion on us to impose such further regulatory conditions as we consider appropriate for requiring the BBC, in carrying out the UK public services, to fulfil the Mission and promote the Public Purposes, and to secure that the audiences in the UK's nations are well served.¹⁰⁷ We have the power to amend the Operating Licence following consultation with the BBC and any person we consider appropriate.
- 6.2 We also consulted on proposed changes to the [Operating Licence](#) that we considered were appropriate to impose in the light of our duties and the requirements of the Charter and Agreement.¹⁰⁸ In this section we restate these proposed changes, summarise stakeholder responses and explain the final conclusions we have reached in the light of those responses.
- 6.3 Following consideration of the consultation responses we have decided to impose the following Operating Licence conditions for BBC Three, which will apply with effect from 1 February 2022, as set out in the Notice of Variation at Annex 3.

In respect of **BBC Three**, the BBC must ensure that every weekday (except Public Holidays) it shows news programmes that are intended to appeal to 16 to 34 year-olds.

In respect of **BBC Three**, the BBC shall ensure that in each Calendar Year the time allocated to broadcasting of original productions is not less than 75% of the hours of all programming.¹⁰⁹

In respect of **BBC Three**, the BBC must ensure that in each Calendar Year it provides first-run UK originations that are intended to appeal to 16 to 34 year-olds across a mix of different genres.

- 6.4 In the rest of this section we set out our approach and our consideration of the responses from stakeholders.

¹⁰⁶ As required by Article 46 of the Charter.

¹⁰⁷ Agreement, clause 13.

¹⁰⁸ Ofcom's function of setting conditions in the Operating Licence is set out in the BBC Charter at Article 46(3).

¹⁰⁹ This condition is incorporated into the Licence through amending the table set out in condition 2.32 of the Licence.

Our overall approach

6.5 In the light of our provisional determination that the BBC should be permitted to relaunch BBC Three as a new UK public service television channel, we considered, and consulted on, what Operating Licence conditions are appropriate in the light of our duties and the requirements of the Charter and Agreement (see further Annex 2: Legal Framework). In considering appropriate conditions for BBC Three, we had particular regard to the need for the BBC to secure the provision of distinctive output and services,¹¹⁰ and for it to reach all audiences. We have also had regard to the objective of securing that audiences in all of the nations are well-served. We proposed conditions in the context of our recent consultation '[How Ofcom regulates the BBC](#)', which sets out the need to update the Operating Licence to ensure that our regulation remains effective.

6.6 We proposed adding three new conditions to the Operating Licence:¹¹¹

In respect of **BBC Three**, the BBC must ensure it shows news every weekday (except Public Holidays).

In respect of **BBC Three**, the BBC shall ensure that in each Calendar Year the time allocated to broadcasting of original productions is not less than 75% of the hours of all programming.

In respect of **BBC Three**, the BBC must ensure that in each Calendar Year it provides first-run UK originations that are intended to appeal to 16-34 year-olds across a mix of different genres.

6.7 We also indicated where we thought that the BBC should set out transparently, in its next Annual Plan, more detail on its plans and how it would measure the impact of them.

6.8 In addition, we explained that it was particularly important for the BBC to have effective metrics in place to measure how well BBC Three content contributed to meeting the Mission and Public Purposes across both the proposed broadcast channel and the BBC iPlayer. We also gave examples of the type of metrics that we expected to report on to monitor the BBC's performance in this area.

Stakeholder responses

6.9 Overall, the BBC and Directors UK were broadly supportive of our proposals. The BBC considered our proposals "appropriate".¹¹² ITV and Channel 4 did not consider that we had gone far enough in setting conditions for the proposed channel.

¹¹⁰ The Agreement, Schedule 2, paragraph 1. "Distinctive output and services" are defined as output and services, taken as a whole, that are substantially different to other comparable providers across each and every UK public service both in peak time and overall, and on television, radio and online, in terms of: (a) the mix of different genres and output; (b) the quality of output; (c) the amount of original output produced in the UK; (d) the level of risk-taking, innovation, challenge and creative ambition; and (e) the range of audiences it serves; Agreement, Schedule 2, paragraph 2.

¹¹¹ See Annex 3 for a notice of variation of the Operating Licence

¹¹² BBC consultation response, p.3

- 6.10 ITV stated that its fundamental difficulty with our provisional conclusions was that, as far as it was concerned, we did not “appear to be requiring the BBC to deliver its proposals and commitments via obligations in the Operating Licence”. It did not think Ofcom keeping conditions ‘under review’ and the BBC setting out its plans in its Annual Plan was sufficient protection against the “BBC’s slide into mainstream commercial programming, particularly acquired US material”.¹¹³ ITV said that it was concerned that there were, “essentially, no barriers to BBC Three becoming an entirely mainstream commercial service, in direct competition with ITV2 and other free-to-air services serving the same audience and competing for rights to the same shows”.¹¹⁴
- 6.11 Channel 4 said that it agreed with our “overarching approach that we should move away from a purely quota-based measurement system”. However, it believed “that, in order to achieve optimal public service outcomes, it was important to retain a mix of both qualitative and quantitative measures”, with quantitative measures remaining in place to measure important genres like news, or policy interventions like the percentage of programming spend outside London.
- 6.12 Channel 4 also noted that we said that we would require the BBC to set out its vision for BBC Three in its Annual Plan and that we would assess its delivery of this. However, Channel 4 was concerned that without the existence of anchoring quantitative measures, the BBC would be able to significantly alter the make-up of BBC Three over time (perhaps by providing less first-run originated content or by placing more acquisitions in peak time) without triggering a review by Ofcom.
- 6.13 Channel 4 thought that our proposals to have only one quantitative measure for BBC Three struck the wrong balance and instead BBC Three’s licence conditions “should broadly reflect the obligations placed on other BBC services including quotas for first-run originations (including in peak time), spend and volume of programming made outside of London, and news (in peak time)”.¹¹⁵
- 6.14 Channel 4 also believed that “it was reasonable, given the BBC’s privileged position as the recipient of £3.5bn of public funding that the BBC was subject to a more formal, more quantitative system of measurement than other non-publicly funded PSBs”.¹¹⁶

Our response

- 6.15 We consider that our proposed conditions are appropriate to secure the key aspects of the channel’s contribution to the BBC’s Mission and Public Purposes.¹¹⁷ We aimed to strike a balance between holding the BBC to specific elements of the proposal, e.g. the condition requiring daily news, and allowing the BBC the flexibility to determine how best to deploy content on the channel to meet the objectives of its proposals. We did not, therefore,

¹¹³ ITV consultation response, p.3.

¹¹⁴ ITV consultation response, p.1.

¹¹⁵ Channel 4 consultation response, p.6.

¹¹⁶ Channel 4 consultation response, p.6.

¹¹⁷ Agreement, clause 13 (3).

propose to convert all aspects of the BBC's proposal into conditions in the Operating Licence, in a similar way in previous BCAs, because we did not deem that appropriate or necessary to secure the channel's contribution to the BBC's Mission and Public Purposes. We also set out our expectation that the BBC would provide sufficient detail in its next Annual Plan on how it was proposing to deploy content on BBC Three, as well as listing a proposed series of metrics that we would be collecting and monitoring to assess the performance of the channel, retaining the ability to step in and impose additional conditions if we had concerns.

6.16 We still consider that this overall approach strikes the correct balance, although we are also considering more widely how the Operating Licence may need to be updated to ensure that it remains effective, in line with our recent consultation [How Ofcom regulates the BBC](#).¹¹⁸ In this consultation we said that our experience of regulating the BBC over the last four years shows there are some areas of the Operating Licence that need updating to ensure that our regulation remains effective. Specifically, we highlighted that our key considerations were to:

- a) expand the licence to cover the BBC's online services, such as BBC iPlayer, more comprehensively with a view to ensuring that the licence enables Ofcom to hold the BBC to account for delivery across all its services;
- b) move away from primarily requiring compliance with quantitative conditions and output reporting and instead make qualitative requirements more central, to ensure that the BBC has scope to determine how best to fulfil its licence obligations across its platforms and services; and
- c) potentially require the BBC – through enforceable reporting obligations – to make specific commitments in its Annual Plan for the year ahead on how it plans to deliver our regulatory requirements, and potentially to explain how it will deliver the Mission and Public Purposes, and how it will monitor their impact, so as to ensure the licence enables Ofcom to hold the BBC more effectively to account by requiring greater transparency and more effective reporting.

6.17 We would anticipate looking again, as needed, at the appropriate conditions to be placed on BBC Three as part of this review of the Operating Licence. We will be consulting on our detailed Operating Licence proposals in spring 2022.

Operating Licence conditions for BBC Three

News and current affairs

Our proposal

6.18 We are required by the Agreement to consider what, if any, conditions would be appropriate for securing that the programmes included in the UK public television services

¹¹⁸ [How Ofcom regulates the BBC](#), p.10 paragraph 3.15.

include news and current affairs programmes. We are also required to consider what appears to Ofcom to be an appropriate level and that news programmes are broadcast for viewing at intervals throughout the period during which UK public television services are provided.¹¹⁹ We set out our view that it was important to hold the BBC to its commitment to provide news on BBC Three by setting a condition in the Operating Licence to secure this. Although news content would make an important contribution to the public value of the BBC Three service, given that the BBC was struggling to reach younger audiences with news, we explained that news was not likely to constitute a significant proportion of its overall programming mix. We therefore thought it was appropriate to give the BBC flexibility to determine the number of hours of news within that mix. We considered that the regularity of news was the most important factor, and therefore our proposed condition reflected that, by requiring BBC Three to provide news content at least daily during the week (Monday to Friday) on the broadcast channel.¹²⁰ We thought that a regular news bulletin would secure the fulfilment of Public Purpose 1 and contribute to Public Purpose 4.

- 6.19 We did not propose to set a separate condition for current affairs as we noted that the BBC had already committed to providing current affairs content as part of the mix of genres on BBC Three, and we would expect the precise proportion to vary year by year. We thought that it was important that the BBC could schedule its current affairs programming at times which appealed to its target audiences, as part of the mix of different genres to which it had committed.

Stakeholder response

- 6.20 Directors UK supported our proposal to create an Operating Licence requirement for daily news as part of the content offering of the channel. It noted that broadcast news was a particularly under-performing area for younger audiences.¹²¹ WGGB agreed with our stipulation that there must be a daily news broadcast on weekdays.¹²²
- 6.21 ITV agreed with us that “the BBC’s commitment to provide news and current affairs targeted specifically at younger audiences was a key part of the BBC Three proposal”. However, it thought that our proposed amendment to the Operating Licence did not require the BBC to produce original content for the channel, or to produce content suitable for the target audience at a convenient time for them in the evening schedule.¹²³ It felt that we had given the BBC too much discretion and that our proposed requirement could be met by showing a short simulcast or clips package from another service.¹²⁴
- 6.22 ITV suggested that we amended the proposed Operating Licence requirement for news accordingly, by making explicit that the BBC must ensure that it showed original news,

¹¹⁹ Agreement, Schedule 2, paragraph 4.

¹²⁰ Like other weekday Operating Licence conditions this would exclude Public Holidays. A ‘Public Holiday’ means Christmas Day, Good Friday, or a bank holiday under the Banking and Financial Dealings Act 1971.

¹²¹ Directors UK consultation response, paragraph 12.

¹²² WGGB consultation response, question 4.

¹²³ ITV consultation response, p.2.

¹²⁴ ITV consultation response, p.2.

intended to appeal particularly to 16-34 year-olds every weekday (except public holidays) particularly during peak time and at other times when the core audience is available to view.¹²⁵

Our response and conclusion

- 6.23 We agree with ITV that the condition as worded could be clearer in requiring the BBC to produce original content for the channel. We were clear in the consultation that the BBC must do more to appeal to younger audiences with its news content. Although we do not think that the potential use of news material gathered from other BBC services is problematic *per se*, we do not consider that simulcasting news bulletins from other BBC services would meet the BBC's PIT commitment to broadcast a nightly news bulletin to keep young audiences informed of national and global events and issues that are of interest to them.¹²⁶ What we think is important is that the BBC ensures that there is strong editorial curation of its BBC Three bulletins to ensure that its news content appeals to its target audience, as set out in the PIT
- 6.24 We are therefore amending the wording of the condition slightly to make it clearer that the news provision for BBC Three must contain news programmes made for the channel, and that it should be designed to appeal to 16-34 year-olds. We do not consider, however, that we need to be more specific on when the BBC should deploy news programmes throughout the schedule. We remain of the view that the BBC should be able to experiment with what works best for the target audience, and that includes where to deploy its bulletin in the schedule. We have therefore decided to impose the following condition in respect of news on BBC Three (amendments to the wording proposed in the consultation are in italics):

In respect of **BBC Three**, the BBC must ensure that every weekday (except Public Holidays) it shows news *programmes that are intended to appeal to 16 to 34 year-olds*.

Original productions

Our proposal

- 6.25 In the consultation, we explained that under the Agreement¹²⁷ we must set a quota for the number of hours to be allocated, in each year, for the broadcasting of UK original productions¹²⁸ for each of the BBC's UK Public Service television channels, which would include BBC Three should it be permitted to launch as a television channel.

¹²⁵ ITV consultation response, p.2-3.

¹²⁶ BBC PIT, p.42.

¹²⁷ The Agreement, Schedule 2, paragraph 5.

¹²⁸ We explained in the Operating Licence that "Original productions", in relation to the UK Public Television Services taken together, has the same meaning that is specified by the Broadcasting (Original Productions) Order 2004 or any subsequent order under section 278(6) of the Communications Act 2003 in relation to a licensed public service channel. This means they are programmes which are commissioned by the BBC with a view to their first being shown on television in the United

- 6.26 While we agreed with the BBC that well-chosen acquisitions could play an important role in the overall makeup of the channel, we recognised that striking the correct balance between BBC originations and acquisitions was important, both in terms of the distinctiveness of the channel and in mitigating potential impacts on other broadcasters which were not essential to enable the public value to be delivered.
- 6.27 We therefore proposed an Operating Licence condition requiring at least 75% of broadcast hours of the new BBC Three broadcast channel to comprise BBC original productions (i.e. programmes commissioned by the BBC including both first-run content and repeats). We explained that in proposing this level we had also had regard for:
- a) the importance of original productions to distinctiveness;
 - b) the level of original productions that we have required other BBC services to provide;
 - c) the reported performance of BBC Three when it was previously broadcasting as a television channel; and
 - d) stakeholder concerns with the BBC’s own proposed level of 70%.
- 6.28 We also considered whether we should set a separate quota for original productions in peak viewing times.¹²⁹ We were of the view that we did not have enough information about the likely viewing behaviour of the specific target audience at this stage to be able to determine whether a BBC Three broadcast channel would be likely to have a conventional ‘peak time’, when most of the target audience were likely to be watching, such as the peak viewing times that we have defined for other services in the Operating Licence. We therefore said that setting a specific ‘peak time’ quota could work against the BBC making appropriate scheduling decisions to respond to specific audience preferences as the new service beds in. We also made clear, however, that we would be concerned, and would step in, if the BBC were to fill the slots with the highest audience viewing figures with acquisitions.

Stakeholder response

- 6.29 Directors UK said it shared the concerns of other stakeholders of “not wanting the channel to be filled with overseas acquisitions and would welcome the channel’s focus on broadcasting distinctive UK-originations”.
- 6.30 Channel 4 agreed with us that acquisitions could play a role in bringing an audience to UK originated content. However, it argued that if the BBC was going to include acquisitions as part of its content mix “there should be a high bar set for the BBC to justify the inclusion of such content”.¹³⁰

Kingdom on the relevant channel or service and are also a ‘European programmes’ within the meaning of article 5 of the Order.

¹²⁹ The Agreement also requires us to consider that the time allocated to the broadcasting of original productions is split in what appears to Ofcom to be an appropriate manner between peak viewing times and other times. ‘Peak viewing time’ is presently defined in the Operating Licence as 18:00 – 22:30 for all UK public television services except for BBC Four, and as 19:00 to 24:00 for BBC Four.

¹³⁰ Channel 4 consultation response, p.5.

Our response and conclusion

- 6.31 We are confirming our decision to set a condition in the Operating Licence requiring a minimum of 75% of output of the BBC Three broadcast channel to be original productions.

In respect of **BBC Three**, the BBC shall ensure that in each Calendar Year the time allocated to the broadcasting of original productions is not less than 75% of the hours of all programming.

- 6.32 Those stakeholders who raised concerns about acquisitions on the channel did not suggest a different figure for the proportion of hours of UK originations to the one that we had proposed. We continue to think, consistent with our view when we consulted on setting the original Operating Licence, that original productions – the content commissioned by the BBC for broadcast on its channels – are a key contributor to the overall distinctiveness of the BBC’s output and services. As such, original productions will be key to the distinctiveness of the BBC Three broadcast channel. However, we also remain of the view that carefully chosen acquisitions within the schedule could play an important role in the overall makeup of the channel, in that they could both complement original BBC content and act to draw audiences to the channel. We think the figure of 75% UK originations sets a sufficiently high minimum level, and that it would not be appropriate to impose a peak time quota, for the reasons set out above.
- 6.33 However, we do share the concerns of many stakeholders, including Channel 4, that the BBC needs to be open about its plan for using acquisitions as part of the overall makeup of the content on the channel, and we expect to see this reflected in the BBC’s next Annual Plan, as set out in section 7.

First-run UK originations

Our proposal

- 6.34 We said we were of the view that the BBC’s investment in new content for BBC Three would be a key determinant of its distinctiveness, and would determine whether the proposal secured the public value that the BBC envisaged. We considered setting an Operating Licence condition relating to the amount of first-run UK originations on BBC Three, to secure distinctiveness (in line with Public Purpose 3). We noted that the BBC had committed to “at least 24% of the hours between 7pm and midnight of the new BBC Three broadcast channel comprising first run productions” and we calculated this to be 438 hours a year. We thought that it was important to draw out for stakeholders that when we clarified this with the BBC, it told us that in its consultation, and in its PIT, it has used the phrase ‘first-run programming’ to include both first-run BBC commissions and what it described as ‘first-run acquisitions’. We also noted that we had only been provided with

limited information at this stage about the level of genuine first-run UK originations that the BBC expected to broadcast on BBC Three.¹³¹

- 6.35 We proposed to set a condition requiring the BBC to provide a range of newly commissioned first-run UK content, intended to appeal to 16 to 34 year olds across a mix of different genres. We said that, as part of the information that we would expect the BBC to provide to Ofcom for the purpose of enabling us to assess the BBC's compliance with this proposed new qualitative condition, we would expect to ask the BBC to provide us with information demonstrating how its first-run content had been delivered across a mix of genres, and how it had appealed to its target audience of 16-34 year-olds.¹³² We also said that we expected the BBC to set out details in its next Annual Plan about the volume of new UK content that it is commissioning for the channel as well as the range it expects to deliver, and to report on this delivery in its Annual Report 2022/23.
- 6.36 We considered whether requiring a minimum number of hours of first-run BBC content on the broadcast channel would be the best way to secure distinctive and high-quality output, or whether this could potentially act against the delivery of high-quality output on the channel.
- 6.37 We considered that our proposed approach struck the right balance between ensuring that the BBC continued to produce a range of high-quality original content aimed at younger audiences, and providing transparency on an annual basis about the amount of first-run originations that it will make for the channel.
- 6.38 We noted that ensuring an appropriate balance between securing investment in new content and ensuring that the BBC continues to commission distinctive and high quality output at scale is something that we will need to consider carefully in the round in our review of the Operating Licence. We said that we would look again at whether to propose an additional quantitative first-run originations condition for BBC Three, encompassing both linear and online, as part of that process.

Stakeholder responses

- 6.39 Directors UK and WBBG welcomed our first-run UK originations condition for content aimed at 16-34 year-olds across a range of genres.¹³³ ¹³⁴ However COBA, Pact and ITV were concerned that there was not a quantitative element in the first-run UK originations condition that we proposed. ITV and Channel 4 thought Ofcom were right to clarify that first-run did not include acquisitions, as the BBC had said in its PIT.¹³⁵

¹³¹We noted in the consultation that as of July 2021, the current level of first-run BBC originations on its core commissioning slates for 2022 was approximately 165 hours, and the current level of what it described as 'first-run acquisitions' was 44 hours.

¹³² Ofcom is required to report annually on our assessment of the BBC's compliance with its regulatory requirements. As part of this, we may require the BBC to provide additional information to us that we consider necessary to enable us to assess the BBC's compliance with the specified requirements, which include the Operating Licence conditions.

¹³³ Director UK consultation response, paragraph 13.

¹³⁴ WGGGB consultation response, question 4.

¹³⁵ Channel 4 consultation response, p.6.

- 6.40 COBA and ITV¹³⁶ thought that not including a quantitative element in the condition would allow the channel to show a high level of repeats. COBA questioned the value of this to viewers and producers.¹³⁷ ITV also stated that we had not proposed any obligation as to quality (i.e. budget set aside), volume or scheduling of first-run originations. As a result, in ITV's view, the BBC was ostensibly free to spend most of its budget on US acquired content for prime-time broadcast, leaving minimal budget for first-run UK original commissions which might then languish at the edges of the schedule.¹³⁸
- 6.41 ITV thought our proposals would not prevent the BBC 'premiering' BBC One content on BBC Three to drive viewing.¹³⁹ And that keeping our decision under review did not provide sufficient protection against what it saw as the potential for the BBC to slide into mainstream commercial programming, particularly regarding acquired US material.¹⁴⁰
- 6.42 ITV suggested that we should require that a certain proportion of first-run productions be scheduled in peak viewing time, as is the case for BBC One, BBC Two and BBC Four. Furthermore, that the BBC should be required to report to us on the proportion of its content budget that is used for the acquisition of non-UK content.¹⁴¹
- 6.43 Pact considered that the first-run origination targets should be 26%, the same as when BBC Three was originally launched as a linear channel. It said that "if the BBC were able to hit first-run origination targets across BBC services it would mean less opportunity for new commissions" and a lower volume of first-run originations than is currently required on channels. It was concerned that this would mean the BBC would be able to programme and commission lower budget content than they currently were able to, as it would be able to fill off-peak schedules with first-run origination content.

Our response and conclusion

- 6.44 We are confirming our decision to set a condition in the Operating Licence requiring the BBC to provide first-run content on BBC Three.

In respect of **BBC Three**, the BBC must ensure that in each Calendar Year it provides first-run UK originations that are intended to appeal to 16 to 34 year-olds across a mix of different genres.

- 6.45 We consider that the main concerns, as articulated by COBA and ITV, relate to the relationship between first-run originations and distinctiveness. We remain of the view that the BBC's investment in new content for BBC Three will be a key determinant of its distinctiveness, and to that extent we agree with stakeholders who have highlighted the importance of this issue.

¹³⁶ Ibid.

¹³⁷ COBA consultation response, p.4, paragraph 11.

¹³⁸ Ibid.

¹³⁹ Ibid.

¹⁴⁰ ITV consultation response, p.6.

¹⁴¹ ITV consultation response, p.3.

- 6.46 However, our aim in setting this condition has been to devise a requirement which best delivers against the objective of ensuring that the BBC's first-run content for BBC Three is genuinely distinctive. In doing this, we have had regard to the BBC's argument that fixing output in terms of hours is inflexible and can lead to a lower cost per hour of programming; and that this can act against creativity, quality and distinctiveness. As we set out in the consultation, we considered that to strike the right balance between ensuring the channel had high-quality, original first-run content while also giving flexibility to the BBC in how this is commissioned and deployed, a qualitative condition would be appropriate. We remain of this view and will be monitoring the BBC's compliance with this condition closely. In response to ITV, Channel 4 and Pact, we reiterate that in respect of this condition, the definition of 'first-run UK originations' is "programmes which are commissioned by or for a UK public television service and have not previously been shown on television in the United Kingdom".¹⁴²
- 6.47 As part of the information that we would expect the BBC to provide to Ofcom for the purpose of enabling us to assess the BBC's compliance with this proposed new qualitative condition, we would expect to ask the BBC to provide to us information demonstrating how its first-run content had been delivered across a mix of genres, and how it had appealed to its target audience of 16-34 year olds. In addition, as part of the general performance monitoring that we will be undertaking (see section 7) we will monitor the spend on first-run originated content on BBC Three carefully to ensure that the BBC is held to the commitments that it has made in the PIT. As part of this ongoing performance monitoring, we will obtain information from the BBC about the proportion of content budget spent on acquisitions, as ITV has suggested it should.
- 6.48 As also explained in the consultation, we expect that, going forward, the BBC should be clear in its Annual Plan about the volume of new content it expects to commission for the channel on an annual basis, and should report delivery against this as well as information demonstrating how its first-run content has been delivered across a mix of genres, and how it has appealed to its target audience of 16-34 year olds. Section 7 includes a summary of the information that we expect the BBC to provide in its Annual Plan and report against in its Annual Report.
- 6.49 Regarding whether the condition prevents the BBC from 'premiering' BBC One content on BBC Three, we note that although it is correct that the definition of 'first-run originations' does not require the programmes in question to be commissioned by or for BBC Three specifically in order to count towards the condition (provided they are commissioned by or for a BBC TV service), the BBC could not count any such programmes towards both the proposed BBC Three first-run condition and the BBC One first-run UK quota. We would also point to the fact that the first-run condition that we proposed specified that the first-run content for BBC Three must be 'intended to appeal to 16-34 year olds' to ensure that the channel delivers for its intended audience. We also note the BBC's statement in the PIT that "the key focus of the new BBC Three channel will be high-quality original British

¹⁴² [Operating Licence for the BBC's UK Public Services](#), 2.37.1.

programming focused on the target audience of 16-34s, not to inflate ratings through premiering BBC One commissioned programmes intended for a mass audience”.¹⁴³

6.50 We note the concerns raised by both Pact and ITV about when the first-run content should be deployed in the schedule. In response to ITV, although we have set quotas for the amount of UK original productions to be shown in peak viewing time on BBC One, BBC Two and BBC Four, we do not currently set a quantitative requirement for the proportion of first-run originations to be shown in peak viewing time on any of these services.¹⁴⁴ As we have explained above, we do not consider that it is appropriate to set a peak viewing time quota for UK originations, due to the fact that it is not yet clear if BBC Three will have a conventional peak viewing time, when most of the target audience are likely to be watching, such as the peak viewing times that we have defined for other services in the Operating Licence. We consider that this means such a condition would also be inappropriate for first-run original programming. However, we expect the BBC to deploy its first-run content to appeal to its target audience and to schedule it at an appropriate time when that audience will be watching, and beyond that, individual scheduling decisions are for the BBC to make. We have set out our expectation that the BBC will publish more detail on how it will deploy content on BBC Three in its Annual Plan, and report against this in its Annual Report. Considering the above, we remain of the view that it is appropriate to set a qualitative requirement for first-run UK originations on BBC Three.

Other considerations

Our proposal

6.51 In addition to the proposed conditions on which we consulted, we set out that we had considered whether it would be appropriate to impose any other Operating Licence conditions on BBC Three at this stage. In particular, we considered whether specific genre quotas would be appropriate, to secure the distinctiveness of the channel, taking into account, as explained in our review of the public value of the proposals, that the BBC has emphasised that BBC Three will be a multi-genre channel, including factual entertainment, drama, current affairs, comedy, sport, live music and films. However, we noted that we were of the view, as expressed in our recent consultation, that our regulation should move away from primarily requiring compliance with quantitative conditions and output reporting. As we said, we think instead that our regulation should combine quantitative requirements with requirements that focus on how the BBC delivers for audiences, using measures such as the quality, reach and impact of programming (qualitative requirements). We also expected the BBC’s content mix on BBC Three to vary to a certain

¹⁴³ BBC PIT, p.17, 3.3.3.

¹⁴⁴ The relevant first-run original programming condition for BBC One is Condition 2.33: “In respect of BBC One, the BBC must ensure that in each calendar year at least 4,000 hours are allocated to the broadcasting of first-run UK originations across daytime and peak viewing time.” For BBC Two it is Condition 2.34: “In respect of BBC Two, the BBC must ensure that in each calendar year at least 2,200 hours are allocated to the broadcasting of first-run UK originations across daytime and peak viewing time.” There is no specific first-run original programming condition on BBC Four.

extent year on year, and therefore we did not consider it appropriate to set any quantitative genre quotas at this stage.

- 6.52 We also considered whether it would be appropriate to impose a qualitative condition on any specific genres, along the lines of those that we were proposing for news content and first-run content. Given the particular emphasis that the BBC had placed on the importance of factual content in contributing to the distinctiveness of the channel we considered whether it was necessary to include a specific condition for factual programming. However, we were of the view that it is the range and mix of genres, and the quality of programming that will determine the distinctiveness of BBC Three rather than securing the delivery of any one specific genre.
- 6.53 We also considered whether it would be appropriate to impose a condition requiring the BBC to provide a mix of different genres across all content on BBC Three, in addition to the proposed condition for UK first-run originations, as discussed above.¹⁴⁵ We considered that the BBC's proposal set out quite clearly that it envisages this to be a multi genre service. We noted that the BBC told us that that, if we were to approve the service, at the channel's launch it would amend the list of services that it maintains within Schedule 1 of the Agreement to include BBC Three with the following definition: "BBC Three: a mixed-genre channel aimed at younger audiences (16-34) across the UK, with a particular focus on innovative entertainment, comedy, drama and factual programmes." Given that the need to provide a mix of different genres would therefore be reflected in the definition of BBC Three as a UK public service, we did not consider it would be necessary to also include a separate Operating Licence condition that sought to secure this.
- 6.54 We set out that if we ultimately approved the BBC's proposals, we would also consider whether it might be appropriate to impose any further qualitative conditions for any other types of programming that might be shown on BBC Three as part of our wider review of the Operating Licence. In that review we expect to consider, for example, whether it might be desirable to allow the BBC greater flexibility across its television services more generally, across BBC iPlayer as well as broadcast channels, and we would take BBC Three into account as part of those wider considerations, along with the existing BBC UK public services. Given the timescales of that review we acknowledged that there could potentially be a gap of over a year from the proposed launch of the service on linear TV until any potential further conditions would come into place.
- 6.55 We noted that we did not consider that we needed to set additional conditions in relation to Public Purpose 4 as programmes on BBC Three would be 'network programmes' and so would be captured by the existing regional production quotas set out in the Operating Licence, which we considered remained appropriate. Equally, we did not consider that it was appropriate to set any other conditions in relation to diversity or nations and regions.

¹⁴⁵ For example in order to ensure that BBC Three would achieve a mix of different genres across repeats and acquisitions that are shown in addition to first-run commissions.

Stakeholder responses

- 6.56 Directors UK said it understood why we had not proposed quotas for specific genres, but it said it would welcome our keeping this under review should an important genre be found to be under-delivered on.¹⁴⁶
- 6.57 WGGB was concerned that our proposed requirements would potentially allow the channel to meet its requirements without commissioning any UK scripted drama. It said that it was disappointed that we had not decided to set at least a minimum requirement for original scripted drama or comedy for the channel. Referring to its response to our broader consultation on the future regulation of the BBC, WGGB was concerned that a lack of quantitative targets for scripted content (particularly for drama and comedy – including children’s) often resulted in a reduction in these areas in exchange for other genres that were less expensive to make.

Our response and conclusions

- 6.58 Regarding WGGB’s comment, we do not consider that it would be appropriate to set an hours quota to require the BBC to produce a certain amount of scripted content per year, as we consider the BBC should have the flexibility to develop the new channel to adapt to its audiences, for the reasons set out above. We also note that the definition of the service that the BBC intends to add to Schedule 1 of the Agreement includes both comedy and drama, the two genres highlighted by WGGB.
- 6.59 We remain of the view that it is the range and mix of genres, and the quality of programming that will determine the distinctiveness of BBC Three, rather than securing the delivery of any one specific genre. However, while we have decided not to set specific conditions on genres to be shown on BBC Three, as set out below, we expect to monitor the split of hours by genre on the channel.

Effecting changes to the Operating Licence

- 6.60 Annex 3 contains a notice of variation of the Operating Licence. The new Operating Licence conditions that we have decided to set for BBC Three will take effect from the date when the channel launches, on 1 February 2022. As with all Operating Licence conditions, we will require the BBC to report on compliance with the relevant conditions in its Annual Report.

¹⁴⁶ Directors UK consultation response, paragraph 14

7. Transparency, reporting and monitoring

- 7.1 In this section we look at the role of the BBC's Annual Plan and Annual Report and how both the BBC and Ofcom should monitor and report on the performance of BBC Three.
- 7.2 Under the Charter, the BBC must publish an Annual Plan and Annual Report and Accounts for each financial year.¹⁴⁷ Its Annual Plan must include (among other things): the creative remit for that year; the work plan for that year; and provision for the UK's nations and regions. It must then report the following year on how it has delivered on these plans. Among other things, in relation to the BBC's Annual Report and Accounts, the BBC must set out whether and how it has complied with our regulatory requirements.¹⁴⁸ The BBC has a responsibility for meeting its Mission and Public Purposes and clearly demonstrating this. In particular, the BBC Board is required under the Charter to set performance measures (and targets for those measures where appropriate) to assess the performance of the UK Public Services in fulfilling the Mission and promoting the Public Purposes.¹⁴⁹
- 7.3 Following the receipt of the BBC's Annual Report and Accounts, Ofcom must publish an Annual Report which (among other things) assesses the BBC's performance and its compliance with our Operating Licence.¹⁵⁰ In our most recent Annual Report on the BBC, we explained that we expected the BBC to include more detail in its Annual Plan on how it would deliver its strategy, its Mission and Public Purposes and ensure that audience needs are met, including what targets or objectives it would set to hold itself to account, how it would measure and report on the impact of its services on audiences and its progress against targets.¹⁵¹ In addition to the BBC Board's requirement under the Charter to set performance measures, we have the power to set measures that we consider appropriate in order to assess the performance of the UK public services in fulfilling the Mission and promoting the Public Purposes.¹⁵² We also have powers to require the BBC to collect information for our performance measures.¹⁵³ Our performance measurement framework was consulted on and agreed as part of our development of the first Operating Licence in 2017 and comprises four main performance measures: availability; consumption; impact; and contextual factors.¹⁵⁴

Our proposal

- 7.4 In our consultation, we noted that the BBC had provided no detail in the PIT as to how it planned to monitor or report on the performance of BBC Three. We said that we thought it was particularly important for the BBC to have effective metrics in place to measure how

¹⁴⁷ Articles 36 and 37 of the Charter.

¹⁴⁸ Article 37(2)(c) of the Charter

¹⁴⁹ Article 20(3)(d) of the Charter.

¹⁵⁰ Article 50 of the Charter.

¹⁵¹ Ofcom, Ofcom's Annual Report on the BBC 2019,20, November 2020, p.12

¹⁵² Article 46(4) of the Charter and clause 14(2) of the Agreement.

¹⁵³ Clause 14(4) of the Agreement.

¹⁵⁴ Ofcom, Holding the BBC to account for delivering for audiences, October 2017.

well BBC Three content is contributing to meeting the Mission and Public Purposes across both the proposed BBC Three broadcast channel and BBC iPlayer. We also said that as BBC Three was a new UK public service we believed it was appropriate for Ofcom to monitor the impact of these changes closely. We set out examples of the type of metrics that we would expect to report on to monitor the BBC's performance. We said that where relevant we would ask the BBC to provide information to support our monitoring.

7.5 In the consultation, we explained, as detailed above, that there were areas of the public value assessment in which the BBC has put significant weight, and where we were proposing not to set specific conditions at this stage. We said however, that if we approved the BBC's proposals, we expected the BBC to set out detail in its Annual Plan about how it intended to ensure that BBC Three will deliver the public value it has identified in the PIT, and how the proposals promote the Mission and Public Purposes.¹⁵⁵ We considered that it was important to have a clear articulation of how the BBC would ensure the deliver of the public value of its proposal.¹⁵⁶ We also noted that we expected the BBC to report in detail how it had delivered against its plans in its Annual Report.¹⁵⁷ We also gave details about specific areas where we expected the BBC to set out its plans for BBC Three in its Annual Plan, and report on these in its Annual Report, including:

- its plans to deliver news content on BBC Three and its plans for current affairs on BBC Three;
- its plans for deploying content on BBC Three including originations,
- first run programming and acquisitions to ensure it is best serving its target audiences;
- the volume of new UK content that it is commissioning and the range it expects to deliver across different genres at times when audiences are watching;
- its plans for factual content on the channel; and
- how it will ensure that the channel drives reach and discoverability of content which authentically represents and portrays diverse, under-represented young people as claimed in the proposal, as well as how it will increase engagement in general with younger underserved and under-represented audiences.¹⁵⁸

Stakeholder responses

7.6 In its response the BBC said it would set out how the channel will contribute to its Mission and Public Purposes during 2022/23 in its next Annual Plan.¹⁵⁹

7.7 WGGB noted that it had previously expressed its agreement with us that the BBC's Annual Plans and reports often lack detail in relation to the amount of content produced.¹⁶⁰ It said that it would ask that Annual Plans and Annual Reports provide specific information on the

¹⁵⁵ BBC Three television channel competition assessment consultation on Ofcom's provisional determination, paragraph 4.80 and 6.4

¹⁵⁶ Ibid

¹⁵⁷ Ibid

¹⁵⁸ BBC Three television channel competition assessment consultation on Ofcom's provisional determination, Section 7

¹⁵⁹ BBC consultation response p.1 and p.3

¹⁶⁰ WBBG consultation response, question 4.

amount of scripted UK drama and comedy content that is planned for commissioning and production by the channel. It also wanted to ensure that the BBC's Annual Plans and Reports detail commissioning by platform – that is, what has been commissioned for linear and what has been commissioned for online.¹⁶¹

- 7.8 Directors UK recognised the importance of monitoring and assessing the performance of the channel in reaching the target audience and in delivering on its Mission and Public Purposes. It said that it thought our criteria seemed appropriate.¹⁶²

Our response and final proposal

- 7.9 We continue to believe that it is important for the BBC to provide more information in its next Annual Plan (and future Annual Plans) on how it intends to ensure that BBC Three delivers the public value identified in the proposal and contributes to the promotion of the Mission and Public Purposes. As such, we consider it should set out in detail in its next Annual Plan how it intends to ensure BBC Three will deliver the public value it has identified in the PIT, and then report against how it has delivered that in its Annual Report. This will give assurance both to Ofcom and to stakeholders about the delivery of public value and the contribution of the proposed channel to the delivery of the Mission and Public Purposes.
- 7.10 Given stakeholder responses to our consultation more generally, we consider that it is particularly important for the BBC to be transparent in how it plans to deploy the planned mix of first-run UK originations, repeats and acquisitions across the schedule.
- 7.11 To give the BBC greater clarity of what we expect to see in its Annual Plan and Annual Report, to demonstrate that it is delivering the public value argued for in its PIT, we have set out information for it below.
- 7.12 It is important that the BBC has the right measures to demonstrate how the channel is meeting its aims to broaden the BBC's engagement with younger audiences, and particularly the specific groups that the BBC has identified. We will engage with the BBC about its plans for its performance monitoring of the channel. We also expect to monitor the impact of the new BBC Three channel closely, and we discuss below the metrics we would expect to report on as part of this.

Details expected to be included in the BBC's Annual Plan

Securing public value

- 7.13 We expect the BBC to set out in its Annual Plan how it intends to ensure that BBC Three will deliver the public value that it has identified in the PIT for the audiences that it is targeting, and, in doing so, how the proposals promote the Mission and Public Purposes.

¹⁶¹ Ibid.

¹⁶² Directors UK consultation response, paragraph 15.

Deployment of content

- 7.14 We expect the BBC to set out clearly in its Annual Plan how it is proposing to deploy content on BBC Three, including the balance between original content, UK first-run programming and acquisitions to secure distinctiveness. We consider that the BBC should give particular weight to explaining how it plans to use acquisitions in the schedule.
- 7.15 This should also include how it will secure a mix of different genres on the channel, in what proportions, and at a time when most audiences are watching, to ensure that its target audiences are well served. As part of this, the BBC should set out the number of hours of first-run UK content that it plans to commission for the channel for that year as well as the range of first-run content that it expects to deliver across different genres.

News, Current Affairs and Factual Content

- 7.16 We expect the BBC to set out in its Annual Plan detail on its plans to deliver news content on BBC Three, detail on its plans for current affairs on BBC Three, and detail on its plans for factual content, and how this will help younger audiences learn and keep them informed about a wide range of subjects in an accessible and engaging way.

Diversity

- 7.17 We expect the BBC to set out in its Annual Plan how BBC Three will provide content which authentically represents and portrays diverse, under-represented young people as set out in the BBC's proposals, as well as how it will increase engagement in general with younger underserved and under-represented audiences.

Detail we expect to see reported on in the BBC's Annual Report

- 7.18 We expect the BBC to report in detail in its Annual Report on each of the areas outlined in paragraphs 7.13-7.17, focusing in particular on how the service is delivering for audiences on both the broadcast channel and BBC iPlayer, drawing on reach and audience perceptions of the service.
- 7.19 We expect the BBC to report against its target for two-thirds of new content on BBC Three to be made outside London on an annual basis in its Annual Report.

Ofcom monitoring

- 7.20 As no stakeholders commented on the suggested metrics that we proposed Ofcom would use to monitor the BBC's performance in relation to BBC Three, we plan to consider the information set out in the table below and we will work with the BBC on the information that they will need to provide to us in support of this. We do not intend to publish all the data and information that we collect. The information we decide to publish will depend on whether it is proportionate to make that specific information publicly available.

Measure	Metric
Availability	<p>Spend on first-run UK originated content for BBC Three (by platform)</p> <p>Spend on acquisitions (by platform)</p> <p>Total hours of first-run UK originated content on linear, broken down by genre</p> <p>Total hours of UK originations on linear</p> <p>Total hours of acquisitions on linear</p> <p>Split of hours of content by genre on linear</p> <p>Mix of genres between 7pm and midnight</p>
Consumption	<p>Reach and share of BBC Three broadcast channel split by demographic groups, in particular those that the BBC has defined in the PIT as targets of the proposals: all audiences split by age, socio-economic background, ethnicity and region; and 16-34s split by socio-economic background, ethnicity and region.</p> <p>Weekly reach and time spent for BBC Three on BBC iPlayer, split by relevant demographic groups as above where possible.</p>
Impact	<p>Research to understand the impact of BBC Three TV channel and BBC Three content on BBC iPlayer, split by demographic groups with focus on the demographic groups defined in the BBC's PIT as targets for the proposal (age, C2DE socio-economic background audiences, minority ethnic audiences, audiences outside London, non-metropolitan audiences and those with less access to digital on-demand services).</p>

A1. Our approach to modelling market impacts and assessment of impact on SVoD and pay-TV services

A1.1 This annex is [published separately](#) on Ofcom's website.

A2. Legal framework

- A2.1 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.
- A2.2 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)¹⁶³ and the Agreement between the Secretary of State for Culture, Media and Sport, and the BBC (the Agreement).¹⁶⁴ The Charter and Agreement set the BBC’s Mission and Public Purposes and the framework for Ofcom’s regulation of the BBC.
- A2.3 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:¹⁶⁵
- a) the object of the BBC to fulfil its Mission¹⁶⁶ 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.¹⁶⁷
- A2.4 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.¹⁶⁸

¹⁶³ [The Charter](#).

¹⁶⁴ [The Agreement](#).

¹⁶⁵ Article 45(2) of the Charter.

¹⁶⁶ 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).

¹⁶⁷ 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.

¹⁶⁸ Clause 7(6) of the Agreement.

The BBC's analysis

- A2.5 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.¹⁶⁹
- A2.6 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.¹⁷⁰
- A2.7 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.¹⁷¹
- A2.8 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.¹⁷²

Ofcom's role

- A2.9 Ofcom must then assess whether the proposed change is material and, if so, decide what type of further assessment to conduct.¹⁷³
- A2.10 Paragraph 4.33 of Ofcom's 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.
- A2.11 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.¹⁷⁴

¹⁶⁹ Clause 7(7) of the Agreement.

¹⁷⁰ Clause 9(6) of the Agreement.

¹⁷¹ Clause 8(1) of the Agreement.

¹⁷² Clause 8(3) of the Agreement.

¹⁷³ Clause 9 of the Agreement.

¹⁷⁴ Clauses 9(3) and (4) of the Agreement.

- A2.12 If we conclude that the proposal is material, we may decide to carry out a BBC competition assessment (BCA) under clause 10 of the Agreement or a shorter assessment drawing on elements of the BCA procedure. Paragraph 4.35 of the BCA guidance explains when each type of assessment might be appropriate.
- A2.13 In carrying out a BCA or shorter assessment, Ofcom must:
- a) review the procedures the BBC has followed in carrying out the public interest test;
 - b) review the BBC's assessment of the public value of the proposed change to the UK public services;
 - c) assess any adverse impact of the proposed change on fair and effective competition; and
 - d) assess whether the public value of the proposed change justifies any adverse impact on fair and effective competition.¹⁷⁵
- A2.14 Ofcom must consider the scale and likelihood of any public value relative to the scale and likelihood of any adverse impact on fair and effective competition. The Agreement recognises that the determination will require qualitative assessments to be made and that direct comparison of factors relating to public value and factors relating to risks to fair and effective competition may not be possible.¹⁷⁶
- A2.15 At the end of the process, we will make one of four possible determinations:
- a) that the BBC may carry out the proposed change;
 - b) that the BBC may not carry out the proposal;
 - c) that the proposal may go ahead subject to conditions or modifications that we consider appropriate; or
 - d) that the BBC must reconsider elements of its public interest test or follow any further procedures we consider appropriate.¹⁷⁷
- A2.16 Ofcom may only make determinations (b) and (c) above where we have carried out a BCA and not following a shorter assessment.¹⁷⁸
- A2.17 Ofcom must complete a BCA within six months¹⁷⁹ and a shorter assessment in less than six months.¹⁸⁰ In either case we will consult stakeholders before making our final determination.

¹⁷⁵ Clause 10(3) of the Agreement. Section 5 of the BCA guidance explains the analytical approach we expect to apply.

¹⁷⁶ Clause 10(4) of the Agreement.

¹⁷⁷ Clause 11(1) of the Agreement.

¹⁷⁸ Clause 11(2) of the Agreement.

¹⁷⁹ Clause 10(2) of the Agreement.

¹⁸⁰ Clause 9(2) of the Agreement.

Operating Licence

A2.18 Under the Charter and the Agreement, we are required to set an operating licence (the Operating Licence) containing a set of regulatory conditions with which the BBC must comply.¹⁸¹ The Charter states that the Operating Licence must contain regulatory conditions Ofcom considers appropriate for requiring the BBC to:

- a) fulfil its Mission and promote the Public Purposes;
- b) secure the provision of distinctive output and services; and
- c) secure that audiences in Scotland, Wales, Northern Ireland and England are well served.¹⁸²

A2.19 The Agreement provides that:

- a) Ofcom must impose on the BBC the regulatory conditions set out in, and in accordance with, Schedule 2 to the Agreement;
- b) Ofcom may impose such further regulatory conditions we consider appropriate for requiring the BBC, in carrying out the UK public services, to fulfil the mission and promote the Public Purposes; and
- c) Ofcom may impose further regulatory conditions we consider appropriate for requiring the BBC to secure that the audiences in Scotland, Wales, Northern Ireland and England are well served.¹⁸³

A2.20 Schedule 2 of the Agreement contains some further requirements regarding the regulatory conditions that Ofcom must impose through the Operating Licence. Amongst other things, it provides that:

- a) Ofcom must have particular regard, in imposing the regulatory conditions, to the need for the BBC to secure the provision of distinctive output and services;¹⁸⁴
- b) In respect of news and current affairs, we must impose requirements, in the Operating Licence, that we consider appropriate for securing:
 - i) that programmes included in the UK public television services¹⁸⁵ include news programmes and current affairs programmes at an appropriate level (as determined by Ofcom); and

¹⁸¹ Under the Charter and the Agreement, Ofcom is required to set an operating licence for the BBC's UK public services. Charter, Article 46(3) and Agreement, Clause 13.

¹⁸² This duty is reiterated in paragraph 1(1) of Schedule 2 to the Agreement, which states that "[i]n imposing the regulatory conditions Ofcom must have particular regard to the need for the BBC to secure the provision of distinctive output and services".

¹⁸³ Agreement, Clause 13.

¹⁸⁴ Agreement, Schedule 2, paragraph 1(1). "Distinctive output and services" is defined in paragraph 1(2) as "output and services, taken as a whole, that are substantially different to other comparable providers across each and every UK public service, both in peak time and overall, on television, radio and online, in terms of: (a) the mix of different genres and output; (b) the quality of output; (c) the amount of original output produced in the UK; (d) the level of risk-taking, innovation, challenge and creative ambition; and (e) the range of audiences it services".

¹⁸⁵ Clause 75 and part 1 of Schedule 1 to the Agreement taken together define 'UK public television services'.

- ii) the news programmes so included are broadcast for viewing at intervals throughout the period during which the UK public television services are provided;¹⁸⁶
 - c) In relation to each of the UK public television services, Ofcom must impose on the BBC the requirements it considers appropriate for securing that:
 - i) The time allocated, in each year, to the broadcasting of original productions¹⁸⁷ included in that service is no less than what appears to them to be an appropriate proportion¹⁸⁸ of the total amount of time allocated to the broadcasting of all the programmes included in that service; and
 - ii) The time allocated to the broadcasting of original productions is split in what appears to them to be an appropriate manner between peak viewing times and other times.¹⁸⁹
- A2.21 The operating framework for BBC regulation includes the ‘Procedures for setting and amending the Operating Licence’ (‘the Procedures’)¹⁹⁰, which explain how we set and administer the Operating Licence regime and the procedures to be followed. We may amend the Operating Licence following consultation with the BBC and any person we consider appropriate.¹⁹¹ We issued the first Operating Licence in October 2017 and it has been subsequently amended several times since then.¹⁹²

¹⁸⁶ Agreement, Schedule 2, paragraph 4(1)

¹⁸⁷ “Original productions”, in relation to the UK Public Television Services taken together, has the same meaning that is specified by the Broadcasting (Original Productions) Order 2004 or any subsequent order under section 278(6) of the Communications Act 2003 in relation to a licensed public service channel (Agreement, Schedule 2, paragraph 5(4)).

¹⁸⁸ This proportion must, in the case of each service, be such proportion as Ofcom consider appropriate for ensuring the service is consistently of high quality (Agreement, Schedule 2, paragraph 5(2)(a)).

¹⁸⁹ Agreement, Schedule 2, paragraph 5(1).

¹⁹⁰ Ofcom, Procedures for setting and amending the BBC Operating Licence, October 2017.

¹⁹¹ Agreement, Clause 13(5).

¹⁹² For changes to the Operating Licence see [The Operating Framework webpage](#).

A3. Notice of Variation

NOTICE NUMBER 5 DATED 25 NOVEMBER 2021

TO THE OPERATING LICENCE FOR THE BBC'S UK PUBLIC SERVICES ISSUED ON 13 OCTOBER 2017

("THE LICENCE")

RECITALS

- (A) On 15 December 2016, the Government published the Royal Charter for the continuance of the BBC ("the Charter") and the agreement between the Secretary of State for Culture, Media and Sport, and the BBC (the "Agreement") which required Ofcom to set a licence for the BBC's UK Public Services. On 13 October 2017, Ofcom issued the Licence. The Licence has subsequently been amended from time to time. The [current consolidated version](#) of the Licence is available on our website.
- (B) Following consultation, on 25 November 2021 Ofcom published a statement setting out our decision to approve the launch by the BBC of BBC Three as a broadcast television channel (the "Statement").
- (C) In accordance with Clauses 80 and 13(5) of the Agreement, Ofcom's "Procedures for setting and amending the operating licence" published on 13 October 2017 (the "Procedures") and its consultation principles, Ofcom consulted with the BBC on proposed consequential amendments to the licence on 16 September 2021. In addition, Ofcom considered it appropriate in the circumstances to consult publicly having regard to the nature and significance of the proposals for industry. Ofcom has considered all the responses to the consultation.
- (D) For the reasons set out in the Statement, Ofcom has decided that it is appropriate to amend the Licence.

NOW THEREFORE the Licence shall be varied in the following manner:

- After condition 2.5, insert new condition 2.5A as follows:

"2.5A In respect of **BBC Three**, the BBC must ensure that every weekday (except Public Holidays) it shows news programmes that are intended to appeal to 16 to 34 year-olds."
- In condition 2.32, at the end of the table, insert a new row, after the row for BBC Scotland, as follows:

Column I	Column II	Column III
Service	Original productions as a percentage of the hours of all programming	Original productions in Peak Viewing Time as a percentage of the hours of all programming in Peak Viewing Time

...
"BBC Three	75%	-"

3. After condition 2.34, insert new condition 2.34A as follows:

"2.34A In respect of **BBC Three**, the BBC must ensure that in each Calendar Year it provides first-run UK originations that are intended to appeal to 16 to 34 year-olds across a mix of different genres."

4. Amend the existing text of condition 2.37 by removing the reference to condition "2.34" and replacing it with a reference to condition "2.34A", so that it reads as follows:

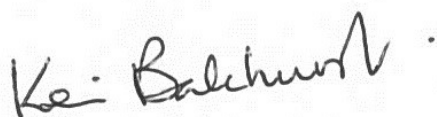
"2.37 For the purposes of conditions 2.33 to 2.34A:

2.37.1 "first-run UK originations" means programmes which are commissioned by or for a UK Public Television Service and have not previously been shown on television in the United Kingdom; and

2.37.2 references to hours mean hours measured in slot times for programmes with a slot time of 10 minutes or more, or hours measured in running times for programmes with a slot time of less than 10 minutes."

This variation to the Licence shall come into force on 1 February 2022.

SIGNED FOR OFCOM ON 25 November 2021



Broadcasting and Online Content Group Director, Ofcom