Policy on material changes to the BBC’s public service activities and commercial activities

7 August 2017
Policy on material changes to the BBC’s public service activities and commercial activities

<table>
<thead>
<tr>
<th></th>
<th>Introduction</th>
<th>2</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Material changes to the BBC's public service activities</td>
<td>4</td>
</tr>
<tr>
<td>3</td>
<td>Material changes to the BBC's commercial activities</td>
<td>12</td>
</tr>
<tr>
<td></td>
<td>Annex A: Approach to stakeholder engagement</td>
<td>17</td>
</tr>
</tbody>
</table>
Policy on material changes to the BBC’s public service activities and commercial activities

1. Introduction

1.1 Under the Charter and Framework Agreement (the Agreement), the BBC’s role is to act in the public interest and serve all audiences with high quality and distinctive services which inform, educate and entertain. In order to fulfil this role, the BBC will deliver a portfolio of services that will inevitably change over the course of the 11 year Charter period. The BBC must be able to constantly innovate, take creative risks and respond to audience expectations, new technology and market developments.

1.2 The Charter and Agreement give the BBC Board responsibility, in the first instance, for considering the impact of certain planned changes, either to the BBC’s public service activities¹ or to commercial activities². This reflects the Board’s responsibility for setting the strategic direction of the BBC and its duty to act in the public interest, taking account of the costs and benefits of the BBC’s activities.

1.3 The BBC must consider whether any proposed changes to its public service and commercial activities are material. The BBC may only materially change such activities where it has carried out either a ‘public interest test’ or a ‘commercial test’, the test is satisfied, and Ofcom have determined that the proposal can proceed.³

1.4 For public service activity, the Agreement defines material changes as the launch of a new UK public service, or a change to a public service activity which may have a significant adverse impact on fair and effective competition. For commercial activity, the Agreement defines a material change as the carrying out of a new type of activity as a commercial activity, or a significant change to the BBC’s commercial arm, where there is a significant risk that the change may distort the market or create an unfair competitive advantage.

1.5 The BBC Board is required to consider:

- proposals for material changes to UK public services and non-service activities, and to assess both the public value and adverse impact on fair and effective competition of such proposals⁴; and
- proposals for material changes to commercial activities, and to assess the proposed changes in terms of their alignment with the public purposes, their commercial efficiency, their impact on the BBC’s reputation and whether the proposed changes, as a result of their relationship with the public service activities, distort the market or create an unfair competitive advantage⁵.

---

¹ The BBC’s public service activities comprise its UK Public Services and non-service activities, as defined in the Charter and Framework Agreement. See clauses 7 and 16 of the Framework Agreement.
² The BBC’s commercial activities are defined in clause 23 of the Framework Agreement.
³ Framework Agreement, clauses 7 (6), 16 (5) and 23 (12).
⁴ Charter, article 20 (4).
⁵ Charter, article 20 (5).
1.6 The Agreement requires the BBC to prepare and publish policies explaining how it will consider material changes to public service and commercial activities respectively, including whether or not a change is potentially material, and how it will consult with interested parties where appropriate⁶.

1.7 This single document fulfils these requirements and sets out the BBC’s policies in respect of material changes to both public service activities and commercial activities. It provides guidance on the procedures, typical timescales and approach that the BBC will generally adopt when considering material changes to public service activities and commercial activities. The procedures and assessments followed will be proportionate and appropriate to the nature and scope of the change.

1.8 Section 2 of this document sets out guidance in relation to the BBC’s consideration of material changes to public service activities. Section 3 sets out guidance in relation to the consideration of material changes to the BBC’s commercial activities.

1.9 Under the Charter and Agreement, Ofcom has a role to protect fair and effective competition when the BBC proposes material changes. It has published its own procedures and guidance as to how it will fulfil this role. Ofcom’s procedures are referenced in the policies set out in this document where necessary to explain the end-to-end process for the consideration of material changes.

1.10 The policies set out in this document will take effect from the date of publication. The policies will be kept under review and amended as appropriate.

---

⁶ See the BBC Agreement, clauses 7(5), 16 (4) and 23 (11).
2. Material changes to the BBC’s public service activities

2.1 This section provides guidance on the procedures, typical timescales and approach that the BBC will generally adopt when considering material changes to the BBC’s UK public services and non-service activities.

The BBC’s role

2.2 The BBC will consider, in the first instance, whether or not a proposed change is material.

2.3 The BBC continuously makes changes to its public service activities, for editorial, creative or other reasons. This is necessary to ensure the activities evolve in line with audience expectations, market conditions and technology developments, and are, therefore, able to effectively fulfil the Charter-defined mission and public purposes. The vast majority of these changes are business-as-usual and should not count as ‘material’ within the meaning set out in the Agreement. The types of changes that we would normally expect to count in this category include:

- TV and radio scheduling decisions, to the extent that they do not materially alter the character of the service;
- Distributing an existing channel in a different technical format, or a distribution arrangement undertaken in line with the BBC’s policy and Ofcom’s Operating Framework;
- Changing the genre mix or volume in services, to the extent that it does not substantially alter the character of the service;
- Changing online functionality, discovery or navigation, to the extent that it does not substantially alter the character of the service;
- Changing the budget of a service, to the extent that it does not substantially change the scale of the service relative to the market;
- Temporarily changing the hours, content mix of a service or creating a ‘pop up’ linked to an existing service to accommodate coverage of special events (e.g. Olympics); or
- Changes to non-service activities which do not substantially alter the objectives of the activity or the means of achieving it.

2.4 The BBC would also not normally expect a decision to reduce the scale of a public service activity or to cease an activity altogether, to be classified as ‘material’. Although this type of change may raise strategic or public value considerations that the BBC may want to consider, a decision to do less is very unlikely to raise significant concerns about fair and effective competition.

2.5 In line with market norms, the BBC may adopt a ‘test, learn, adapt’ approach to online service development, with new ideas sometimes being trialled first before the implementation of permanent changes to public services. To mitigate any impact on competition, the BBC will place clear constraints around such pilots or trials. Under these circumstances, the BBC would not normally consider such pilots or trials to be material changes.

---

7 This policy excludes the BBC’s general business terms with the market.

8 The BBC will ensure that such trials normally last no more than 6-12 months, cost no more than 1% of the annual content spend on the relevant public service and have a limited user group.
2.6 If a change is judged to be material by the BBC Board, the BBC will carry out a Public Interest Test (PIT). The PIT will only be met if the BBC Board is satisfied that a proposal will generate sufficient public value to justify any adverse impact on competition which it is unable, via reasonable steps, to avoid.

2.7 If the PIT is met and the BBC Board decides to proceed, the BBC will publish the proposal and send a copy to Ofcom.

Ofcom’s role

2.8 Ofcom has a role to protect fair and effective competition when the BBC proposes material changes to its public service activities. It has published its own procedures and guidance as to how it will fulfil this role. Ofcom’s proposed steps are referenced in this document where necessary to explain the end-to-end process for the consideration of material changes.

2.9 Ofcom will consider whether or not a proposed change is material, and notify the BBC of the outcome of that assessment. If Ofcom has not notified the BBC within six weeks of the proposal being published, or if Ofcom has notified the BBC that they do not consider that the proposed change is material, the BBC may proceed with the change.

2.10 If Ofcom considers the proposed change is material, it will conduct either a full competition assessment or a more limited, shorter assessment of the proposal.

2.11 The outcome of Ofcom’s assessment will be a determination to: (i) send the proposed change or elements of the proposal back to the BBC for reconsideration; (ii) allow the change to proceed; (iii) require modifications or conditions to be made before the change proceeds; or (iv) find that the BBC may not proceed with the proposed change. Ofcom may only block a change or make it conditional on modifications following a full competition assessment and not a shorter assessment. Ofcom is required to reach a determination within six months.

2.12 If the BBC does proceed with a change it will be the same as that published in all substantive respects and will be implemented in so far as possible in accordance with the timeframes indicated in the published proposal.

2.13 The BBC will keep Ofcom appraised of developments that may lead to material changes, including in the Annual Plan each year and in regular discussions.

2.14 The following sections provide guidance on the procedures, typical timescales and approach that the BBC will generally adopt when considering material changes to the BBC’s public service activities.

BBC Materiality Assessments

2.15 The BBC must consider whether proposed changes to its public service activities are material, and, if so, undertake a PIT.

---

9 See the BBC Agreement, clause 8, 1 (b) and clause 17, 1 (b).
2.16 The Agreement defines a material change to the UK public services as: (a) the introduction of a new UK Public Service; or (b) any change to an existing UK Public Service which may have a significant adverse impact on fair and effective competition.\(^{10}\)

2.17 The Agreement defines a material change to non-service activities as: any change to non-service activities (including carrying out a new activity) which may have a significant adverse impact on fair and effective competition.\(^{11}\)

2.18 The BBC is required to maintain a list of its UK Public Services;\(^{12}\) any proposed new UK Public Service that is not covered by that list would be regarded as a material change. In reaching a view on category (b) changes, the BBC will want to understand the likelihood and scale of any adverse competitive impacts net of any positive impacts. To inform this, the BBC will normally take into account a range of factors, including:

- Investment scale (e.g. what is the incremental level of investment associated with the proposal, both in absolute terms and relative to comparable commercial operators?)
- Distinctiveness (e.g. how will the proposal differ from commercial services and to what extent is usage likely to be complementary or substitutional?)
- Novelty (e.g. is the activity taking the BBC into a wholly new market, or significantly expanding its presence in a nascent market?)
- Duration (e.g. whether the proposed change is permanent; see paragraph 2.5)
- Usage (e.g. what is the expected change in usage and market share of the service associated with the proposal; and/or does the proposal change the target audience/s of the service?) and
- Whether there are competitors that are likely to be significantly affected by the change?

2.19 The market context in which the BBC operates will have a direct bearing on judgements about whether a proposal is likely to have a significant adverse impact on fair and effective competition.\(^{13}\) As part of this, it will be relevant to look at the likely impact of the proposed change on competitors and the supply chain.

2.20 The BBC will undertake desk-based research and analysis to inform the assessment of potentially material changes. The assessment will be proportionate and appropriate to the nature and scope of the change. The BBC will not generally do materiality assessments of the types of changes set out in paragraphs 2.3 to 2.5.

2.21 The BBC will take account, where appropriate, of the views of third parties in reaching a decision on materiality. The BBC’s Annual Plan will reference potentially material changes to the UK public services that the BBC intends to make over the coming year. The BBC may also use other mechanisms to engage interested parties on proposals (See Annex 1).

---

\(^{10}\) BBC Agreement, clause 7 (7)

\(^{11}\) BBC Agreement, clause 16 (6)

\(^{12}\) Schedule 1 of the Framework Agreement for a list of the BBC’s UK Public Services as of 3 April 2017.

\(^{13}\) The BBC agrees with Ofcom that it would not be appropriate to undertake a formal approach to market definition as part of assessing materiality.
The BBC Board will determine whether a planned potentially material change is material or not. Where the Board determines that a change is material, the BBC will undertake a PIT.

**Conduct of the Public Interest Test**

2.23 This sub-section provides guidance on the procedures, typical timescales and analytical approach that the BBC will normally adopt when undertaking a PIT. The assessment of each proposal will be proportionate and appropriate to the facts of the case.

2.24 The PIT will articulate the proposed change to the BBC’s public service activity, including how it fits with the BBC’s strategy, the timescale for the change and the costs involved. The PIT will set out the analysis and reasoning undertaken to conclude whether the public value of the proposed change justifies any adverse impact on fair and effective competition. It is important to recognise that these assessments will not be an exact science and will, inevitably, involve the exercise of judgement.

2.25 The BBC would expect a PIT to normally take around three months from launch to the BBC Board’s determination of the outcome, but this may vary according to the proposal.

*Defining the proposal and the counterfactual*

2.26 As the policy is concerned with changes to public service activity, the BBC will identify the current level of provision (i.e. the baseline) and describe how this will change as a result of the proposal. It is the change or changes – and the *additional* public value and any impacts on competition associated with them - which are subject to the PIT. In the case of a non-service activity which may be undertaken in partnership with third parties, the PIT will generally focus on the BBC’s contribution to the activity and how this will change as a result of the proposal.

2.27 The PIT will also seek to define, in discussion with Ofcom, the counterfactual against which the effects will be measured. The counterfactual will demonstrate what would likely happen over time (normally three years) in the absence of the proposed change.

*Assessing Public Value*

2.28 The first component of the PIT will be to assess the expected public value of the proposal. Normally, the BBC will consider public value over a three year forecast period, reflecting the pace of change in market and audience conditions.

2.29 The Charter requires the BBC to ensure that the overall benefits of decisions relating to the fulfilment of the mission and public purposes, such as material changes, outweigh the overall costs.

2.30 In assessing the public value of a proposed change, the BBC will consider:

a) How the proposal contributes to the BBC’s mission to serve all audiences through the provision of high quality and distinctive output and services which informs, educates and entertains;

b) The benefits to consumers who will use the service, as well as the wider social, democratic and cultural impacts. These wider benefits to citizens are reflected in the BBC’s public purposes; and

---

14 BBC Agreement, clause 8 (1a).

15 BBC Charter, article 9.
c) The costs to licence fee payers of pursuing the proposal.

2.31 The benefits should outweigh the costs of the proposal, if the proposal is to generate a positive return on the investment for licence fee payers.

2.32 One factor in assessing public value will be the predicted change in take-up and usage over the forecast period, as a result of the proposal. We will develop usage forecasts to assess the extent to which the impact on reach/time spent will likely be additional (i.e. whether the BBC is growing the market), or drawn from usage of existing BBC services or services from alternative providers (primarily the commercial sector). In some instances it may be appropriate to identify usage for specific audience groups.

2.33 The BBC will assess the quality and distinctiveness of the proposal drawing on empirical evidence (e.g. market and/or audience research).

2.34 The BBC will seek the views of the public on the benefits of the proposal, using a variety of research techniques. The BBC will also identify wider social and cultural impacts using appropriate methodological and research techniques. Where appropriate, we will consider potential trade-offs and alternative options.

2.35 The analysis of public value will be likely to identify a range of different benefits. To help assess public value overall, it may be appropriate, in some cases, to seek to value these benefits, or the proposal as a whole, in monetary terms. Where such valuation is not appropriate, weighting and scoring techniques may be useful to help compare benefits on a common scale. It will be necessary to tailor the appraisal techniques to the nature of each proposal.

**Minimising the adverse impact on fair and effective competition**

2.36 The BBC’s presence, as a publicly-funded organisation that is entrusted with a wide-ranging public service remit, inevitably has an impact on competition in the wider media market. This impact may be positive by, for example, stimulating demand or promoting innovation; it may also be negative by crowding-out commercial activity or harming competition elsewhere in the supply chain.

2.37 The second component of the PIT will be to demonstrate that the BBC has taken reasonable steps to ensure that the proposed change has no adverse impact on fair and effective competition beyond any necessary for the effective fulfilment of the mission and public purposes.

2.38 The analysis will, where relevant, explain how the proposal has been designed to mitigate adverse impacts on fair and effective competition.

**Approach to identifying the services and products potentially affected by the BBC proposal**

2.39 The BBC will look at the characteristics of the proposed change or may take a more technical approach, for example using consumer survey data to assess demand side substitution, to identify the products and services that could be affected by the change. It may also consider the scope for supply side substitution (i.e. how easily it would be for third party suppliers to supply similar products and services) in some instances. However, we would not normally expect to conduct a formal market definition exercise of the type carried out in competition law investigations.
2.40 The BBC will seek to understand and assess the scale of likely market impacts associated with a proposal. Although our assessment will need to consider the short-term or static impact of the proposal on the revenues of individual market players, its focus will be on whether the proposal will likely harm the process of competition and therefore have a detrimental impact on consumers over time (for example, by slowing innovation).

2.41 The analysis will identify any negative static and dynamic impacts of the BBC proposal in the markets most directly affected. There is a risk of the BBC crowding-out commercial activity or deterring others from investing or innovating if the proposal undermined their ability to develop profitable ventures. There is also a risk that how the BBC behaves could harm competition elsewhere in the supply chain.

2.42 In determining whether the proposal is likely to have an adverse impact on fair and effective competition, the BBC will forecast the likely change in usage of substitute services as a result of the proposal – and the impact this may have on commercial revenues (to the extent that this would be an indicator of adverse impact on fair and effective competition).

2.43 The assessment will also consider potential positive impacts, for example, whether entry by the BBC will increase choice and value for consumers, aid innovation, bring new technology to the market which commercially-funded competitors might find too risky to pursue, or build demand for valuable but previously unknown services.

2.44 It will also identify static and dynamic impacts (positive and negative) in wider markets and in the supply chain, where relevant.

2.45 We will base our assessment on qualitative and quantitative analysis, drawing on the available evidence. This will include, where appropriate, 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.

2.46 The BBC would publish the details of a proposal in order to allow interested parties to understand it and to be able to provide input. The BBC may use a variety of routes to engage stakeholders, including consultations and/or stakeholder meetings. The BBC would normally expect to give interested parties a period of around four to six weeks to comment on a proposal. Critically, the BBC will only be able to consider concerns that have been raised with it. While the BBC will seek to engage interested parties in a reasonable manner (and protect the confidentiality of any commercially sensitive material), it should be recognised that some may choose not to engage or not to raise specific concerns, for whatever reason.

2.47 The conclusions of the assessment will be on the net impact on fair and effective competition, taking into account both static (positive and negative) and dynamic (positive and negative) effects. Inevitably, the assessment will identify a range of potential impacts, some of which will be difficult to quantify and all of which will involve making predictions about uncertain future events. Where possible, the BBC will identify the scale and likelihood of the effects and to assess the overall impact of these different effects, the BBC may draw on techniques such as weighting and scoring.
Assessing whether the public value of the proposed change justifies any adverse impact on fair and effective competition

2.48 The final component of the PIT will be to assess whether the public value of the proposed change justifies any adverse impact on fair and effective competition.

2.49 The Agreement states that in carrying out the PIT the BBC must consider the scale and likelihood of any public value relative to the scale and likelihood of any adverse impact on fair and effective competition. This will require a comparison of whether the audience and wider benefits of the proposal (net of the costs) justifies any unavoidable adverse impact on competition (net of any positive impacts). This will also involve an exercise of judgement, informed by evidence and the use of appropriate methodologies. A direct comparison of factors relating to public value and factors relating to risks to fair and effective competition is unlikely to be possible.

Provision to Ofcom and publication

2.50 The BBC Board will assess whether a proposal satisfies the PIT and has been conducted in accordance with this policy. As part of this, the Board will need to be satisfied that the BBC has engaged interested parties in a proportionate and appropriate manner, and that their views have been taken into account.

2.51 The BBC will:

- Send a full proposal and details of the PIT to Ofcom, including supporting documentation, subject to the retention of material covered by legal privilege. Where the BBC has amended the proposal following third party comments, the version submitted to Ofcom will reflect any changes. This will be a full version of the proposal including confidential material. The BBC will also share a non-confidential version with Ofcom that is suitable for publication.
- Subsequently, publish the non-confidential version of the proposal. The BBC will not publish commercially sensitive information that may be part of the proposal or which has been supplied to it by stakeholders.

2.52 In the event that Ofcom requests further information or seeks clarification, the BBC will agree a timeline for supplying this information, or if it cannot provide the additional information it will explain why.

---

16 BBC Agreement, clause 8 (2).
3. Material changes to the BBC’s commercial activities

3.1 This section provides guidance on the procedures, typical timescales and approach that we will generally adopt when considering material changes to the BBC’s commercial activities.

The BBC’s role

3.2 When the BBC proposes a material change to the commercial services it must undertake a ‘commercial test’, which requires the BBC Board to be satisfied that the change meets the four commercial criteria, as identified in clause 23(5) of the Agreement. If the proposal passes the commercial test, the BBC will publish the proposed change and send the proposal to Ofcom.

Ofcom’s role

3.3. Ofcom has published its own procedures and guidance as to how it will consider the BBC’s proposals and determine whether they may proceed. Ofcom’s steps are referenced in this document where necessary to explain the end-to-end process for the consideration of material changes.

3.4 Ofcom will carry out a materiality assessment of the proposal and notify the BBC of the outcome of this assessment within six weeks of the publication date. If Ofcom has not notified the BBC within six weeks of the proposal being published, or if Ofcom has notified the BBC that they do not consider that the proposed change is material, the BBC may go ahead with the change.

3.5 If Ofcom finds the proposal to be material, it may undertake a ‘trading and separation assessment’ under which it will assess whether the proposal meets the fourth commercial criterion, namely that it is not likely, as a result of the relationship of the activity with the UK Public Services, trading activities or non-service activities, to distort the market or create an unfair competitive advantage.

3.6 Once Ofcom’s assessment is completed, Ofcom will make a determination that: (i) the BBC may carry out the proposed change; (ii) carry out the proposed change subject to modifications or conditions; or (iii) the BBC may not carry out the proposed change. If Ofcom decides that the proposal cannot proceed, the BBC may resubmit a revised proposal that addresses the issues raised by Ofcom in its determination.

3.7 If the BBC does proceed with a change it will be the same as that published in all substantive respects and will be implemented in so far as possible in accordance with the timeframes indicated in the published proposal.

3.8 The BBC will keep Ofcom appraised of developments that may lead to material changes.

3.9 The following sections provide guidance on the procedures, timescales and approach that the BBC will generally adopt when considering material changes to the BBC’s commercial activities.

---

17 That Ofcom consider appropriate in order to comply with its trading and separation requirements.
3.10 The Agreement defines a material change to commercial activity as:

(a) the carrying out of a new type of activity as a commercial activity (for example, an activity previously carried out as a UK public service, non-service activity or trading activity); or

(b) a significant change to the BBC’s commercial arm,

where (c) there is a significant risk that the change may, as a result of the relationship of the activity with the UK public services, trading activities or non-service activities, distort the market or create an unfair competitive advantage.

3.11 This is a cumulative test where both a) and c), or both b) and c) must be met. Whether a proposal involves the carrying out of a new type of activity as a commercial activity should be largely a factual question, which will be determined by reference to the existing types of commercial activity which are carried out at the time of the assessment.

3.12 In considering whether a proposal should be considered a new type of commercial activity or a significant change to the BBC’s commercial arm, that raise a significant risk of market distortion in the UK, the BBC will normally consider a range of factors including:

- Scale – (e.g. what is the level of investment associated with the proposal, both in absolute terms and relative to market?);
- Usage (e.g. what is the expected change in usage and market share of the activity associated with the proposal?);
- Novelty (e.g. entry into a wholly new market or significant expansion into a nascent market);
- Duration (e.g. whether the proposed change is temporary); and
- Geography (i.e. whether the proposed activity takes place in the UK or ex UK)

3.13 The BBC will also assess whether the proposed change would create a new relationship or change an existing relationship between a commercial activity and the BBC’s public service activities, in a way that created the significant risk of market distortion or an unfair advantage. The assessment will include consideration of the BBC’s proposed arrangements to ensure compliance with Ofcom’s trading and separation requirements.

3.14 Based on the above factors, the BBC would not normally expect a proposal to be considered a new type of activity or a significant change, that raise market distortion concerns, if it was a natural development of the BBC’s commercial activity of content production, exploitation and distribution, including:

- The on-going delivery of an established commercial strategy agreed with the BBC Board;
- A change in rights exploitation strategy in order to reflect changes in technology or audience needs;
- Extending existing businesses into new territories (ex.UK);

---

18 BBC Agreement clause 23 (14).
- Programme investment decisions;
- Programme financing mechanisms and partnerships, e.g. provision to the market of Content Funds;
- Business as usual efforts in new territories (i.e. production, exploitation or distribution);
- Creation or restructuring of joint venture partnerships within existing business areas; or
- Rebranding a service or parts of a service.

3.15 The BBC would also not normally expect a decision to reduce the scale of a commercial service or to cease an activity all together, to be classified as ‘material’. Although this type of change may raise strategic considerations that the BBC Board may want to consider, a decision by the BBC to do less is very unlikely to raise significant competition concerns.

3.16 The BBC will generally undertake desk-based research and analysis to inform the assessment of materiality. Where it is clear that the materiality test is satisfied, the BBC will not normally consult at this stage.

3.17 The BBC Board will determine whether a planned potentially material change is material or not. Where the Board determines that a change is material, it will require that a commercial test is undertaken.

**Conduct of the Commercial Test**

3.18 This section provides guidance on the procedures, typical timescales and analytical approach that the BBC will normally adopt when undertaking a commercial test. The assessment of each proposal will be proportionate and appropriate to the facts of the case.

**Commercial criteria**

3.19 Under the commercial test, the BBC must be satisfied that the proposed material change meets the four commercial criteria.

3.20 The commercial criteria are that:

   (a) The activities must fit with the Mission and Public Purposes;
   (b) The activities must exhibit commercial efficiency;
   (c) The activities must not jeopardise the good reputation of the BBC or the value of the BBC brand; and
   (d) The activities must not, as a result of the relationship of the activity with the UK Public Services, trading activities or non-service activities, distort the market or create an unfair competitive advantage.

   *(a) Fit with the Mission and Public Purposes*

3.21 A commercial activity is to be considered to fit with the mission and public purposes if it is appropriate to be carried on in association with the promotion of the public purposes and it is connected, otherwise than merely in financial terms, with the ways in which the BBC promotes its public purposes.
3.22 The BBC considers that commercial activities will fit with the mission and public purposes if they do not compromise the UK public services, or put at risk the BBC’s ability to deliver the public purposes effectively. The requirement for a connection, otherwise than merely in financial terms, with the ways in which the BBC promotes its public purposes should be assessed in relation to the activities that the BBC undertakes to fulfil its public purposes. This need not be at the level of the individual commercial services (e.g. demonstrating that a proposed activity is connected with a specific BBC channel) but the activity must link clearly with the way in which the BBC promotes its public purposes (for example, promoting innovative British content and talent).

(b) Commercial Efficiency

3.23 The efficiency of commercial activities will be assessed against the business plans of each relevant commercial subsidiary or the business plan for the proposed change. The BBC will consider the commercial rate of return which is appropriate for the proposal, taking account of the relevant market and the strategic benefits that comparable operators would recognise. The business plan for the proposal will demonstrate the rate of return that is expected to be earned over a reasonable period of time (for example, within the time horizon of the business plan). The BBC will ensure that Ofcom’s trading and separation requirements in relation to the need for the BBC to earn a commercial rate of return on its commercial activities are satisfied.

(c) Good reputation of the BBC and the value of the BBC brand

3.24 The BBC’s commercial activities must not jeopardise the good reputation of the BBC or the value of the BBC brand. Commercial activities should comply with the editorial principles set out in the BBC’s Editorial Guidelines.

3.25 The value and reputation of the BBC brand may be damaged if any part of the BBC is seen to be associated with inappropriate third parties. This may arise where the BBC trades with such third parties (e.g. purchasing goods or rights from them), or where they are licensed to use BBC content or brands (e.g. clips or programmes).

3.26 The assessment of ‘appropriateness’ of a given partner is an editorial issue governed by the BBC’s Editorial Guidelines.

(d) Not, as a result of the relationship of the activity with the UK Public Services, trading activities or non-service activities, distort the market or create an unfair competitive advantage

3.27 In assessing the proposal against the fourth commercial criterion, the BBC will principally consider whether the proposal is compliant with Ofcom’s trading and separation requirements.

3.28 In particular, the BBC will consider whether:

- The commercial activity will be separate from the BBC Public Service Group;
- Transactions will be undertaken at arm’s length under commercial terms; and
- Procedures will be in place to ensure that the commercial activity pays a fair price for any goods or services supplied by the Public Service.
3.29 The BBC will also take account of the assessment as to how the commercial activity will deliver commercial rates of return (see above under commercial efficiency).

3.30 As part of the assessment of the fourth commercial criteria, the BBC may identify the services and products that could be affected by the proposed change and consider the likely impact of the proposed change on them.

3.31 The BBC considers that commercial activities should not be regarded as distorting the market or creating an unfair competitive advantage where they are in compliance with general competition law requirements and have not been given an unfair commercial advantage which could unduly and negatively influence the market. That will be the case where the proposed change is compliant with Ofcom’s trading and separation requirements.

3.32 The BBC’s approach will be proportionate to the nature of the change. We will base our analysis as far as possible on empirical evidence. This will include a consideration of whether it is appropriate to seek views from interested parties. The BBC’s judgment as to whether consultation is necessary or desirable - and on the form and timescales of such consultation - will balance the need for stakeholder engagement with issues of commercial confidentiality and the ability of the BBC’s commercial activities to operate effectively in the market. For example, if the BBC were to release advance details of a potential new joint venture with a commercial partner, it could put the BBC and the joint venture at a significant disadvantage compared to other market participants. There may also be circumstances in which, in order to abide by the rules about the disclosure of market-sensitive information relating to listed companies, the BBC is not able to publish details of a planned change in advance. Where the BBC does seek views from third parties it will allow a reasonable time frame for comments to be submitted and assessed.

3.33 The BBC Board will assess whether a proposal satisfies the commercial test and has been conducted in accordance with this policy.

** Provision to Ofcom and Publication **

3.34 The BBC will:

- Send a full version of the proposal and details of the commercial test to Ofcom, including supporting documents, subject to the retention of material covered by legal privilege. Where the BBC has amended the proposal during the commercial test, the version submitted to Ofcom will reflect any changes. The BBC will also provide Ofcom with a non-confidential version of the proposal suitable for publication.
- Subsequently, publish the non-confidential version of the proposal. The BBC will not publish commercially sensitive information that may be part of the proposal.

3.35 In the event that Ofcom requests further information or seeks clarification, the BBC will agree a timeline for supplying this information, or if it cannot provide the additional information it will explain why.
Annex 1 - Approach to stakeholder engagement

The BBC is required in its policies on material changes to its public service and commercial activities, to set out how it will consult with interested parties where appropriate.

Generally, when the BBC undertakes a consultation, it will seek to follow the following principles:

- We will be clear about who we are consulting with and why
- We will give a clear indication of how long the consultation will last for, taking into account the nature and the impact of the proposal
- We will seek input when our plans are in development to avoid asking questions about issues on which we already have a final view
- We will ensure that our consultations are targeted – in that they should consider the full range of parties that may have an interest in the proposal
- We will publish all consultation responses (except where respondents request we don’t due to concerns, e.g. commercial confidentiality). We will also state how many consultation responses we have received
- We will explain how the responses have influenced what the BBC has done

In those cases where the BBC consults on material changes to public service and commercial activities, it will follow the following approach.

Material changes to public service activities

The BBC will normally seek feedback from interested parties at one or two stages:

(a) Materiality assessment. The BBC will aim to include high level details of potential material changes to UK Public Services scheduled for the coming year in its Annual Plan. The BBC may also use other mechanisms to engage stakeholders on the proposals where appropriate – for example, by meeting with stakeholders and/or publishing material to inform stakeholders about proposals; and

(b) Public Interest Test. The BBC will seek the views of interested parties when it is undertaking a PIT, particularly on the question of how any adverse impact on fair and effective competition could be minimised.

Where material changes to non-service activities involve third parties, the focus of any consultation will normally be on the BBC’s contribution to the proposed non-service activity. Therefore, the BBC may invite views on how the BBC (rather than third parties) could modify the plans in order to limit the potential impact of the proposal.

Material changes to commercial activities

The BBC will follow the following approach:

(a) Materiality assessment. The BBC will aim to give a high level indication of material commercial changes scheduled for a coming year in its Annual Plan, subject to commercial confidentiality. Given the definition of materiality in the Agreement, the BBC considers that generally it will be clear whether the materiality test is satisfied, without seeking the view of stakeholders.
(b) Commercial test. The BBC will, where appropriate, seek the views of interested parties when it is assessing the proposal against the fourth commercial criteria. The BBC’s judgment as to whether consultation is necessary or desirable at this stage - and on the form and timescales of such consultation - will balance the need for stakeholder engagement with issues of commercial confidentiality and the ability of the BBC’s commercial activities to operate effectively in the market. In particular we will need to take into account risk of harm to the BBC or our commercial partners’ commercial interests.