Robert Kenny & Kip Meek

BBC services and competition – regulation for the next decade

August 2026

COMMUNICATIONS CHAMBERS

Disclaimer

This is a paper funded by News UK. The opinions offered are purely those of the authors. They do not necessarily represent the views of other Communications Chambers members or of News UK.

About the Authors

Rob Kenny is a founding member of Communications Chambers, a UK-based strategy and policy consultancy working in telecoms and media. He is the author of dozens of papers covering media, telecoms and technology policy issues.

He previously headed strategy and/or M&A for Level 3, Reach and Hongkong Telecom. He has served as a senior advisor to the Payment Systems Regulator. He has a degree in mathematics and management from Cambridge University.

Kip Meek is a founding member of Communications Chambers. He has previously acted as an Inquiry Chair of the UK's Competition and Markets Authority, a special advisor to BT, a senior partner at Ofcom (and member of its Content Board) and the Chairman of the European Regulators Group. He was founder of Ingenious Consulting and of Spectrum Consultants, two firms working in media.

He is a chair of A Million Ads and Ascension Ventures. He has also chaired the UK's Radiocentre; South West Screen; and YouView, the internet-connected television platform established by the UK PSMs. He has a degree in history from Oxford University.

Contents

1 Executive summary 2

2 Introduction 4

3 Overview of the current framework 6

4 Market developments since the framework was established 22

5 Assessment of UK process 29

6 Suggested improvements 39

7 Conclusion 50

8 Annex: Changes to governing instruments 51

1 Executive summary

The BBC's scale, public funding, strong brand, free-at-the-point-of-use offer and lack of advertising all position it to shape – and potentially damage – the commercial markets in which it operates. The regime governing changes to BBC services that may impact its commercial rivals is therefore central to the health of commercial broadcasting and news publishing.

This paper examines that regime, and finds that it has a growing and concerning bias away from constraining BBC changes, and needs reform for the next Charter.

The current framework was laid down in 2016 for a different era: one in which the BBC advanced through a few, major initiatives (rather than a series of incremental changes to its services which become cumulatively significant); broadcast services dominated consumption; and commercial players were generally in robust financial health.

None of these are true today. The BBC's development is increasingly focused on many small developments to its online offering. This may be multiple incremental changes to an existing offer (with the significant change in character of bbc.co.uk and the expansion of its size and scope on third party platforms as prime examples), or the launch of many niche services, such as those in digital radio. In aggregate these changes (relatively low-cost and attractive to the BBC) can have a significant impact on the market.

Meanwhile linear TV is contracting rapidly and all media are increasingly consumed online; and the finances of commercial broadcasters and publishers have deteriorated rapidly, so that a given loss of revenue does far more damage than it once did.

These changes have exposed weaknesses in the current regulatory structure.

- Online services face only loose, qualitative obligations under the operating licence (in contrast to the much more specific obligations on linear services)
- The materiality gate is poor protection against many small changes that may reshape services substantially over time.
- The BBC Competition Review (BCR) process, intended to address such creeping change, is entirely unused and effectively a dead-letter

- Ofcom has been permissive of online change, with only one such change taken to a BBC Competition Assessment (BCA) , and that change then being allowed
- Ofcom has also signalled that changes to iPlayer and Sounds are unlikely to attract scrutiny
- The BCA process has focused on revenues rather than profits and on groups rather than services – both inappropriate given the centrality of investment incentives

In aggregate, the mismatch between the process and how it has been operated on the one hand, and the developments in the market on the other, mean that there has in effect been creeping deregulation of the BBC. The harm of this is inherently difficult to measure - what commercial services or service features never came to be? But it is real nonetheless.

Looking ahead, it is unclear exactly where the current regime is expected to 'bite'. The very areas where the BBC will develop are ones where the current regime turns a myopic eye.

Both the BBC and commercial players argue that the current regime needs to change. We propose a set of reforms that are intended both to sharpen scrutiny, reduce unnecessary regulatory burden and shorten the process (this last being a particular BBC interest). These reforms include:

- A reset for the treatment of online
- Clarification that market impact should consider profitability and individual services
- Mechanisms to address eroded public value from approved services
- Mechanisms to address creeping change
- Specification of 'no go' areas for the BBC
- An indicative, financial test of materiality
- Removal of the BBC's obligation to consider public value vs market impact
- Removal of Ofcom's initial assessment phase
- Earlier publication of a full service description by the BBC, with an associated opportunity for stakeholders to comment to Ofcom on the service before Ofcom begins its BCA
- A duty on the BBC Board to engage with relevant commercial stakeholders in their consideration of a service proposal
- A greater bias towards transparency

2 Introduction

This document examines the regime that governs the BBC's freedom to make changes to its services that may affect the competitive environment and how this regime might be improved.

The intention of the current rules is to establish a balance between the potential value created by the BBC and the potential value created by its competitors in TV, radio and the host of online information, transactional and entertainment services that have emerged over the last twenty years.

The need for specific rules governing the BBC arises because of its funding – the licence fee is a very substantial public intervention and, in the absence of any constraints on the BBC, could potentially have significant damaging effects on the ability of its competitors to invest and innovate and therefore create value themselves for UK citizens and consumers. The rules are designed to evidence the trade-offs between the public value created by a proposed change in the services offered by the BBC and its impact on commercial competitors.

At the heart of the issues we discuss is the relationship between Ofcom and the BBC. Ofcom is the institution that, alongside the BBC, is responsible for implementing the rules. Its leading role in regulating the BBC is relatively recent – when the BBC Trust was abolished in 2017, Ofcom was given extensive powers in relation to the BBC, including determining how the rules constraining the BBC's impact on competition were designed and implemented.

One of the themes that we return to throughout this document is that Ofcom needs to make particular efforts to be responsive to the commercial interests affected by the BBC. Ofcom has a more active role as a regulator with the BBC than it has with its other regulatees with whom it acts primarily as an economic regulator. This means its relationship with the BBC is likely to be much closer than it is with commercial radio stations and with the (mainly) news publishers who compete in online services with the BBC. In television, the difference is less stark but still real – Ofcom interacts with the BBC much more than, for example, ITV or Channel 4.

Also relevant is the fact that both Ofcom and the BBC are public sector organisations and might be thought to share attitudes and assumptions associated with public service and to put less weight on commercial interests. What this means is that to avoid undermining the perceived legitimacy of the regime (and the accusation of

regulatory capture), there is a particular need for rigour and due process.

This is not to say that poor arguments should not be dismissed, but it is to say that, for example, the need for transparency both from the BBC and from Ofcom should be acknowledged. Throughout our document, when we identify problems with the current regime or suggest improvements, we think this contextual point about the relationship between the BBC and Ofcom reinforces the need for change.

Our work on this paper has been supported by interviews with multiple commercial and public media organisations, and Ofcom. We are grateful for their participation.

3 Overview of the current framework

In this section we consider the current regulatory framework for changes to BBC services, covering its origins; its structure; and how it has worked in practice.

3.1 What the current framework replaced

The current approach was established in 2016, replacing a competition regulatory framework managed by the BBC Trust. Under this prior framework the Trust was the ultimate arbiter of new services.[1] It conducted Public Value Tests (PVT) for 'significant' changes to public services. Like today's framework, the PVT compared the public value and competitive impact of new services.

Ofcom had a role in this process - it prepared a Market Impact Assessment, provided to the Trust – but this was advisory, rather than determinative (by contrast to today's framework, where Ofcom is the decision maker).[2]

The previous framework also featured detailed service licences, for each BBC UK public service, covering scope, budget, quotas and so on. These put boundaries on what was permissible for each service. This provided confidence for commercial players, and knowing what the BBC would *not* do supported investment. This specificity also provided a basis for analysis as to whether a change was significant.

(These service licences have been replaced with a single, much-higher-level 'operating licence' oriented around the BBC's public purposes).[3]

The Trust was also required to conduct service reviews at least every five years, looking at the service in the round, including consultation with the public and industry, and consideration of market impact.[4]

The previous regimes also featured audience councils for each of the Nations "to bring the diverse perspectives of Licence Fee payers to bear on the work of the Trust".[5] One of their roles was to provide a licence-fee payer's perspective for service reviews and potential service changes.

[1] BBC Trust, *Public Value Test (PVT): Guidance on the conduct of the PVT*, August 2007
[2] In the latter years of this framework, the Trust developed the practice of informally consulting Ofcom on 'significance' decisions. Sir David Clementi, *A Review of the Governance and Regulation of the BBC*, March 2016
[3] Ofcom, *Operating licence for the BBC's UK Public Services*, 31 July 2025
[4] Sir David Clementi, *A Review of the Governance and Regulation of the BBC*, March 2016
[5] DCMS, *Royal Charter for the continuance of the British Broadcasting Corporation*, October 2006

Changes to all these features were recommended by the 2016 Clementi Review. Regarding service licences, this said:

> "It is not clear that this regime has the flexibility to keep pace with the way that the organisation of the BBC is changing. Both the governance and regulatory tools will need to have the flexibility to adapt to changing technologies and audience expectations." [6]

With the falling away of service licences, the five year service reviews have ceased also. Instead, Ofcom conducts broader, four-yearly performance reviews.

The Review challenged audience councils' representativeness, given that they were small and unpaid. There were also concerns about their ability to have an impact on the operations of the BBC via the BBC Trust. Digital tools were seen as a new, better way to engage directly with audiences.

3.2 Structure of the current framework – operating licence

In November 2016, DCMS and the BBC reached a Framework Agreement.[7] Following on from this, in 2017 Ofcom developed an Operating Licence for the BBC, which has since been substantially amended, most recently in 2025. [8]

The Operating Licence sets a range of quotas for individual TV and radio services, covering hours of news and current affairs, original production quotas, nations-and-regions programming and so on. By contrast, online services are treated far more loosely. The Licence specifies types of content that must be available (including relevance to nations-and-regions). But there are no practical limits. Regarding distinctiveness, the BBC must merely report on its plans to be distinctive.

3.3 Structure of the current framework – service changes

The Framework agreement also created a new process for service changes. It specifies that the BBC may only make a material change if it has determined the change satisfies a public interest test, and with Ofcom's permission. The Framework Agreement has been supplemented by policy statements from Ofcom and the BBC,

[6] Sir David Clementi, *A Review of the Governance and Regulation of the BBC*, March 2016
[7] DCMS & BBC, *BBC Framework Agreement*, 7 November 2016
[8] Ofcom, *Operating licence for the BBC's UK Public Services*, 31 July 2025

providing greater detail on the process. We set out below the key stages.

Publication of proposed changes

Ofcom specifies that the BBC must publish proposed changes, and suggests this be primarily via its annual report.[9]

Materiality assessment

The first test for a proposed change is a materiality assessment by the BBC itself. In the original Agreement, 'material' was defined as 'carrying out of any activity as a new UK Public Service' or a change that may have ' significant adverse impact on fair and effective competition'. However, a December 2025 update to the Framework Agreement removed the 'new UK Public Service' test.[10]

The Framework agreement requires the BBC to publish a policy setting out how it will assess the materiality of potential changes, against this definition.[11] This policy sets out various categories of changes that the BBC would not normally see as material, including changes in genre mix, online functionality, scheduling decisions, and so on. It also assumes immateriality for pilots and trials. For changes not so excluded, the BBC considers investment scale, distinctiveness, novelty, duration, usage, and whether competitors are likely to be significantly affected.

Ofcom guidance specifies that the BBC "should make reasonable efforts to seek dialogue with parties who may be affected by the change" and "should ensure that it is easy for stakeholders to raise concerns". No timeline is specified for this phase.

If the BBC finds that a change is not material it may go ahead, without further regulatory process. However, Ofcom does have a reserve power to halt the change or direct a Public Interest Test if it disagrees with the BBC's finding of non-materiality.[12] (As a matter of practice, rather than requirement, the BBC notifies Ofcom of its non-materiality findings, and Ofcom aims to respond within six weeks).[13]

The Public Interest Test

If the change is material, the BBC conducts a Public Interest Test (PIT). This assesses whether: the change contributes to the Mission and Public Purposes; the BBC has taken reasonable steps to avoid

[9] Ofcom, *How Ofcom regulates the BBC's impact on Competition: Changes to guidance and requirements*, 18 April 2023
[10] DCMS & BBC, *Updates to BBC Framework Agreement: December 2025*, 16 December 2025
[11] BBC, *Policy on material changes to the BBC's public service activities and commercial activities*, 7 August 2017
[12] ¶9(6) of the Framework Agreement
[13] ¶4.50 of Ofcom, *How Ofcom regulates the BBC's impact on Competition: Changes to guidance and requirements*, 18 April 2023

unnecessary adverse competitive impact; and the public value justifies any adverse impact. The BBC must also "consider the scale and likelihood of any public value relative to the scale and likelihood of any adverse impact on fair and effective competition". If the BBC Board is satisfied on these points, the BBC publishes the proposed change.[14]

Ofcom Initial Assessment

On publication of a change for which the BBC has conducted a PIT, Ofcom takes its own view on materiality. In theory it could disagree with the BBC's finding of materiality (which led to the PIT) and deem the change immaterial. In practice this has not happened.[15]

If Ofcom does find a change to be material, it may - exceptionally - decide no further review is necessary (though it must consult on such a view). Otherwise, it then needs to decide what form of competition assessment to undertake. This may be either a full BBC Competition Assessment (BCA) or a shorter assessment.

Ofcom has six weeks to notify the BBC of its conclusions. Absent such notification, the BBC may go ahead with the change.

Competition Assessment

Ofcom's approach for a typical BCA (limited to 6 months) includes:

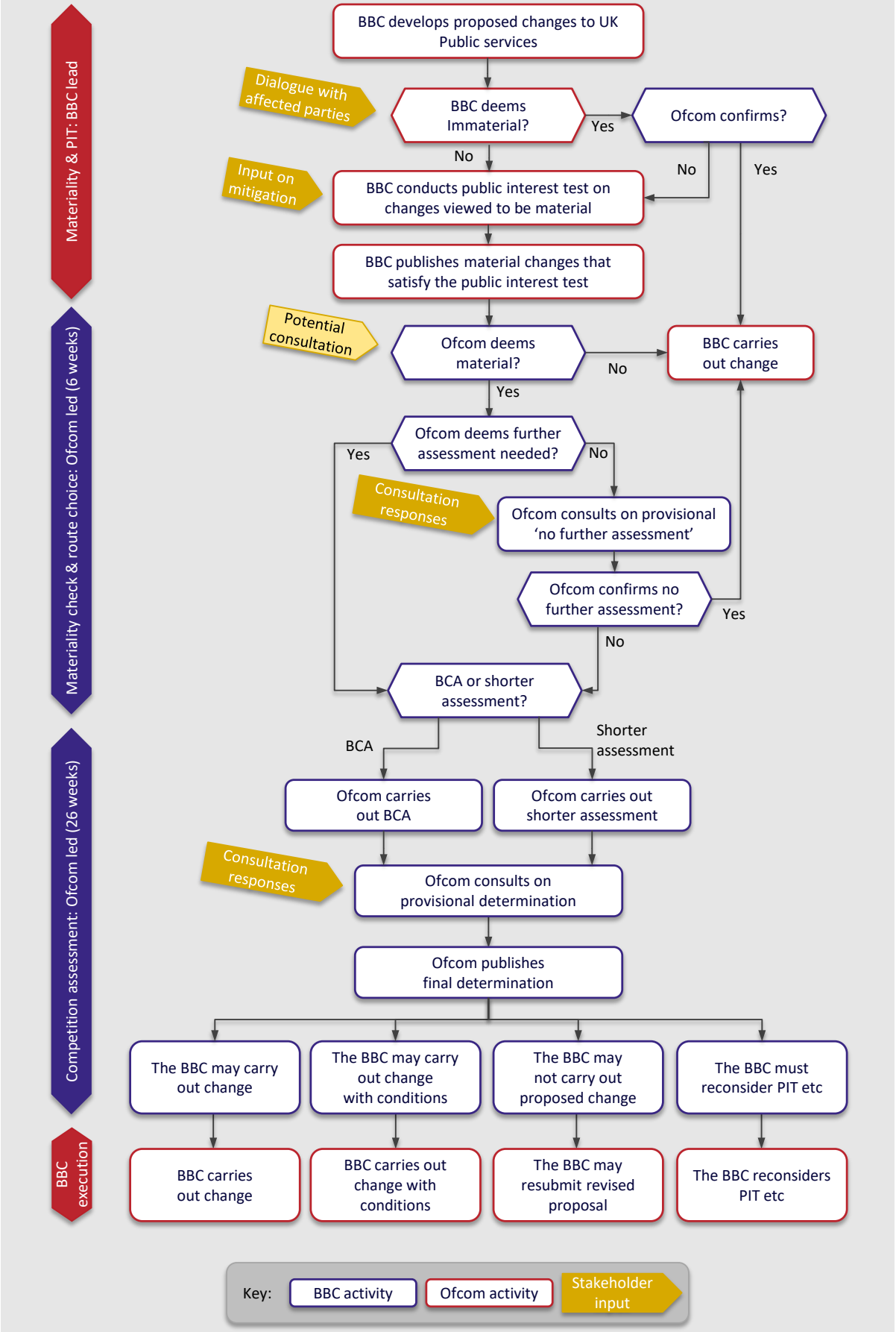
- Information gathering, developing analysis and publication of a preliminary view (14 weeks)
- Consultation (4 weeks)
- Final conclusions (8 weeks)

Conceptually, the BCA must review the BBC's procedures for the PIT and its assessment of public value; assess any adverse impact on fair and effective competition; and assess whether the public value justifies any such impact.[16]

It analyses likely take-up of the service, the impact this may have on commercial revenues and profitability, and in turn the impact on competition, either through crowding out or harms elsewhere in the supply chain (such as monopolising talent).

[14] ¶8 of the Framework Agreement
[15] Note however the 2022 iPlayer archive content assessment. Here the BBC conducted a PIT despite its own view that the change was not material. Ofcom then reached the same conclusion regarding materiality, allowing the BBC to go ahead with the change without a competition assessment
[16] ¶10(3) of the Framework Agreement

Figure 1: Change review process overview[17]



Separately, Ofcom reviews the BBC's assessment of the public value of the service.[18] (It does not consider the value-for-money of the proposed service).

Based on its assessment of the balance of market impact and public value, Ofcom may allow the BBC to go ahead (with or without conditions). Alternatively, it may block the change entirely. A final option is to ask the BBC to reconsider its proposal, particularly in instances where Ofcom believes the public value could be enhanced so as to justify the competitive impact.[19]

A shorter assessment (taking less than 6 months) may focus only on certain aspects of the PIT that Ofcom decides need development.

BBC Competition Review

As a backstop, and (at least in theory) as a way to address cumulative impact, clause 12 of the Framework Agreement allows for a BBC Competition Review (BCR). If there are reasonable grounds to believe that a UK public service is having a significant adverse impact on fair and effective competition, Ofcom *may* conduct a review, to assess if that impact is justified by the public value of the service. If it deems it is not, Ofcom may require modifications to the service.

Ofcom's guidance for BCRs dates back to 2017, and is unrevised since.[20] It states:

> "A BCR will enable us to consider significant competition issues which emerge, in some cases gradually, over the course of the Charter period".

In practice no BCR has been conducted. Wireless Group[21] did request one regarding the BBC's acquisition of sports rights in 2018, but Ofcom declined the request.[22] One of its key grounds was that there had been no substantive change within the Charter period.

[17] Adapted from p13 of Ofcom, *Guidance for assessing the impact of proposed changes to the BBC's public service activities*, 11 May 2026
[18] ¶5.10 onward of Ofcom, *Guidance for assessing the impact of proposed changes to the BBC's public service activities*, 11 May 2026
[19] ¶4.72 onward of Ofcom, *Guidance for assessing the impact of proposed changes to the BBC's public service activities*, 11 May 2026
[20] Ofcom, *Assessing the impact of the BBC's public service activities: Ofcom's procedures and guidance*, 29 March 2017. (Note that there was a correction of a cross-referencing error in 2018)
[21] Now News Broadcasting, part of News UK
[22] Ofcom, *Consideration of a request from Wireless Group Media (GB) Limited for Ofcom to launch a BBC Competition Review*, 18 December 2018

3.4 History of competition assessments

Materiality assessments

Under the current framework, the BBC has made approximately 35 materiality assessments.[23] In the great majority of cases, the conclusion (endorsed by Ofcom) was that the change in question was not material. Figure 2 shows a selection of such cases, though it is not exhaustive since not all assessments of immateriality have been publicised. (It also excludes commercial service changes).

Figure 2: Selected public service changes deemed immaterial

Change	Platform	Year
BBC Children's investment	Mixed	2017
BBC Wales Charter Reinvestment	Mixed	2017
BBC Northern Ireland investment	Mixed	2017
Live Sport Streaming	Online	2017
BBC Ideas	Online	2017
Launch of BBC Sounds	Online	2018
BBC Sounds – phase 2 (streaming & aggregation)	Online	2018
Adjustment to BBC Scotland hours for access services	TV	2019
Own It App	Online	2019
BBC Sounds – phase 2 supplementary assessment	Online	2019
BBC Voice Assistant	Online	2020
BBC Classical Music Archive	Online	2020
BBC Sounds – Radio 1 Dance (R1D) stream[24]	Online	2020
BBC Sounds – Radio 1 Relax / Wellbeing stream	Online	2021
BBC Sounds – OD speech & music TRIALS	Online	2021
BBC iPlayer – increased archive content[25]	Online	2022
BBC Sounds – on-demand speech and music changes	Online	2023
Extending online local news in England	Online	2022
BBC Sounds – Radio 1 & Radio 3 ext'n streams + R1D changes	Online	2024
BBC Bitesize – Phase 2 developments	Online	2024
S4C advertising on BBC iPlayer	Online	2026
6 Music – additional stream on BBC Sounds	Online	2026

Competition assessments

Overleaf we show those proposed changes that went on to a full assessment.

[23] Estimate to include unpublished materiality assessments

[24] The approval of Radio 1 Dance was the subject of an unsuccessful legal challenge by Radiocentre

[25] While the BBC found this change to be immaterial, it nonetheless undertook a PIT. Ofcom then also found the change to be immaterial, and no competition assessment was undertaken

Figure 3: Service changes subject to competition assessments[26]

Change	Platform	Year(s)	BBC: Material?	Ofcom: Material?	Ofcom process	Ofcom decision	Note
BBC Scotland channel	TV	2017–18	Yes	Yes	Full BCA	Approved	
BBC iPlayer – extended availability	Online	2018–19	No	Yes	Full BCA	Approved – conditions	Materiality overrule
BBC Three channel – linear relaunch	TV	2021–22	Yes	Yes	Full BCA	Approved – conditions	
BBC Radio Cymru 2 – extension to a new UK Public Service	Radio	2023–24	New UKPS (auto)[27]	Yes	Shorter assessment	Approved – conditions	
New streams on BBC Sounds – Radio 2 extension	Online	2024–25	No	Yes	(folded into DAB+ BCA)	Directed to PIT	Materiality overrule
DAB+ stations: R1 Dance, R1 Anthems, R3 Unwind	Radio	2024–25	Yes	Yes	Full BCA	Approved	
DAB+ station: Radio 2 extension (50s/60s/70s)	Radio	2024–25	Yes	Yes	Full BCA	Blocked	
Radio 5 Sports Extra – extended hours (9am–7pm daily)	Radio	2024–25	Yes	Yes	Full BCA	Blocked	

[26] Excludes the 2020 proposal for BBC audio portfolio expansion, which the BBC found to be material, but which was abandoned due to COVID
[27] At the time, new public services automatically required review

These changes taken to a full review include two instances where the BBC's view that the change was immaterial was overruled by Ofcom: the Radio 2 extension and iPlayer extended availability.

In all cases but one, Ofcom undertook a full BCA. BBC Radio Cymru 2 is the only example of a shorter assessment.

The two outright rejections were of the Radio 2 extension (R2E) and the proposal to extend the broadcast hours on 5 Sports Extra. Ofcom concluded that R2E's distinctiveness was modest, and it was concerned about the market impact on Boom Radio in particular. It anticipated this could lose 14-21% of its listening. Regarding 5 Sports Extra, it concluded that News Broadcasting's talkSPORT stations could lose 5% of their listening. Thus the only proposals Ofcom has rejected were those that led to a significant impact on a radio station outside a major group (Global and Bauer).

In three cases Ofcom approved the proposed change, but added conditions. However, these conditions did not materially restrict the service, but rather mostly related to transparency, such as obligations to report plans or performance.

The mix of the BBC changes, and their outcomes, is as follows:

Figure 4: Number of BBC changes by type[28]

Change	Immaterial	Approved	Blocked	Total
Online	18	1	-	19
Radio		4	2	6
TV	1	2	-	3
Mixed	3	-	-	3

As these figures make clear, by count it is online that has been the focus of the BBC's development over the last Charter (unsurprisingly). Conversely there have been no new TV proposals since 2021.

What is also striking is that only one of the online proposals has been taken to a competition assessment, and *none* of the online proposals have been blocked.

[28] Count does not include initial rejection of BBC's immateriality decision regarding the Radio 2 Extensions stream

Judicial review of Radio 1 Dance

There has been one judicial review of these decisions. Radiocentre challenged the assessment that the new, 2020 Radio 1 Dance stream was not material on four grounds:

1. That the service was a radio service, and hence a new public service that would automatically trigger a PIT
2. That non-materiality was based on an assumption that it would not contain new content when it effectively did
3. That there was limited engagement with commercial stakeholders
4. Errors of fact

Radiocentre's challenge was unsuccessful.

The first ground is now anyway moot, in that even new public services do not necessarily require a PIT. The other grounds were more matters of process than the substance of the service. Thus it might be said that the JR does not set precedents for the approval decision itself.

However, from our discussion with stakeholders, the JR does seem to have had an impact on perception, with parties believing BBC changes to online services are more likely to be approved, and unlikely to be successfully challenged.

3.5 Case studies

In this section we offer case studies of several BBC changes that illustrate aspects of how the process has operated during this Charter period. We look at the new DAB stations, expanded local online news provision, BBC Scotland, bbc.co.uk and the BBC's expansion on YouTube.

New DAB stations

In 2025 Ofcom reviewed four proposed new DAB+ stations and a proposed extension of the hours of Radio 5 Sports Extra. Ultimately it rejected the extension and one of the new stations, a Radio 2 extension focused on music from the 50s, 60s and 70s.

These particular changes were not rejected because of their scale. Indeed, the Sports Extra extension was the smallest of the changes, measured by Ofcom's view of listener hours.

Rather changes were rejected or approved because of the particular stations on which their impact was expected to fall.

Regarding its approval of Radio 3 Unwind, Ofcom noted that the station could take 15% of Magic Classical's listening and 6% of that of Classic FM. However, it set aside any concerns about impact on investment incentives on the basis that

> "(i) these stations form part of a large portfolio and we estimate any revenue loss to be relatively low across the portfolio; and (ii) there are indications that commercial operators could dynamically respond to the BBC's proposals".[29]

Conversely the Radio 2 Extension was blocked for the particular reason that it would take share from Boom Radio, an independent station. R2E was also expected to take share from larger groups, but as with Radio 3 Unwind, this aspect of its impact was set aside.[30]

Thus in these findings Ofcom has sent a strong signal that impacts on larger groups can be set aside if they are not material at the group level. Impacts on stations within a large group are not seen as relevant.

Local online news

In its 2021/22 plan, the BBC trailed plans for "a new network of local news video journalists covering some of the UK's most under-served communities".[31] The BBC's subsequent materiality assessment found its planned changes to be non-material. In a review published in December 2022, Ofcom confirmed this finding,[32] and the BBC went ahead with its plans.

There are several notable aspects of Ofcom's approach to its materiality assessment.

Firstly, it solely considered the impact on the sector's revenues, and found this to be small (likely between 0.5% and 1%), but took no account of the impact of this revenue loss on profits, which is more important for investment incentives.

Secondly, it did not put the BBC impact in context of the parlous state of many local news publishers. For instance, while Ofcom drew on an

[29] Ofcom, *Proposed new BBC DAB+ radio stations and proposed changes to Radio 5 Sports Extra: Annex 1: Assessment of market impacts*, 10 April 2025. Ofcom has applied similar logic in a number of other cases.
[30] The Radio 5 Sports Extra extension was blocked because of its impact on talkSPORT, but in this case there may have only been modest wider impact
[31] BBC, *Annual Plan 2021/22*, March 2021
[32] Ofcom, *Review of the BBC's materiality assessment of proposed changes to the provision of local online news in England*, 14 December 2022

Economic Insight report (for DCMS) for revenue data, it made no mention of that report's findings regarding local press, which were:

> "Highly negative operating margins can be seen for regional publishers in recent years – and margins have trended down. … [T]his suggests they may face considerable challenges over the coming years. From a policy perspective, this raises the question of whether there is a 'social value' for such publishers that merits policy support especially given their importance in reaching the less digitally confident readers."[33]

Thirdly, Ofcom's analysis only considered the impact of the BBC's expansion on a cross industry basis. It did not consider that there might be more acute impacts on particular groups. This is particularly striking given that the BBC's proposal included targeted local expansions, rather than a nationwide approach. This is in contrast to the approach Ofcom has since taken to radio, where it has been focused on the impact on individual stations, rather than on commercial radio as a whole.

Fourthly, Ofcom's analysis was based on the current revenue mix. Because at the time of analysis, online revenues (those affected by the change) were only 20% of total local news publisher revenues, Ofcom found the percentage impact on total revenues to be small. However, online revenues were growing as print revenues fell, and a forward looking analysis would have assumed a greater percentage for online.

Fifthly, Ofcom asserts

> "While we think there will be some substitution of commercial local news stories with BBC stories, we think this will be limited by the distinctiveness of BBC content and the **likelihood that there is currently unmet demand** for local news." [emphasis added]

This key assumption is unevidenced. Moreover, by its nature it would be very difficult to rebut.

Thus in this instance Ofcom appears to have foreclosed a full review on a matter that was of significant concern to commercial players with a materiality assessment that was – at least – overly narrowly focused.

[33] Economic Insight [for DCMS], *Press sector financial sustainability*, May 2021

We note Ofcom's subsequent assessment that (with a particular methodology) it was not able to detect material adverse impact from the BBC changes.[34] But this does not change whether, ex ante, the decision to forego any competition review was merited.

BBC Scotland

BBC Scotland was approved by Ofcom in 2018. In its market impact assessment, it concluded that that impact was likely to be most acute for STV, and anticipated a share loss of 0.29 percentage points. However, it described this as "relatively small". This represented 2% of STV's viewing at the time.[35]

Ofcom estimated it would cost STV in the region of £2.4m, but stated

> "we do not consider the BBC's proposal by itself is likely to have an impact on the viability of commercial TV services in Scotland or substantially affect the incentives of commercial broadcasters to invest and innovate."

However, Ofcom did not publish any analysis of the impact on STV's profitability. In 2017 STV's operating profit was £19m.[36]. In this context, a loss of £2.4m of advertising revenue (that is likely to drop directly to the bottom line) is significant – it would result in a 13% loss in operating profit. Thus even at the time it seems unsafe to assume no substantial impact on investment incentives. Given squeezed margins today, the same loss of share would have an even greater proportionate impact.

While Ofcom did concede that there would be some market impact, it was comfortable that the public value was commensurate. Both Ofcom and the BBC saw news programming (particularly a one-hour bulletin at 9pm) as a critical component of the public value of the new channel. In line with this, Ofcom subsequently imposed a quota of 250 hours of news in peak per year.

However, as it turned out, audiences for the bulletin were modest, and fell from 17,000 to 10,000 in the period from 2020 to 2023.[37] In light of this, Ofcom halved the BBC's news quota.

By itself this is reasonable – a quota to produce little-watched programming is not rational. However, the practical effect is that the actual public value of the channel is greatly diminished, while its market impact remains (indeed may worsen if more popular peak

[34] Ofcom, *Review of local media in the UK - Part 2: Final report*, 29 November 2024
[35] Ofcom, *BBC Scotland Competition Assessment - Consultation on Ofcom's provisional determination*, 20 April 2018
[36] STV, *Annual Report and Accounts 2018*, 25 April 2019
[37] Ofcom, *BBC Scotland news provision -Consultation on BBC's request to change its Operating Licence*, 3 May 2024

programming remains). This might suggest a reassessment of the original judgement as to the balance of public value and market impact – but there was no obvious mechanism for Ofcom to make such a reassessment.

bbc.co.uk

We now turn to two important BBC developments that appear not to have been considered by the existing regulatory process at all. The first is the BBC's website. Developments of this website have not been subject to a competition assessment, but it is an important part of its online offer. While recent figures on usage are not available, across this website and the BBC apps, the BBC reaches 76% of adults each month.[38]

In the last decade, the site has had a significant transformation. Figure 5 shows the headings on the home page, in 2016 and today:

Figure 5: Section headings, bbc.co.uk[39]

2016	2026
5 top stories	News headlines
News	Sport headlines
Sport /Rio Olympics	Entertainment and TV
Weather	Food and recipes
Editors Picks	Money
Featured video	Health and wellbeing
More from the BBC (news)	Uplifting stories
World in pictures	Insight and analysis
	Video playlist
	Discover more to watch & listen to
	New and trending on the BBC
	Sudoku
	Around the UK

Several changes are clear. In the 2016 version of the site, news was more prominent (particularly if sport and weather are included under this heading). In 2026, the range of material covered had expanded appreciably.

In particular, the page had been reoriented to include much more light material – entertainment, recipes, wellbeing and so on. Sudoku has been added. As an example of the entertainment content, the 'Love Island' section of the BBC's website currently offers 470 BBC articles.[40]

[38] Ofcom, Ofcom *Annual Report on the BBC 2024-2025*, 28 November 2026.
[39] For 6 August of each year. 2016 via Wayback Machine
[40] As of 25 August 2026. BBC, *Love Island*

In aggregate, this is a material reorientation of the offer, and one that broadens its threat to commercial players, without delivering obvious incremental public value or distinctiveness. For example, it is not clear why UK audiences need to receive Sudoku or recipes from the BBC specifically (given that they are already very widely available from other sources), nor is it clear why these are a necessary part of the BBC offer (since the site was very successful without them).

However, these changes have gone entirely unreviewed, in part because each was small and (by itself) immaterial, and because the BBC's Operating Licence gives such broad latitude for the website.

Further, the presence of Sudoku is an illustration of the risks created by Online being treated as a single service. The puzzles are 'sourced' to BBC Bitesize. There is a logic for the BBC providing Sudoku in that context, and (if limited to the Bitesize section of the site) market impact would be minimal. However, Sudoku is also appearing on the BBC homepage, which is much more significant. Puzzles are an important way for news publishers to attract returning traffic – Wordle brought tens of millions of new users to the New York Times, for example.[41] By providing Sudoku on the home page, the BBC competes directly with news publishers in this area.

The BBC on YouTube

Over the course of the past decade, the BBC has significantly expanded its presence on third party platforms, such as Facebook, X, Instagram, TikTok and YouTube. Initially the BBC presence was primarily promotional – a way to maintain brand familiarity with younger audiences, and as a pointer to relevant content available via traditional channels. However, this has changed, and increasingly these platforms are distribution channels in their own right – no longer shop windows but shops. Not only is the BBC making full items from its traditional channels available on these platforms, it is also creating content specifically for them.

[41] Press Gazette, *New York Times tops 9.1m subscribers as Wordle acquisition brings in 'tens of millions' of new users*, 4 May 2022

We here consider YouTube as an example. The BBC has multiple channels on YouTube, including the general 'BBC' channel, but also BBC News, BBC Sport, BBC Radio 1, CBeebies and so on. Nine of these channels have a million subscribers or more.

Figure 6: BBC News subscribers on YouTube[42]

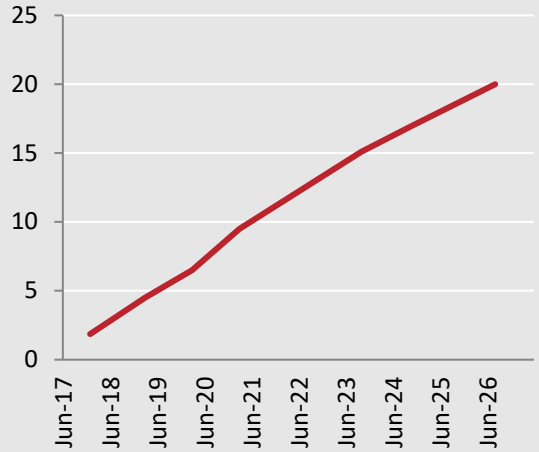


Figure 6 shows the growth of the BBC's news channel on YouTube, which has now reached 20m subscribers. This is significant in absolute terms, but the BBC is also in a strong position relative to commercial players. For instance, at the time of writing, three of the top five results of a YouTube search for 'news' (including the top two) are BBC videos.[43] Prominence for the BBC - as proposed in DCMS' recent *Watch This Space* Green Paper - would further disadvantage commercial players.

This has a competitive impact, because for almost all media organisations social media platforms such as YouTube are becoming important distribution channels and revenue sources.

For instance, for radio multiple stations will make their programming (particularly studio conversations) available as video, or stream station events such as concerts. On the revenue side Global now directly sells YouTube video advertising, alongside its traditional radio advertising.[44]

News publishers too are adding visual content on YouTube, with The Sun and the Daily Mail now having over 6m and 5m subscribers respectively.

Thus over the course of the last decade, the BBC has established major new distribution channels for both its existing content and new bespoke content. In so doing, it is directly competing with similar moves by commercial media organisations. However, this shift appears to have been entirely unexamined through a competition lens.[45] It is another example of 'creeping' change, where the current regulatory structure provided no obvious opportunity for review. The generally permissive approach to the BBC's moves online may also be a factor.

[42] Various sources, including BBC, Ofcom, Press Gazette
[43] 9am, 25 August 2026. Search from an incognito window to eliminate personalisation
[44] Global, *Global announces new premium video advertising capability on YouTube*, 19 May 2026
[45] It has been monitored via Ofcom Performance Review however

4 Market developments since the framework was established

In this section we consider key market developments since the current framework was established in 2016 that are relevant to how competitive impact should be assessed.

4.1 Increasingly targeted/narrow service launches

Digital distribution has far lower fixed costs. This makes much smaller services viable. Media organisations, including the BBC, have responded by launching more narrowly targeted products aimed at specific audience interests.

In radio, the picture is particularly clear. Dozens of targeted stations such as Radio 1 Anthems, Radio 3 Unwind, Heart Musicals and Hits Radio Pride have been established. While individually these are small, in aggregate they have become an important part of the market.

In 2016 there were 33 national stations, today there are 89. However, total listening for national stations has grown only moderately (up 8.3%). There has been increasing fragmentation (or targeting) within this group, with weekly listening hours per station falling from 20m to 8m. The 'long tail' of national stations has become far more important, with those national stations outside the top 20 now representing 21% of listening, compared to 5% in 2016.[46]

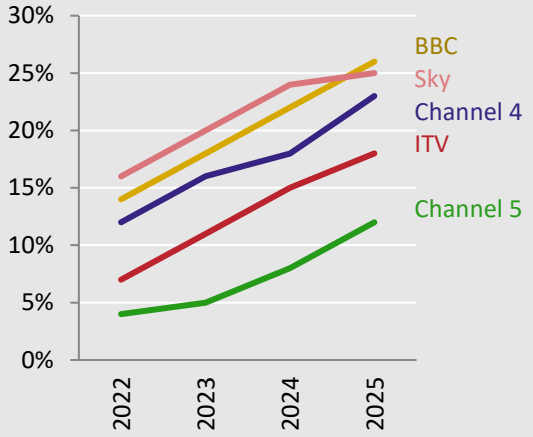
This has implications for assessments of materiality. If the BBC (and other media organisations) are playing out their strategy through many small steps rather than fewer, larger ones, then strategic shifts may 'fly below the radar' of the PIT process. These small steps may not rise to the level of materiality, and thus each go unexamined, even if the cumulative effect is significant.

[46] Communications Chambers analysis of RAJAR data. Q1 for each year

4.2 The growing importance of online

Online consumption has grown apace over the period, for both the BBC and commercial players. Figure 7 shows the portion of broadcasters' viewing that is via BVoD rather than broadcast. For most broadcasters it is over 20% as of 2025, and growing around 3-4 percentage points per year.

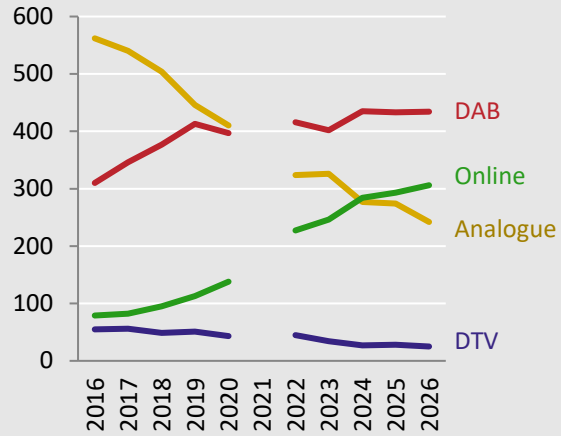
Figure 7: On-demand share of broadcaster viewing[47]



This is in part because of the growth of BVoD, but also because of the rapid contraction of linear. For example, per capita viewing of the BBC and ITV fell 26% and 27% respectively, in the three years from 2022 to 2025. This suggests that future innovation and service expansion is likely to be focused on online offers, rather than into the rapidly contracting broadcast market. This is doubly the case given that broadcast may see a significant contraction in 2034 if DTT transmission is ended.

Radio listening has also shifted materially online (Figure 8). Apps, smart speakers and other online listening now account for 30%, up from 8% a decade ago. Since 2019 (when DAB growth largely levelled off), this is the only distribution platform that has seen material growth.

Figure 8: Hours (m) of radio listening / wk[48]

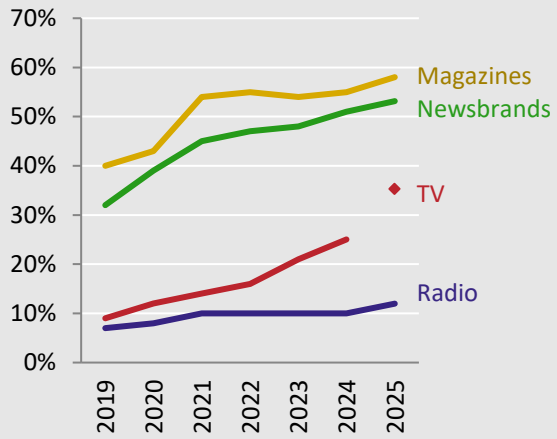


[47] Ofcom, *Media Nations 2026*, 29 July 2026

[48] RAJAR 'All Digital Listening' reports. Figures are for Q1 each year. Data not collected in 2021. Post 2021, 'Online' explicitly includes smart speakers – unclear whether this listening is included in online figures pre 2021

The shift of media markets online is also evident in the growing importance of online advertising to traditional media organisations. It is now over 50% of the advertising income of magazines and news brands, and growing rapidly for TV, reaching 35% in 2025 (Figure 9).

Figure 9: Online share of adspend[49]



Commercial media organisations see the success of their online arms as pivotal to their future. For example, Reach plc has said that "digital growth … is essential to the sustainability of our business".[50] The main reason cited for Sky's acquisition of ITV Media and Entertainment is to create "a commercial streaming champion for the UK" to better compete with global streaming giants.[51] Channel 4 describes its planned transition to 'digital-first public service streamer' as "the most important phase of its 42-year history".[52]

Thus BBC activities that may impact online growth for its commercial rivals merit particularly close scrutiny. However, the online aspects of the BBC's operating licence are in fact the most loosely set out.

4.3 Margin pressure across commercial media

A further important change has been the increasingly challenged financials for many commercial competitors to the BBC. Declining consumption of TV and newspapers in particular, as well as the general shift of advertising online means that profits have been falling.

[49] Ofcom, *Media Nations 2025*, 30 July 2025; AA/WARC, *AA/WARC updates advertising expenditure report to capture evolving UK media landscape and records £46.7bn media investment in 2025*, 30 April 2026. Note that TV figure for 2024 is VOD advertising as a share of total, while the 2025 figure is addressable advertising

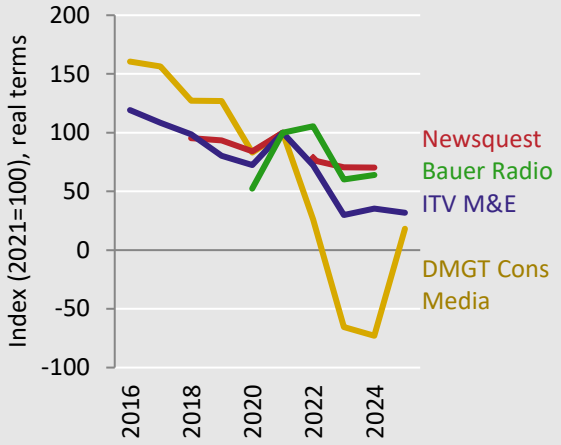
[50] Reach plc, *Annual Report 2025*, 3 March 2026

[51] Sky, *Sky agrees to acquire ITV Media & Entertainment, creating a commercial streaming champion for the UK*, 6 July 2026

[52] Channel 4, *CEO Role and candidate specification*, August 2025

Figure 10 shows profit trends for selected[54] key BBC competitors. All these players have seen substantial falls. ITV's Media & Entertainment division[55] saw a 73% fall in adjusted EBITDA, 2016-2025. Its EBITDA margin fell from 30% to 12% over the same period. DMGT's operating profit[56] performance has been even worse, with material losses in 2023 and 2024.

Figure 10: Profits of select media companies[53]



Thinner margins mean a given revenue loss from resulting BBC expansion now has a greater proportional impact on profitability and investment incentives. An investment that might previously have been attractive notwithstanding BBC encroachment is much more likely to tip into unviability today. Thus the potential for adverse market impacts is much greater today than when the framework was designed.

4.4 The BBC's relative importance

For TV viewing, the BBC's share has been relatively flat in recent years. In radio, it has had a loss of share – though it remains the largest player in both markets, with 34% and 43% share respectively.[57] However, in digital services the BBC has established a commanding lead – at least relative to its UK competitors.

[53] Company accounts. Available profit figures vary by entity. DMGT consumer media: Adjusted operating profit; Newsquest: Operating profit from core business; ITV: Media & entertainment division adjusted EBITDA; Bauer Radio: Operating profit. Earlier Bauer Radio and Newsquest figures are impacted by acquisitions and are not shown

[54] Companies have been selected primarily on the basis of 'clean' accounts for comparison. For instance, Global Radio's accounts include significant out-of-home advertising, which is not relevant

[55] Previously 'Broadcast and Online'

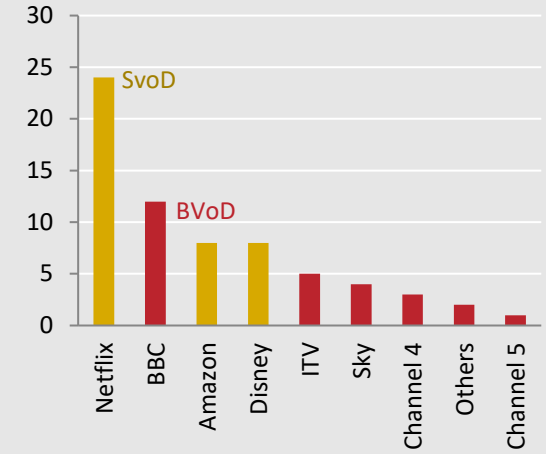
[56] Note that matching profit metrics are not available across these different divisions

[57] Ofcom, *Ofcom Annual Report on the BBC 2024-2025 – Annexes 1-4*, 28 November 2025; RAJAR (Q1 2026)

VOD

While the BBC does lag Netflix in terms of volume of consumption, it is well ahead of all other VoD providers, and is more than twice the size of ITV, its nearest UK rival (Figure 11).

Figure 11: VoD consumption, mins/capita/day[58]

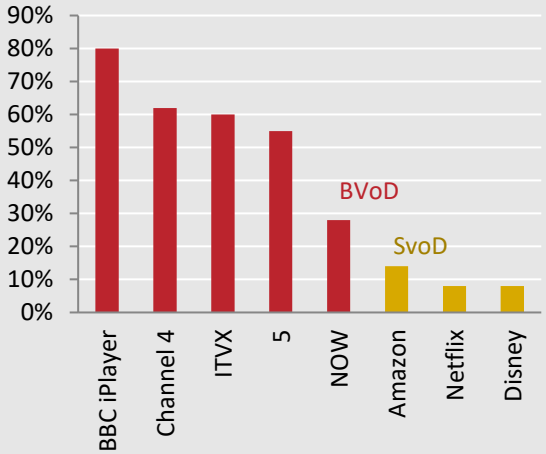


Understandably, there has been much focus on the BBC's ability to compete with the international players. However, in this context it is worth asking whether the BBC's BVoD growth is capturing viewing that would otherwise have gone to the SVoD providers, or to other UK providers.

Of total non-BBC viewing (linear and VoD), 69% is to non-BBC broadcasters, and just 31% is to SVoD providers.[59] This by itself suggests that an additional minute of iPlayer viewing is perhaps more likely to be at the expense of UK players.

Further, the iPlayer content offer is - as might be expected - much more like that of other BVoD providers than it is like that of the SVoD providers (Figure 12). This too suggests that additional iPlayer consumption may be more likely to be at the expense of UK providers.

Figure 12 Share of catalogue sourced from UK[60]



This means that support for the BBC to compete with the SVoD players needs to be carefully balanced with the (potentially greater) impact on other UK broadcasters. This is particularly the case since SVoD growth anyway appears to be slowing dramatically. SVoD penetration increased just two percentage points between Q1 2024 and Q1 2026 (68 to 70%). This contrasts to the pre-pandemic period when it was growing around 6 points per year. [61]

[58] Ofcom, *Media Nations 2026*, 29 July 2026
[59] Communications Chambers analysis of data from Ofcom, *Media Nations 2026*, 29 July 2026
[60] Ofcom, *Media Nations 2026*, 29 July 2026
[61] Ofcom, *Media Nations 2026*, 29 July 2026

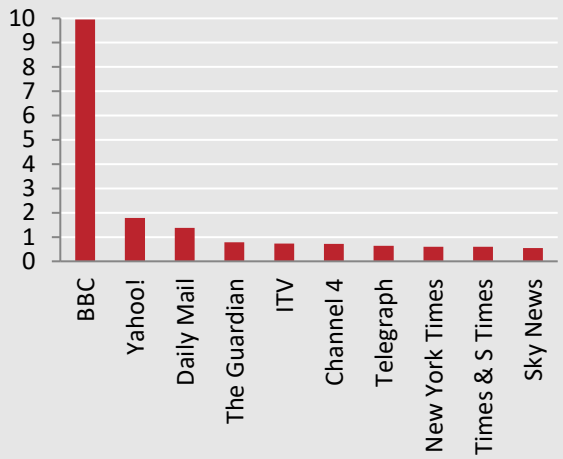
Web & apps

The BBC has a dominant lead over other news websites online. In terms of minutes of usage, it is larger than the next ten news sites *combined*.

Reuters Institute survey data tells a similar story, with 45% of respondents saying they used BBC news online, three times the figure for the Guardian, its nearest rival.[63]

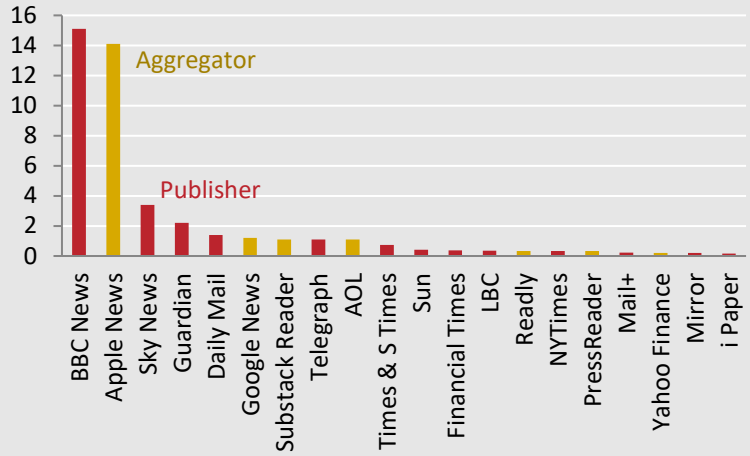
Looking specifically at local news, the BBC's share of local news pageviews grew from 18% to 30% between January 2022 and June 2024,[64] in material part due to the increase in BBC local news output online.

Figure 13: News website usage (bn mins), May 2026[62]



The BBC also has a commanding lead over other publishers in news app usage, with four times the usage of Sky, the next largest publisher:

Figure 14: News app users (m), November 2025[65]



When the BBC first launched apps, the Trust deemed it not to be a 'significant change' and no Public Value Test was undertaken (the equivalents respectively of a material change and a PIT under the current regime).[66]

[62] Press Gazette, *50 biggest news websites in UK: ITV and Irish Mirror lead engagement growth in June*, 28 July 2026
[63] Reuters Institute, *Digital News Report 2026*, 2026
[64] Ofcom, *Review of local media in the UK*, November 2024
[65] Press Gazette, *Most popular news apps in the UK: Times and Daily Mail lead on engagement*, 15 January 2026
[66] BBC Trust, *BBC mobile Apps , Trust final decision*, July 2010

In summary, the BBC has staked out substantially stronger positions than its UK rivals across a range of digital services that are crucial to the future of those rivals.

4.5 Conclusion

The current Framework was established in a different era – one where the BBC progressed by major new services, not many increments; when linear services were at the centre of UK media; when UK commercial media companies were in robust financial health.

The market has changed dramatically since then, and the BBC has responded, shifting its attention to digital services to meet the challenge of changing audience expectations and new international rivals.

This is understandable. However, issues of BBC market impact have become much more urgent. UK commercial rivals are much more financially vulnerable today, and small losses of share to the BBC are consequently much more threatening. At the same time, smaller BBC changes are less likely to trigger a full review, and the BBC's operating licence is particularly loose for online, the very area where competitors are facing an existential threat if they do not transition successfully themselves.

5 Assessment of UK process

We now turn to an assessment of the current UK process, and in particular areas where it may need improvement. We consider both the 'written' process, and the softer factors that influence how it operates.

5.1 A creeping deregulation?

In aggregate, the combination of the market developments and the regulatory changes can be seen to represent a substantial deregulation of the BBC and its competitive impact.

Regarding the Operating Licence, ever more of the BBC's activity is under the broad, loose online component of the Operating Licence, with minimal requirements or limits.

Sir David Clementi, author of the review that underpinned the substantial restructuring of BBC governance, said in that review:

> "The Service Licences are one of the key tools for holding the BBC to account. In a new model there must remain a structure, similar to the Service Licences currently issued by the Trust, which sets the scope for the BBC's activities and their key delivery objectives in a transparent and accessible way. The success of any new model will be measured in part by the extent to which it increases the accountability of the BBC." [67]

By this test, the new model reflected by the Operating Licence cannot be said to be a success.

As a matter of practice, Online is also an area of the BBC's activities where Ofcom is yet to block a single BBC change. Its statements also suggest that it may not in future either. While Ofcom has not fettered its discretion, it has said its expectation is that:

> "Changes to BBC iPlayer are unlikely to have a significant impact on the viewing share – and therefore revenues – of domestic competitors. They are therefore not expected to carry a significant risk of crowding out. However, we recognise that the risk could be higher if the impact of a specific change was expected to fall on a concentrated pool

[67] Sir David Clementi, *A Review of the Governance and Regulation of the BBC*, March 2016

> of domestic commercial providers, and such a change would be more likely to require closer scrutiny."

And:

> "Changes that only affect BBC Sounds are unlikely to have a significant impact on the listening share – and therefore the revenues – of domestic competitors, and we do not expect a significant risk of crowding out"[68]

For as long as this guidance stands, it sends a powerful signal.

A further area of de facto deregulation is the shift from a few major changes to many small ones, which means the materiality test excludes much more of the BBC's travel from regulatory scrutiny. (As we discuss later, the ex-post BCA also provides little protection here).

This raises the question where the regulation of the BBC's impact on competition might actually bite in future:

- New TV services are most unlikely given the market environment
- As a matter of practice Ofcom has been unconcerned about the impact of new radio services on the major players that make up much of the market, and has generally only intervened in the case of acute impact on smaller stations
- Ofcom's expectation is that changes to BBC Sounds and BBC iPlayer will not lead to crowding out
- Changes to the BBC website and apps (iPlayer aside) have never been subject to a competition assessment and anyway are likely to proceed by many small steps below the materiality threshold.

There is a risk that in effect, Ofcom's regulation of the BBC's impact on competition becomes a reserve power to be used in exceptional circumstances only, rather than a standard aspect of regulating the corporation.

5.2 The role of the BBC Board

In theory, the BBC Board are the first gatekeepers in the process. They have the ability to reject a PIT brought forward by BBC management. As far as we are aware, they have never done so.

As we have noted, there have been two services (both radio) that have passed at the PIT stage and been rejected by Ofcom. While this

[68] Ofcom, *How Ofcom regulates the BBC's impact on competition: Changes to guidance and requirements*, 18 April 2023

does not inherently suggest a failure by the Board – some differences of perspective are inevitable - it may be worth exploring why the Board reached a different decision. For instance, are the Board entirely reliant on BBC management's description of the impact on commercial players (which may itself depend on limited information on commercial operators' perspectives)?

We note that (as far as we can identify) the BBC has no board members with commercial radio experience, and only two with any news publisher experience (limited in both cases).[69]

5.3 Ability of commercial players to engage

Commercial players have various opportunities to engage regarding BBC service changes, though in practice the impact may be somewhat limited.

The materiality assessment

At the materiality stage, Ofcom expects

> "the BBC to explain what the change consists of, to allow stakeholders to comment on any concerns they have regarding the potential impact of the BBC's plans on competition. One way in which the BBC can do this is through its annual plan
>
> …
>
> The BBC should make reasonable efforts to seek dialogue with parties who may be affected by the change as part of its consideration of whether the change is material. We would expect the BBC to explain how it has engaged with stakeholders, and taken account of this engagement, as part of any materiality assessment."[70]

However, some stakeholders have told us they believe that this consultation may sometimes be pro-forma, rather than substantive. It may also be based on limited information. For example, the description of the Radio 3 Relax stream in the relevant annual plan was simply: "We will … launch a new stream of content to help young audiences in particular manage stress and wellbeing through music and speech content".[71]

[69] Matt Brittin served as a director of GMG for 13 months prior to joining the BBC and worked at Trinity Mirror for three years to 2007. Robbie Gibb was owner of the Jewish Chronicle

[70] ¶4.13/4.14 and ¶4.16 of Ofcom, *Guidance for assessing the impact of proposed changes to the BBC's public service activities*, 11 May 2026

[71] BBC, *Annual plan 2021/22*, March 2021

Further, we understand that when commercial stakeholders have complained to Ofcom about the quality of the BBC's engagement at this stage, they have simply been referred back to the BBC – which suggests little enforceability of genuine engagement.

The PIT

The BBC's procedure for PIT says it will include:

> "consideration of the views of interested parties on the proposal's impact on fair and effective competition, and in particular, on steps that could be taken to mitigate potential adverse impacts (without substantially impacting public value) and potentially create positive impacts."[72]

However, this is largely self policed. Ofcom requires the BBC to include consultation in its policy, but generally does not oversee the quality of that consultation in practice.

The scope of the BBC's consultation is also particularly focused on mitigation. The BBC's own language regarding the proposed Radio 5 Sports Extra extension is suggestive here. The BBC acknowledged that this service might have material market impact, and *did* reduce the proposed hours of the service after speaking to stakeholders (from 6am to 10:30pm to 9am to 7pm).[73] In light of this, it commented:

> "[W]e have taken reasonable steps to ensure that the proposed change has no adverse impact on fair and effective competition which is not necessary for the effective fulfilment of the Mission and the promotion of the Public Purposes. On this basis we consider that the proposed change justifies the adverse impact on fair and effective competition, and the Public Interest Test is met."

This appears to suggest that because the market impact was minimised, the PIT is met. But this should not be the test – rather the question is whether the impact is commensurate with the value. Further, the BBC's PIT does not appear to assess whether its proposed reduction in hours would make a material difference to the market impact of the service.

Finally, if steps of mitigation 'clear' a service in the eyes of the BBC, this creates a clear incentive to start with a maximalist service, of which elements can be sacrificed to demonstrate mitigation.

[72] BBC, *Policy on material changes to the BBC's public service activities and commercial activities*, 7 August 2017
[73] It also removed proposed simulcasting of 5 Live

Ofcom's view of materiality (If the BBC has found it to be immaterial)

Ofcom has the ability to overturn a BBC assessment of immateriality. As a matter of practice, it expects the BBC to provide it with such assessments. However, there appears to be no codified process for Ofcom's approach, and in particular no specification of how third parties might be consulted (though it does appear that Ofcom has, at least occasionally, engaged with them). Even if consulted, a challenge for third parties is that there may be very limited information in the public domain on the BBC proposal, making comment difficult. Ofcom may choose to share some of what it has been told by the BBC, but is of course bound by confidentiality.

Thus commercial operators have very limited rights at what is a critical gate in the process.

Ofcom's materiality check and route choice

At this stage, commercial operators do have somewhat greater involvement. Ofcom "may invite third parties to comment on whether they consider the BBC's published proposals to be material".[74] That said, this is both discretionary and clearly short of a full consultation, regarding a critical gate in the process.

Commercial operators also have the right to be consulted if Ofcom provisionally decides that no further assessment is necessary, and the BBC can go ahead with the change without a competition assessment.

However, while it is right that commercial players are engaged, in practice these consultations are generally not meaningful. They would contribute only if Ofcom was minded to overturn a BBC finding that its proposed change was material, or if it was minded to make no further assessment. Neither of these scenarios has ever arisen.

Ofcom's competition assessment

Within the competition assessment, Ofcom's guidelines specify that it will consult on its provisional determination. Here, finally, is a formal and mandated opportunity for commercial parties to provide input. However, the ability to have real impact at this late stage may be in doubt – and as a general matter it is rare for Ofcom to materially revise provisional findings. Looking specifically at the five competition assessments, in no case did Ofcom change its approval

[74] ¶4.36, Ofcom, *Guidance for assessing the impact of proposed changes to the BBC's public service activities*, 11 May 2026

decisions or (with one minor exception[75]) the conditions it attached to approvals.[76]

Conclusion

While on its surface the process allows for substantial input by commercial parties, in practice the earlier opportunities to input are discretionary and provide very limited information to commercial parties. While a fuller consultation does take place in the competition assessment phase, this is far down the track when perspectives may be becoming set. Certainly the examples to date suggest that it is too late for competitors to have a meaningful impact on the Ofcom decision.

5.4 Assessment of market impact on groups or services

As we noted above in our discussion of Ofcom's analysis of the DAB changes, Ofcom has focused on the group level rather than the services that most directly compete with a new BBC service.

This focus on groups rather than services is puzzling. Groups invest into individual services, and it is these investment decisions that may be distorted by BBC competition. During the process for the BBC's proposed new DAB+ radio stations, Ofcom set aside a forecast 15% loss of listening to Magic Classical on the grounds that "radio operators (with large portfolios) have kept stations operational with much higher losses of listening". [77] However, it certainly increases the risk, and at minimum is likely to weaken the case for further investment in the station.

Investment by the larger groups is an important aspect of healthy competition in the radio sector, both to the BBC and between commercial operators. The major radio groups have other places they could be investing (Bauer is part of an international media group, Global has a significant position in out-of-home advertising), and thus it is important not to discourage their UK radio investment.

Looking ahead, the approach Ofcom has taken here risks suggesting that if the BBC launches radio stations that do not have an acute impact on independent or smaller-group radio stations, they have free rein. The impact on the investment by the larger groups into individual stations can be set aside.

[75] For BBC Three, Ofcom tightened the language regarding the obligation on BBC Three to show news
[76] It did in some instances revise its forecast uptake of the proposed services, but this had no practical impact
[77] Ofcom, *Proposed new BBC DAB+ radio stations and proposed changes to Radio 5 Sports Extra: Annex 1: Assessment of market impacts*, 10 April 2025. Ofcom has applied similar logic in a number of other cases.

This seems unsound on both economic and policy grounds. In particular, this approach could deter investment that would otherwise contribute to UK growth.

5.5 Balancing market impact and public value

In theory, at the heart of Ofcom's decision lies a trade-off between market impact and public value. A negative market impact is not inherently problematic, as long as there is commensurate public value. However, there are some important asymmetries in how Ofcom strikes this balance.

Firstly (as mandated by the Framework Agreement) Ofcom undertakes its own assessment of market impact, but merely reviews the BBC's assessment of public value. Secondly, as a competition regulator Ofcom is perhaps more comfortable with the market impact side of the balance, and on less familiar territory regarding public value.

Further, the trade-off between market impact and public value is inherently judgemental – there is no common currency that can be used to compare the two.

In combination, these factors may create a bias toward approving rather than challenging BBC proposals.

5.6 Ofcom's guidance to the BBC

A further challenge is that Ofcom provides guidance to the BBC on what it sees as areas of deficiency, and this may effectively constrain its room-to-manoeuvre on subsequent BCAs.

For instance, in the run-up to the BBC Three proposal, Ofcom had repeatedly highlighted the importance of the BBC improving its engagement with younger audiences. In its 2019 annual report on the BBC it said:

> "The BBC will face a threat to its future sustainability if it cannot engage young people sufficiently. This will undermine the BBC's ability to fund content to deliver its Mission and Public Purposes."[78]

However, Ofcom's discussion of this was narrowly through the prism of public value. While it noted that other PSBs were also struggling with younger audiences, this was only to contextualise the BBC's challenge, not to acknowledge that if the BBC expanded its reach

[78] Ofcom, *Annual Report on the BBC*, 24 October 2019

with this group, it would likely be at the cost of taking share in a demographic that was valuable and challenging to reach for all players (PSB and purely commercial).

In this context, the BBC brought forward the BBC Three proposal. While theoretically possible, in practice it would have been particularly challenging for Ofcom to reject a proposal that was responding to the guidance it had given, and indeed Ofcom's consultation on the proposal itself highlighted their prior guidance.

However, that guidance had taken no account of market impact. Given the importance of the balance of public value and market impact, it would seem appropriate that Ofcom's guidance to the BBC on areas of emphasis take greater consideration of market impact, to avoid inadvertently skewing subsequent BCAs.

5.7 Declining visibility – online services much less measured

A challenge for assessing competitive impacts is that the focus of development is shifting to an area where the information in the public domain is far less rich. For TV and radio, BARB and RAJAR provide rich data. Market participants can see both their own consumption and their rivals in rich detail.

However, far less rich data is available from third-party sources for certain online activities. For instance, online-only streams, and catch-up and podcast listening are not captured by RAJAR, which only tracks live radio. For example, BBC Radio 1 Anthems did not appear in RAJAR when it was just a stream on BBC Sounds, it was only added when it launched on DAB.

Ipsos Iris, the standard currency for usage of websites and apps, offers only limited visibility below the parent level. So, while individual BBC apps are tracked, usage within them is not (and for news at least, the majority of use is via the app). [79] Tracking of usage of areas of the BBC website will depend materially on what the BBC chooses to tag, and may be unlikely to support analysis (say) of usage of BBC Bitesize the kind of data that would be necessary to assess market impact.

Similarly, it is challenging to interpret consumption of BBC content across the third party platforms (such as YouTube) that are ever more important.

[79] Annex 2 of Ofcom, *Review of local media in the UK: Part 2: Final report*, 29 November 2024

As a practical example, when Ofcom undertook its analysis of the impact of the changes to the BBC's online local news,[80] it relied heavily on data provided by the BBC – data that would (understandably) be unavailable to a commercial operator. However, this puts such operators at a material disadvantage when making a case for prospective or historic market impact. When compared to TV or radio, they are much less likely to have the relevant data available to them.

5.8 BCR as a dead-letter?

The risk of many small changes leading to a substantial shift with adverse impact on competitors is a real one. As we have seen, the character of bbc.co.uk has changed materially over the last decade, without any ex-ante scrutiny.

In theory the BCR process exists as a mechanism to address such situations. However:

- In practice it has never been used
- Ofcom's guidelines say it is designed to assess changes 'over the course of the Charter period'. This would appear to imply a 'reset' for the BBC at the beginning of a new charter period, with any changes in the prior period set aside
- Issues of data visibility for online services make it harder for commercial parties to make a case that a BCA is necessary
- A significant adverse impact might be commercial services that were never launched as a result of the BBC offer – but this is almost impossible to evidence
- In a chaotic media market it may be challenging to definitively demonstrate that an adverse impact was the result of the BBC's actions – particularly if the actions were cumulative over time

Further, even if Ofcom did undertake a BCR; found that there was significant impact; and deemed this to be excessive relative to the public value of the service, then its options are limited. It cannot close down the service, only require alterations to limit market impact.

Such options may or may not be available – the impact may be inherent in the service. Further, audience endowment effects may make it difficult to take away features of the service that audiences value.

[80] Annex 2 of Ofcom, *Review of local media in the UK: Part 2: Final report*, 29 November 2024

For all these reasons, not only has the BCR process never been used, it is doubtful whether (except in exceptional circumstances) it *could* be meaningfully used.

Thus the mechanism that purportedly protects the BBC's competitors from many small changes with a cumulative impact is effectively a dead letter, and this critical issue is unaddressed.

5.9 Service approval as a one-way gate

It is in the nature of the decision the process is trying to support that if a change is approved (either due to non-materiality or because of a favourable competition assessment), that decision can be difficult to reverse. As noted, audience endowment effects may be a factor, but so too may be institutional reluctance to intervene.

In such situations, a cautious approach to approvals is appropriate.

5.10 Conclusion

The above analysis suggests that the current process has significant weaknesses. We do not suggest that – to date – the process has produced obviously damaging decisions. Indeed, in some areas (notably radio) competitors have gained appreciable share from the BBC over the last charter period.

However, this ignores the counterfactual. With a process that gave commercial operators real protection against the unwarranted extension of BBC services, it is possible that investment and innovation by the commercial operators would have created new public value which has been lost.

Given the worsening financial health of many commercial players, it is important that the process be updated and improved.

We now turn to potential refinements. We believe these can support investment by commercial players; reduce regulatory burden; accelerate innovation by the BBC; and ultimately lead to better outcomes for audiences.

6 Suggested improvements

While opinions naturally differ, both commercial players and the BBC feel the process could be improved. For instance, both feel it could be streamlined.[81]

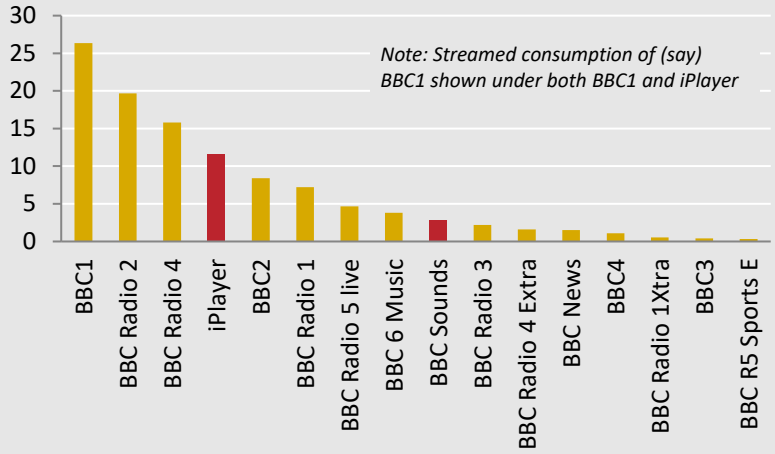
In this section we offer our own suggestions for a range of improvements, to ensure it is suitable for the decade of the next Charter period. We describe proposed changes at a high level here, but set out how they might be implemented in the various regulatory instruments in the Annex to this document.

6.1 A reset for online

The regulatory regime has become highly permissive of BBC online changes, through: the structure of the operating licence; Ofcom's guidance as to where it expects impact; and the perceived implications of the judicial review. This is inappropriate, given the importance of online.

For example, amongst the BBC's video services, iPlayer consumption is larger than that of any other channel except BBC1. (Of course, iPlayer content is currently substantially drawn from that of the channels):

Figure 15: Daily minutes of usage of BBC services, 2025[82]



Comparing to competitors, by itself iPlayer consumption is roughly equal to the *total* consumption of Channel 4 group.[83]

[81] For the BBC, see p68, BBC, *A BBC For All - Our response to the government's Green Paper*, 5 March 2026
[82] BBC Annual report (2025/26), RAJAR (June 2025), BARB (July 2025)
[83] Ofcom, Ofcom *Annual Report on the BBC 2024-2025*, 28 November 2026.

As linear consumption declines and on-demand grows, the relative importance of these online services will only grow.

Undoubtedly it is important for the BBC to develop online, as for any media company. But in the past one would have said it was important for the BBC to develop its portfolio of channels – but this did not imply free rein to do so without regard to competitive impacts.

Further, while there may once have been an argument that in the early stages of development it was important to provide flexibility, the current scale of iPlayer and Sounds suggest this is no longer valid. So too does the maturity of these services – iPlayer is almost 20 years old, and BBC Sounds is eight years old.[84]

Within the coming Charter period, these services are only going to become more important. Particularly if DTT transmission ceases in 2034, online distribution will become absolutely central to the BBC's video content.

To address this, we suggest:

- DCMS should provide Ofcom with guidance that the lighter touch treatment of online is no longer appropriate
- The operating licence should be amended to bring greater specificity to expectations of and limits on BBC online services

6.2 Clarification of how market impact should be assessed

As we have noted, Ofcom has often focused primarily on revenue impacts, and has set aside impacts that have a small impact at the group level.

We recognise that in some instances, assessing impacts on profit may be challenging in the time available. However, as sector margins fall, percentage revenue impacts are an increasingly unreliable guide to the impact of BBC services on investment incentives. Industry bodies may be able to assist Ofcom by (outside the context of a BCA) providing evidence setting out the financial structure of their sector, and how changes in revenue might affect investment in particular services.

We suggest:

- Ofcom's guidance for competition assessments be updated to specify that:

[84] Launched December 2007 and June 2018 respectively

- Wherever practical, Ofcom will primarily consider the impact of the BBC change on the *profitability* of commercial services, since this is ultimately what provides incentives for investment
- Assessments should be at the service level, not the group level, because this is the level at which investment decisions are made

6.3 Addressing degradation of the public value of a service

The trade-off between public value and market impact is made at a point in time. However, as a service develops over time, this trade-off may change. A case in point is BBC Scotland, which has had its news hours reduced, leaving its public value diminished but its market impact in place.

This problem is exacerbated by the challenges the BBC faces in closing services. If a commercial service consistently underperforms, its owner will close it. But licence fee funding makes it more plausible to continue funding a service with diminished audience, and audience endowment effects and (potentially) regulation make it harder for the BBC to close a service. Thus the natural reaction of the BBC is to seek to reduce the more expensive, public-value-creating aspects of the service, as with news and BBC Scotland.

This dynamic risks creating a set of 'zombie' services that are no longer delivering their public value, but are still having market impact.

To address this, we suggest:

- At approval of a service, Ofcom should specify what it regards as the key attributes of the service, the components of its public value, and (where appropriate) the expected future demand for the service
- If the BBC plans to make changes that materially reduce the public value of the service, it must in parallel consult with third parties and propose changes to mitigate the market impact of the service (to ensure PV remains commensurate to market MI)
- Ofcom should have an obligation to consider the PV/MI trade-off (if the PV changes require its approval) or the option to open a new investigation to consider the trade-off (if it does not). In the latter case, Ofcom should have the power to direct changes to the service.

- If actual demand materially exceeded expected demand,[85] this would represent grounds for third parties to call for a BCR. (Note that this addresses a separate issue than any potential degradation of public value)

6.4 Addressing creeping change

As we have seen in the context of bbc.co.uk, it has been possible for some BBC services to change materially in a way that may create adverse market impact, but where that impact may be challenging to evidence even if real. We do not believe there is a simple regulatory solution to this issue, but the following changes may mitigate it:

- At the start of the Charter period and every five years thereafter, create and/or update 'service descriptions' for BBC services, both broadcast and online.[86] Online would be treated at the service level (iPlayer, individual apps and so on) rather than be treated as a single category. These would set out the audience proposition; the key components of public value and the budget. These descriptions would not be a licence or other binding constraint – rather they would be an 'anchor point' against which drift could be assessed, and (if there was material drift) grounds for a BCR
- Update the BCR guidance[87] to make clear it assesses changes over the last five years, rather than since the start of the Charter period
- Update the BCR guidance such that the assessment is of the PV vs MI of the cumulative *changes* to the service in question, not of the service itself.[88] This would allow a clearer view as to whether the many small changes had increased market impact without commensurate public value, and (by extension) whether exclusion of them would have been considered appropriate mitigation if they'd been assessed ex-ante
- For the BBC Website and News app, require the BBC to categorise content on that site into that with clear PV (such as news) and that for which the prime role is audience building (such as puzzles), and report over time as to how the mix of usage between these two categories is changing. If

[85] As a practical matter, we believe actual demand for BBC services subject to a BCA has generally fallen short of that anticipated by Ofcom

[86] The Austrian 'Angebotskonzept' (offer concept) documents might be a model, but note that there are in effect restrictive licences, and as such are probably more detailed than would be needed in this context

[87] Ofcom, *Assessing the impact of the BBC's public service activities: Ofcom's procedures and guidance*, 29 March 2017. (Note that there was a correction of a cross-referencing error in 2018)

[88] Ofcom says the purpose of the BCR is to assess "whether an ongoing BBC public service activity is having a significant adverse impact on fair and effective competition". ¶1.7

Ofcom found that there was an ongoing drift to audience-building content, this would provide a trigger for a potential BCR.

6.5 Setting 'no go' areas for the BBC

Other jurisdictions, notably Germany and Austria, have a set of express limits on the online activities of their PSM. These are not all areas that the PSM would be likely to pursue, but they do create an 'outer perimeter', and reassure commercial players that they can pursue these areas without fear of later facing BBC competition.

Figure 16 shows the list of activities that are impermissible for German PSM.

Figure 16: Precluded activities for German PSM[89]

- Advertising
- Business directories
- Price-comparison and calculation tools
- Rating services, establishments and products
- Music downloads
- Advice sections
- Business networks
- Telecommunications services
- Gambling
- Software
- Route planners
- Links without editorial review
- Dating, contact, job and exchange platforms
- Games
- Photo downloads
- Events calendars
- Forums and chats

Note: Material in several of these categories is permitted *if* it is directly related to a broadcast programme

There is also an important restriction on German PSMs that

> "their own websites and online services and services on third-party platforms must not, in either case, be press-like. Their own websites and services must consist predominantly of moving images or audio".[90]

This is clearly very different from the UK situation, where bbc.co.uk is very press-like (though we do not argue this should be reversed).

- We suggest that DCMS, in consultation with industry and the BBC, consider establishing some clear exclusions for BBC

[89] *Anlage (zu § 30 Abs. 5 Satz 1 Nr. 4 des Medienstaatsvertrages) - Negativliste öffentlich-rechtlicher Telemedien*
[90] *MStV: § 30 Telemedienangebote*

activities, for incorporation in the next charter, with limits on advertising being a prime candidate

6.6 A financial test for materiality

Since the end of the requirement that new public services necessarily be subject to a competition assessment, 'materiality' is the only route to competition assessment, and this is entirely judgemental. It seems reasonable to add a backstop that would ensure that certain larger changes went through to a competition assessment by default.

In Denmark a service will 'as a general rule' be considered significant if its annual cost is over DKK1m per year (approximately £115,000).[91] Austria has an indicator of materiality that is spend over 2% of the 'cost of the public contract',[92] or roughly €20m (£17m).

We do not believe that a 'flat' threshold, applicable across all services, is appropriate. A £5m increase in BBC One spending might be unlikely to have competitive impact. Conversely the same spend on a new radio service might be very significant.

Therefore a better approach might be a set of thresholds specific to the services the BBC investment was likely to primarily compete with. For example, there might be different figures if the relevant competitors were 'generalist TV channels', 'genre-focused radio stations', 'local news publishers' and so on. Figures could be determined on the basis of typical revenue and (crucially) profit levels for such organisations.

We therefore suggest:

- Changes to BBC services should be presumed to be significant if the associated increase in annual spend is higher than the threshold for the relevant category of affected media services, with thresholds to be determined by Ofcom. (For the avoidance of doubt, we note that services with much lower budgets may also be significant, dependent on circumstances)
- A service launched in the prior five years with spend of less than the agreed threshold should be subject to a BCR if its spend rises above that threshold. (Other anti-gaming mechanisms may also be necessary)

[91] Kulturministeriet, *Bekendtgørelse om godkendelse af DR's og de regionale TV 2-virksomheders nye tjenester*, 9 March 2011

[92] § 6 ORF-G Anwendungsbereich

6.7 Drop the BBC's assessment of market impact vs public value

As part of the BBC's PIT, the BBC Board must be satisfied that "the public value of the proposed change justifies any adverse impact on fair and effective competition".[93] However, this is the same judgement that Ofcom makes in its own assessment, and ultimately this is a decision that *must* be Ofcom's. The BBC Board's judgements in this regard may be in good faith, but ultimately they are an interested party. This raises the question as to whether the BBC's work in this area is useful. Certainly it is important that the BBC consider mitigations of market impact (and consult with commercial players on this), but this is the subject of a separate mandate.

The value of the Board's requirement to consider PV vs MI is all the more doubtful since we are unaware that the Board has ever rejected a PIT, on this ground or any other. Removing this requirement on the BBC could both reduce regulatory burden and streamline the process.

Thus we suggest:

- Dropping the requirement for the Board to assess whether any adverse impact on competition is justified by public value.

6.8 Drop mandatory Initial Assessment phase

Ofcom's initial assessment phase allows it to make two decisions – does it agree with the BBC's materiality assessment, and does it wish to undertake a BCA, a shorter assessment or (potentially) no assessment. Ofcom has up to six weeks for this phase, and typically has used approximately four weeks.

Ofcom has never overruled a BBC assessment that a change is material (and this seems an unlikely scenario). Further, on methodology, in all cases but one, Ofcom has undertaken a full BCA.

This suggests that this Initial Assessment may not be a necessary part of the process, at least by default. It could be dropped, with Ofcom going directly to a BCA by default, but with Ofcom having the *option* to declare at the start of the BCA that it was going to consider the change being non-material or requiring no or only a shorter

[93] ¶4.21 of Ofcom, *Guidance for assessing the impact of proposed changes to the BBC's public service activities*, 11 May 2026

assessment. If so, it would have (up to) an additional six weeks for this consideration.

This change would streamline the regulatory process in most cases with no material impact on the reliability of decisions.

We therefore propose:

- Dropping the Initial Assessment and instead moving straight to a BCA
- Giving Ofcom the discretion to pause a BCA to consider either non-materiality or lighter competition assessment (subject to consultation)

6.9 Early publication of a service description

The earlier commercial players have a clear picture of the proposed BBC service, the better placed they are to comment. While a service or change may still be in flux at the point the BBC assesses materiality, it should be largely set well before the Board reviews the PIT. To undertake demand forecasts, market research and other analysis that underpins the PIT, the BBC must operate off a well defined specification of the service. For example, in the case of BBC Scotland, the BBC was able to launch a public consultation on the service including a developed description of the service on 14 June 2017,[94] four months before the Board decision on the service on 17 October.[95]

If this information is available well before the PIT itself is published, it is appropriate to make it available to competitors, to maximise the time they have to analyse the change and consider their submissions to Ofcom (assuming the proposal goes on to a competition assessment, as has always been the case to date).

This additional time for competitor consideration is all the more important if (as we suggest above) the 6 week initial phase of Ofcom's work is to be dropped.

The value of earlier availability of the service description could be further enhanced if Ofcom published a standard set of 'opening questions' on which it would value input at the start of a BCA. Interested parties could then use the time between the publication of the service description and the start of the BCA to prepare submissions against this set of questions, giving Ofcom the benefit of

[94] BBC, *Public Interest Test on the Proposed new BBC Television Channel for Scotland: Consultation document and guidance for submissions*, 14 June 2017
[95] BBC, *Meeting of the BBC Board – Minutes*, 17 October 2017

formal input from the market at the beginning of its assessment. (Note that this would not be a substitute for the standard, more specific consultation later in the process.)

Therefore we suggest:

- The BBC shall be required to publish a description of a proposed, material new service or change at least three months prior to that proposal being considered by the BBC Board
- Ofcom should publish a standard set of 'opening questions' for a BCA

6.10 BBC Board consideration of competitor perspectives

There are many requirements for the set of skills and attributes of members of the BBC Board, and it is to be expected that Board members do not have a range of commercial experience fully covering the sectors the BBC competes with. However, in light of this, it is important that they engage with industry to understand their perspective. It has been suggested to us that there is little such engagement. We therefore propose:

- In the context of assessing PITs brought forward by BBC management, the BBC Board should have a duty to engage directly with relevant third parties who could provide an external perspective, to support the Board's assessment as to whether appropriate steps to mitigate market impact have been taken

6.11 A default preference for transparency

Finally, we would argue that Ofcom should do more to promote transparency in the processes associated with the BBC's plans to develop its services. This issue has been the subject of extensive debate between the BBC's commercial competitors and Ofcom.[96] Ofcom has generally not been minded to alter its approach as a result of that debate. (It has however moved to publishing its materiality assessments).

We don't propose to open up the issue in detail as that detail has already been extensively examined. However, at the level of principle, we think it would add to the perceived legitimacy of the process if Ofcom adopted a default position that transparency was

[96] See, for instance, consultation responses and Ofcom's Statement regarding *Updates to Ofcom's Guidance for assessing changes to BBC's public service activities*

an objective in the process and that transparency should only be set aside when there are extremely good grounds to do so.

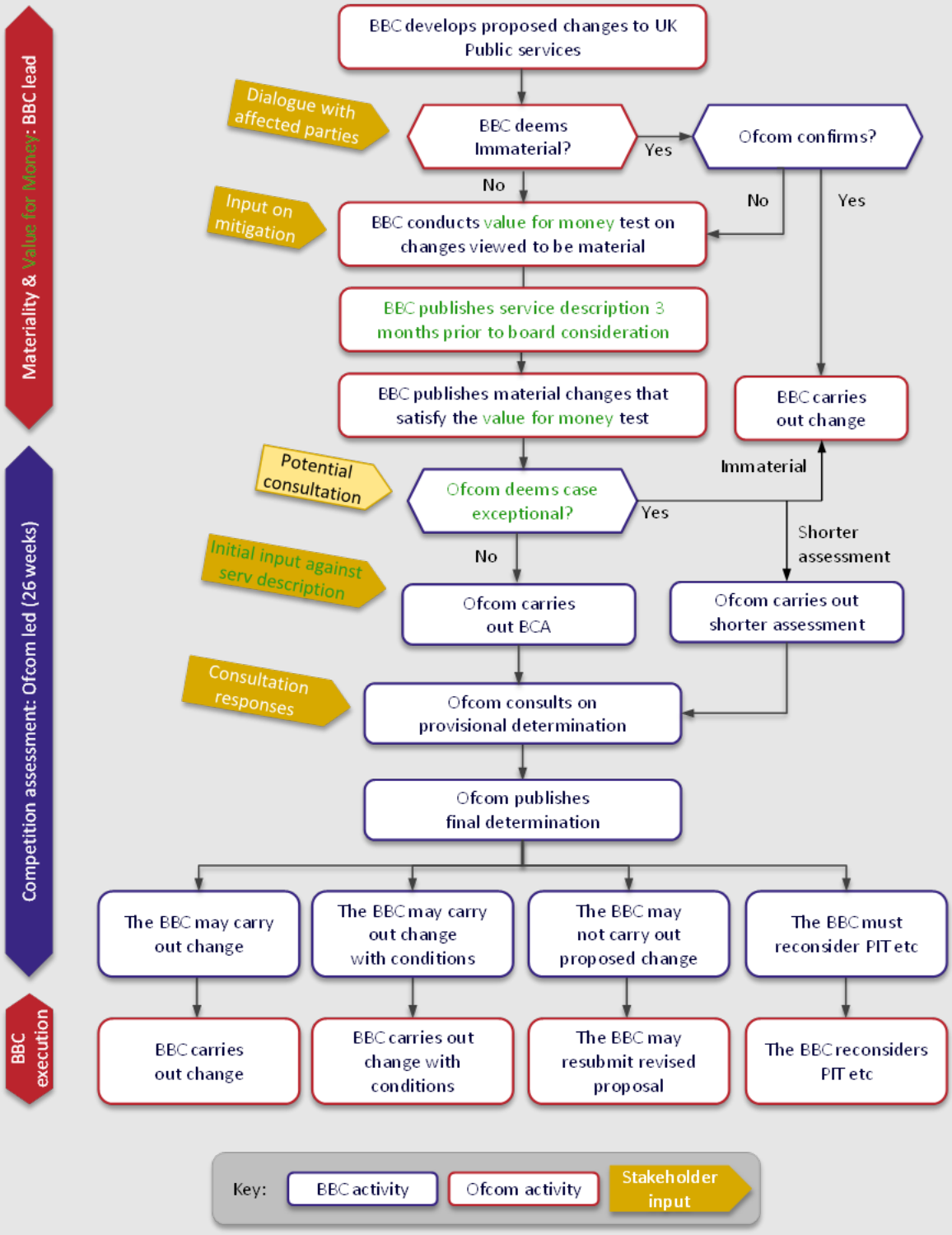
This is for two reasons. First, as explained earlier, we think that failings in the current process are real and the fact that (for example) the commercial radio sector does not have a clear view of the information exchanged between the BBC and Ofcom on new services means that commercial radio is disadvantaged when arguing its case.

Second, as we suggested in the Introduction, the closeness of the Ofcom/BBC relationship and the perception that their status as public bodies might create a bias in favour of the BBC's position needs to be addressed to ensure that the legitimacy of the competition evaluation is widely recognised.

6.12 The resulting process

A number of the suggestions above would affect the structure of the process of competition assessments. The revised structure would be as follows:

Figure 17: Change review process overview[97]



Edit shown in green. Not shown: Removal of Ofcom materiality and route check phase, and 'no further assessment' path

[97] Adapted from p13 of Ofcom, *Guidance for assessing the impact of proposed changes to the BBC's public service activities*, 11 May 2026

7 Conclusion

The UK media market has seen dramatic change over the last decade, and the pace of change is only accelerating. International SVOD and content sharing platforms are growing in importance, and the BBC – as a key provider of content telling UK stories – needs flexibility to respond to this and other changes.

However, the BBC is certainly not the *only* media organisation telling UK stories. A wide and varied commercial sector, across TV, radio and online, serves UK audiences. However, this sector faces the same pressures as the BBC, but without the benefits of its scale, secure funding and ad-free output.

The commercial sector is considerably less financially robust than it was at the start of the last charter period, and the regulatory process to police the 'boundary' between the BBC and the sector is therefore all the more important to ensure a healthy and plural media sector serving UK audiences.

Against this background, the creeping de-facto deregulation of this boundary is concerning. The Charter Review provides an ideal opportunity for a 'reset', while simultaneously streamlining the process to accelerate the BBC's ability to make unproblematic changes.

8 Annex: Changes to governing instruments

In this section we set out how the improvements proposed in Section 6 might be implemented across the various instruments that govern the assessment of the BBC's impact on competition.

Documents referenced

FA	Framework Agreement as amended by CP 1460 (2026)
BCA Guidance	Ofcom, Guidance for assessing the impact of proposed changes to the BBC's public service activities (2026)
BBC Policy	BBC, Policy on material changes to the BBC's public service activities and commercial activities (2017)
BCR Guidance	Ofcom, Assessing the impact of the BBC's public service activities (2017)
Charter	BBC Charter

Specificity: ● a specific edit is set out; ◐ the provision requires widespread edits and/or needs further specification (commentary given); ○ not yet specifiable (commentary given).

Proposed improvement	Affected document(s) & provision	Necessary text additions / edits (or commentary)
1a A reset for online DCMS steer that lighter-touch treatment of online is no longer appropriate	DCMS letter of guidance to Ofcom (non-binding) **Firmer route:** Charter / FA	◐ A letter cannot bind Ofcom, which is independent. To bind, the expectation must be written into the Charter or FA
1b A reset for online Greater specificity / limits on BBC online services in the Operating Licence	Operating Licence, conds 1.2–1.3 and 3.2–3.3	◐ Insert parameterised conditions for BBC iPlayer, BBC Sounds, the BBC Website and BBC apps alongside the existing primarily qualitative ones — e.g. minimum first-run / originated content or spend commitments, and scope caps where a "limit" is intended — mirroring the numerical structure used for linear (cf. cond. 1.4: "at least 1,520 hours … network news").
2a How market impact is assessed Assess impact primarily on profitability, not revenue	CA guidance, ¶5.10 **Conform:** BCR guidance ¶¶5.10–5.11	• Recast ¶5.10: "*Wherever practical, we will assess the impact of the change on the profitability of the affected commercial services, since it is profitability rather than revenue alone that determines the incentive to invest. Where profitability cannot be reliably estimated we will use the revenue impact as a proxy and explain the limitation.*"
2b How market impact is assessed Assess at the service level, not the group level	BCA guidance, new sub-¶ after ¶5.17	• Insert: "*We will normally assess effects at the level at which the relevant investment, entry or exit decision is made. This will often be the affected service or product rather than the diversified group as a whole. Where group-level effects are relied upon, we will explain why.*"
3a Degradation of public value Ofcom to record a service's key attributes, PV components and expected demand at approval	FA cl. 11 **Conform:** Ofcom BCA guidance	◐ **Commentary —** Add a power/duty for Ofcom, when clearing a material change, to record the service's key attributes, public-value components and expected future demand, and reflect it in the guidance. The taxonomy of "attributes / PV components" and how "expected demand" is expressed to be developed
3b Degradation of public value BBC duty to consult + mitigate when it materially reduces PV components	FA	◐ **Commentary —** Requires both a new trigger (a material reduction in a specified public-value); and a new associated process (a duty on the BBC to consult and proposed changes to mitigate market impact)
3c Degradation of public value Ofcom power to reopen and direct changes where PV no longer justifies MI	FA cl. 12(1) **Conform:** BCR Guidance	◐ Insert at end of 12(1) in FA "or it has reasonable grounds to believe that the public value of the activity no longer justifies its adverse impact on fair and effective competition". Widespread changes required to BCR Guidance, to add decline in public value and to centre the trade-off of market impact vs public value, rather than a standalone 'significant adverse impact on fair and effective competition'
3d Degradation of public value Actual demand materially exceeding expected demand as a ground for a third-party BCR	BCR guidance ¶4.15	• Add as a factor in ¶4.15 — "Whether usage of a service subject to a BCA has significantly exceeded that forecast in the context of the BCA"

Proposed improvement	Affected document(s) & provision	Necessary text additions / edits (or commentary)
4a Creeping change Five-yearly non-binding "service descriptions" (online at service level)	FA	◐ **Commentary —** Establish a duty on the BBC to prepare and publish five-yearly service descriptions (audience proposition, public-value components, budget), expressly non-binding, as an "anchor point" against which drift is judged. The template and granularity are a policy choice (the Austrian Angebotskonzept is a model).
4b Creeping change BCR to assess changes over the last five years, not since the start of the Charter	BCR guidance ¶¶1.7, 3.2, 3.4	• Amend the references framing the review "over the course of the Charter period" (¶¶1.7, 3.2, 3.4) to a rolling five-year look-back.
4c Creeping change BCR to assess the PV vs. MI of the cumulative changes, not the service itself	BCR guidance ¶5.3 (baseline) + ¶¶1.7, 3.3; revisit ¶¶1.8, 3.4 **Likely conforming edit:** FA cl. 12(3)	◐ **Commentary —** Re-write the ¶5.3 baseline ("the public service activity continues unchanged") so the comparator is the service as it stood at the start of the look-back, and re-frame the trigger at ¶¶1.7, 3.3. Because the guidance is grounded in FA cl. 12(3), a conforming FA edit is likely; and the self-imposed limits at ¶¶1.8/3.4 (not day-to-day; not revisiting historic matters) would need revisiting.
4d Creeping change BBC Website content categorisation + reporting; drift → potential BCR	Operating Licence / Operating-Framework reporting condition	◐ **Commentary —** Impose a reporting condition requiring the BBC to categorise BBC Website content (clear public value vs. primarily audience-building) and report the changing mix over time; an Ofcom finding of drift feeds the discretion to open a review. The category definitions are the policy choice.
5 Setting "no-go" areas for the BBC A negative list of impermissible BBC activities (advertising a prime candidate)	Charter, Art. 7 (or a FA Schedule)	○ **Commentary —** The perimeter of BBC activities is constitutional; a negative list belongs in the next Charter (or a FA Schedule cross-referenced by it). Exact list to be determined by a DCMS-led consultation.
6a A financial test for materiality Spend-increase in excess of competitor-specific threshold presumed of materiality	FA — new cl. 7(7A) **Conforming edits:** BBC policy ¶2.18; Ofcom guidance ¶4.40	◐ **Commentary —** • Insert cl. 7A: Establish threshold test with a new clause 7A, with actual sectors and thresholds to be established by Ofcom. Language to specify that this does not limit 7, so that smaller changes may also be material
6b A financial test for materiality Service launched in last 5 years → BCR if spend rises above threshold	FA cl. 12(1) (new ground)	◐ **Commentary —** Add a ground to cl. 12(1) so that spend rising above the threshold within five years of launch is itself a ground for a competition review. The five-year clock and how "spend rises above" is measured TBD
7 Drop the BBC's PV-vs-MI assessment Remove the Board's duty to judge whether PV justifies the competition impact	FA cl. 8(1)(c) and 8(2) BBC policy ¶¶2.6, 2.24, 2.28–2.31 **If wider:** Charter Art. 20(4)	• Delete cl. 8(1)(c) and (2) The justification judgement rests with Ofcom (cl. 10(3)(d)). Recast BBC policy ¶¶2.6, 2.24, delete 2.31.

Proposed improvement	Affected document(s) & provision	Necessary text additions / edits (or commentary)
8 Drop mandatory Initial Assessment Go straight to a BCA, with an option to off-ramp to non-material / shorter / no assessment	FA cl. 9(1), cl. 9(4), cl. 10(2) Ofcom guidance ¶¶4.30–4.41 & Figure 1 BBC policy ¶¶2.9–2.11	◐ Recast cl. 9(1) so that, on publication, Ofcom proceeds directly to a competition assessment under cl. 10, but may, before [X weeks] and following consultation, determine that the change is not material, or that a shorter or no assessment is appropriate. Repoint the cl. 10(2) six-month clock to run from publication. Collapse the guidance's six stages to five.
9a Early publication of a service description Publish a service description ≥3 months before the Board considers it	New FA obligation (cf. cl. 7(5) / 8(3))	• New FA obligation: "*Where the BBC proposes a material change it must publish a description of the change (audience proposition, principal public-value components, timescale and indicative budget) not less than three months before the Board determines the public interest test.*" **Reflect in:** BBC policy
9b Early publication of a service description Ofcom to publish a standard set of "opening questions" for a BCA	Ofcom BCA guidance — new ¶ after 4.64	◐ Add a provision that Ofcom will publish a standard set of opening questions on which it invites input at the start of a BCA (the questions themselves are Ofcom's to write). Wholly within Ofcom's gift.
10 Board consideration of competitor perspectives Board duty to engage relevant third parties directly when assessing PITs	FA cl. 8 (new Board-level engagement duty) BBC policy ¶¶2.21	• Add to cl. 8: "*In carrying out the public interest test the BBC must take reasonable steps to obtain the views of third parties likely to be affected, including by direct engagement at Board level, to inform the Board's assessment of steps to mitigate adverse impact on competition.*" **Reflect in:** BBC policy ¶¶2.21 (firmer than the current "take account, where appropriate").
11 A default preference for transparency Adopt transparency as a default objective, set aside only on compelling grounds	Ofcom guidance principle (cf. 2023 statement ¶4.3) **To bind:** Charter Art. 12 / FA hook	◐ Insert a principle: "*Ofcom will approach its BBC competition functions on the basis that transparency is a default objective. Information exchanged between Ofcom and the BBC in the course of an assessment will be published unless there are compelling reasons not to do so, and any departure will be reasoned.*"

COMMUNICATIONS CHAMBERS

+44 773 858 2227
info@commcham.com
www.commcham.com