

BBC Trust

Provisional conclusions on proposals for BBC Three, BBC One, BBC iPlayer, and CBBC

30 June 2015

BBC Trust

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Key findings

The Trust has used the public value test (PVT) to assess the following proposals from the BBC Executive (hereafter, the Executive):

- the closure of BBC Three as a broadcast channel and its reinvention as an online-only offer
- the launch of a +1 channel for BBC One
- the evolution of BBC iPlayer from primarily a catch-up service to one that also offers online-first BBC content and selected third-party content
- extended hours for CBBC (from 7pm to 9pm)

The test requires the Trust to judge whether any adverse market impact likely to be generated by the proposals is justified by their likely public value. These are provisional conclusions which the Trust must consult on before it reaches any final decisions.

Context

The long-term future of broadcasting is online delivery and the BBC needs to find innovative ways to support the audience move in that direction. The transition will be quicker for younger viewers who already watch less broadcast television, watch more online and use new digital services in different ways.

Separately, the BBC needs to make savings and the Executive acknowledges that, because of cost pressures, it is proposing to move BBC Three online earlier than it would have wished or ideally planned. If BBC Three moves online now, there will be an immediate impact on those young people who rely on it in broadcast form. We have a duty to those audiences, and our assessment has therefore also considered how the BBC might use the full range of its television services to serve them.

BBC Three

Our provisional conclusion is that the public value test is passed and that we should approve this proposal.

- The public value assessment identifies clear long-term potential in a new online service that we judge will be more distinctive than the existing BBC Three channel, whose audience is currently falling. The proposal will also save £30m a year. Those aged 16-34 are more likely than any other group to use online video services and the BBC is right to anticipate the need to serve this audience in new ways.
- Ofcom's market impact assessment suggests that the switch to an online service is likely to create a positive market impact for rival television channels.
- But there are some clear concerns, at least in the short-term, about the impact of this change, given the projected loss of reach among younger and other underserved television viewers (particularly those who do not watch other BBC television services or do not have reliable broadband) and the potential impact on the ability of the BBC to try out new ideas and develop new talent.
- We have concluded that it should be possible to address these concerns by imposing some conditions, to require:
 - a. A more carefully managed transition from broadcast television to an online service, to raise awareness of the change. We will consider whether this should include a period of running both services in parallel.

- b. Clearer commitments to programming on BBC One and/or BBC Two that appeals to a younger audience, including the use of those channels to continue broadcasting long-form BBC Three programmes.
- c. A commitment to a space on broadcast television (not just on BBC Three online) where risks can be taken with new talent and new ideas of the sort that BBC Three has been successful in developing.

We have asked the Executive to provide further detailed information in these three areas, including a costed proposal and timetable for a managed transition that evaluates options for a period of parallel running. We will publish this information for consultation ahead of our final conclusions.

Final approval would be dependent on receiving a satisfactory response from the Executive, as well as our review of the responses to our consultation. If we impose the above conditions, we would incorporate new commitments in the service licences for BBC One and/or BBC Two.

BBC One +1 channel

Our provisional conclusion is that this proposal fails the public value test and should be rejected.

- Ofcom has concluded that the launch of BBC One +1 would have the greatest adverse market impact of any of the proposals, capturing viewing share for the BBC at the expense of commercial channels and reducing the profitability, in particular, of ITV and Channel 5.
- The proposal would have limited public value given the need for 24% of UK television households to upgrade their equipment in order to receive it; the inability to offer 'opt-out' programmes for the nations and regions; the lack of distinctiveness; and the limited impact on reach among 16 to 34-year-olds, which means it would be unlikely to mitigate the impact of changes to BBC Three.

BBC iPlayer

Our provisional conclusion is that the public value test is passed and that we should approve the proposal.

- Audiences will benefit from the development of BBC iPlayer beyond its original remit to include more online-first and third-party content, delivered at minimal cost.
- We are satisfied with Ofcom's conclusion that the proposed changes are too limited in scale to have a notable market impact.
- Ofcom has identified the possibility that any future acceleration in consumers' use of iPlayer for browsing and discovering content (for example through the new online BBC Three service) rather than using it for catch-up viewing, could have a greater impact on commercial channels and on-demand providers. While this falls outside the current assessment, it is a point we would need to consider, particularly if the BBC were to propose significant changes to iPlayer. In the meantime, we note that the amount of BBC Three content that will be available is very limited compared to leading commercial on-demand services.
- Ofcom recommends that the BBC set clear, objective criteria in relation to any third-party content on iPlayer, and we intend to make this a condition of our approval.

CBBC

Our provisional conclusion is that the public value test is passed and that we should approve the proposal.

- The proposal would expand choice for younger viewers, can be implemented at minimal cost and represents a good use of the licence fee.
- Ofcom's work suggests that the market impact of the proposal is likely to be small.
- This proposal is dependent (for spectrum) on BBC Three moving online and our approval is therefore also dependent on the final decision about BBC Three.

Next steps

We have asked the Executive to provide further information on BBC Three by 28 July. We will publish the Executive's response and begin our public consultation on these provisional conclusions at this point, before publishing our final decision in the autumn.

1. Background

- 1.1 In December 2014, the BBC Executive (hereafter, the Executive) submitted proposals to the BBC Trust for a package of changes to the UK public services, comprising:
- the closure of BBC Three as a broadcast channel and its reinvention as an online-only offer
 - the launch of a +1 channel for BBC One
 - the evolution of BBC iPlayer from primarily a catch-up service to one that also offers online-first BBC content and selected third-party content
 - extended hours for CBBC
 - increased investment in drama on BBC One
- 1.2 The Executive plans to use savings from the closure of BBC Three and its relaunch online to fund the other proposals. The Trust has consistently requested that the Executive undertakes additional investment in drama when budget allows. While the drama investment is not subject to Trust approval, it is linked to the package of proposals. The Executive has confirmed that financially, the investment depends on the closure of BBC Three as a broadcast channel. The investment was therefore reflected in the proposals and has been factored into our assessment.
- 1.3 The Trust decided that the proposals constituted a significant change¹ to the UK Public Services and that it was therefore required² to conduct a [public value test](#) before deciding whether or not to approve the change. The PVT is a key component of the BBC's system of governance. The Framework Agreement provides that the BBC should be able to alter its UK public services, for example to respond to changes in technology, culture, market conditions and public expectations. However, any proposals from the Executive for a significant change must be subject to full and proper scrutiny, by means of a PVT.³ This is a rigorous, evidence-based process featuring two consultation periods, used to assess both the public value and the market impact of the proposals. It comprises:
- a public value assessment (PVA) which assesses the public value expected to be created by the offering, and is undertaken by the Trust; and
 - a market impact assessment (MIA) which assesses the effect of the proposals on providers of alternative products and services, and is undertaken by [Ofcom](#).
- 1.4 In deciding whether or not to approve the proposals, the Trust has to judge whether any adverse market impact likely to be generated by the proposals is justified by their likely public value.⁴ The MIA and PVA are published, and the Trust must reach provisional conclusions, and consult on them. The Trust will take account of all representations received before making its final decision on the proposed change, which of course may differ from its provisional conclusions. In performing its functions in relation to a PVT, the Trust acts in accordance with the requirements of the Royal Charter and the Framework Agreement. It must also comply with all its other legal duties including the general duties in Article 23 of the Charter and the general law, and accordingly must be satisfied that its decision is consistent with those duties.
- 1.5 In accordance with this process, the Trust has now reached its provisional conclusions on the package of proposals, and these are set out in full in **section five** of this report.

¹ In deciding on the question whether the proposed changes are significant, the Trust had regard to the four considerations set out in clause 25(2) of the Framework Agreement, which are impact, financial implications, novelty, and duration.

² See clause 25(1) of the Framework Agreement.

³ BBC Charter and Agreement with Her Majesty's Secretary of State for Culture, Media and Sport - Clause 23, 2006, p.11.

⁴ Agreement, clause 26(6).

2. Summary of the proposals

2.1 Closure of BBC Three and its reinvention online

- 2.1.1 The Executive is seeking permission to close the broadcast channel in January 2016⁵ and create in its place an online-only offer targeted at 16-34 year-olds. The content budget for the new service will be c. £30m in 2017/18 (excluding news and sport and content-related costs). In the first year, around 80% of the budget will be used to commission long-form programming, such as *Life and Death Row* and *Cuckoo*. The remaining 20% will be devoted to short and new-form content.⁶
- 2.1.2 BBC Three Online will offer news and sport in collaboration with other parts of the BBC. It will also collaborate with other BBC services to provide an editorial perspective on major sporting events and festivals, and with Radio 1 to develop new talent, cross-commission and produce short-form content.

2.2 Launch of BBC One +1

- 2.2.1 The Executive would like to launch a +1 channel for BBC One. The new service, BBC One+1, would broadcast 24 hours a day, seven days a week in standard definition. The service would show BBC One programmes one hour later than BBC One, except that, when BBC One has shown a regional programme, BBC One+1 would instead carry the BBC News channel.
- 2.2.2 BBC One+1 would be broadcast on all television platforms: DTT (Freeview, YouView) cable (Virgin) and satellite (Sky, Freesat). However, on DTT from launch, BBC One+1 would only be available to households with a YouView or Freeview HD television or set-top box. This is because the service on DTT would be broadcast on the BBC B multiplex (otherwise known as PSB-3) and households would need a YouView or Freeview HD television or set-top box in order to receive it.
- 2.2.3 The proposal included a plan to migrate BBC One +1 to the BBC A multiplex (otherwise known as PSB-1), which is available to all DTT households, in 2017. However, as this was contingent on future encoding efficiencies and lacked firm detail, we considered the plan to be an aspiration rather than a firm commitment, and did not factor it into our analysis.

2.3 Evolution of BBC iPlayer

- 2.3.1 The Executive would like to increase the amount of online-only content in BBC iPlayer (as part of its proposals for BBC Three) and, as part of a wider strategy, improve the curation, prominence and availability of its content. In addition to its plans for BBC Three, the Executive plans to evolve BBC iPlayer in two specific ways:
- to premiere some programmes on BBC iPlayer before they are broadcast on a linear service
 - to include selected content commissioned by third parties

⁵ The original proposal envisaged the changes taking effect from autumn 2015. This has since been revised to January 2016.

⁶ Short-form content can be defined as short audio visual programmes (e.g. BBC Three comedy feeds or BBC drama shorts) which have a narrative arc. New-form content includes but is not limited to text-based content (articles, blogs, and tweets), images, video clips, animation and interactive content (that allows, for example, users to comment or vote on content). BBC Trust, Service Description of Proposed Changes to BBC Three, BBC iPlayer, BBC One and CBBC, 2015, pp.10.

2.4 Extended hours for CBBC

- 2.4.1 The Executive wants to use the capacity made available by the closure of BBC Three as a broadcast channel to extend the broadcast hours for CBBC by two hours, from 7pm to 9pm. It hopes that the extension will enable the BBC to better meet the viewing needs of the audience as television reach for 6 to 12 year old audience peaks between 7pm and 9pm, after CBBC closes.⁷
- 2.4.2 Under the proposals, the first hour would be used for programmes with appeal for 6 to 9 year olds and the second hour for programmes which appeal to the older 10 to 12 year old audience. The Executive is not proposing an increase to the current content budget for CBBC. During the extended two hours, the schedule would run repeats of such programmes as *Wolfblood* and *The Dumping Ground*.

2.5 Investment in drama

- 2.5.1 The Executive plans to strengthen drama on BBC One with an additional investment of c. £30m, which would be part-funded by the proposed closure of BBC Three. While the investment is not subject to Trust approval, it is linked to the package of proposals: the Executive has confirmed that, financially, the investment depends on the closure of BBC Three as a broadcast channel. The investment was therefore reflected in the proposal.

⁷ BARB, 2014.

3. Summary of the public value assessment

3.1 Introduction

- 3.1.1 The Trust has considered the PVA findings in full in reaching its provisional conclusions. This section provides a summary to aid the reader.
- 3.1.2 The PVA took as its starting point the wider strategic context. The proposal responds to:
- **the changing consumption patterns of younger viewers:** with the performance of BBC Three in decline the Executive believes that the BBC needs to take steps to retain its reach among young adults and this has intuitive force. Equally, however, closure of the broadcast service could reduce reach at least in the short-term. The PVA therefore needed to establish whether evidence of a shift in consumption was sufficiently strong and sustained to justify both a short-term reduction in reach and the risk that in the longer-term an important but hard-to-reach demographic was lost; and
 - **a need to deliver savings (due to downward pressures on funding):** the Executive did not believe that it could maintain the quality of the main television services through marginal cuts to existing budgets and so proposed the closure of the broadcast channel.⁸

3.2 Closure of BBC Three and its reinvention online

Summary

- 3.2.1 The PVA concluded that the proposal for BBC Three delivers a low to medium level of public value, considering the following factors:
- in favour of a move online, that:
 - BBC Three's service licence encourages digital innovation⁹
 - its performance as a broadcast channel is under pressure, and
 - its audience has a high level of internet access¹⁰ and is more likely than other age groups to use online video services;¹¹ but
 - against such a move:
 - for reasons of technical availability (including geographical location, e.g. living in a rural area) or affordability, not everyone has an adequate broadband connection, by which we mean a connection that is both reliable and fast enough for the delivery of on-demand video services (including when such services are possibly in competition with other services accessed by other members of the household), and
 - for many younger people, broadcast television still remains important.¹²
- 3.2.2 The PVA concluded that it may be possible to attenuate some of the risks with a well-managed transition and continued access to programmes on the linear schedule.

⁸ BBC Executive, Public Value Assessment of the Reinvention of BBC Three Online and Related Proposals, 2014, pp.1.

⁹ BBC Three Service Licence, 2014, pp.3.

¹⁰ 94% for those aged 16-24 and 92% for those aged 25-34. Ofcom, Communications Market Report, 2014, pp.264.

¹¹ Ofcom, Adults' Media Use and Attitudes, 2015, pp.64.

¹² For a full discussion, see the Trust's equality impact assessment, published alongside this document.

Quality and distinctiveness

- 3.2.3 The PVA findings suggest that the offer will be of medium to high quality. The proposal aims to increase the distinctiveness and quality of output, by reducing the emphasis on lighter formats, and providing focus on factual and comedy. We consider that fewer but more innovative titles will benefit the public.
- 3.2.4 Furthermore, the BBC has a proven record in developing digital offers (notably BBC iPlayer). It also has high-quality production values that it can bring to an online environment. However, this depends on access to producers, writers and actors which (according to a number of stakeholders) will be put at risk, as the closure of the broadcast channel may result in less audience exposure to new shows and make it difficult for the BBC to attract and nurture talent. We add to this a concern about the level of attribution for BBC content on third-party sites such as YouTube and the provision of access services for those with auditory and sensory impairments.

Reach

- 3.2.5 We conclude that the proposal will deliver low reach. Those aged 16-34 are far more likely than other age groups to use online video services and to do so on a regular basis,¹³ but there is nevertheless a risk that reach among young adults (at least in the short-term) will fall. This is principally because the linear schedule still drives online consumption and not everyone has access to a reliable internet connection. We therefore conclude that:
- the reach of BBC television could be reduced by 1.3-1.5% overall
 - reach to 16-24 year olds could fall by 3-3.5%
 - 80% of a uniquely reached audience (who use no other BBC television service) could be lost

Impact

- 3.2.6 BBC Three online may help to improve the connection with a young and generally hard-to-reach audience by providing a 'gateway' to the full range of BBC content, but if reach is low, impact will be more limited. The consumption patterns of younger audiences may be shifting but not everyone has an adequate broadband connection, and for many young viewers, television still remains important, located in an experience that it is familiar, effortless and social. Recognising that online offerings have potential, the PVA identified value in responding now to the structural shift, but also identified three barriers to broader use:
- (i) **Awareness:** a successful video-on-demand (VOD) site depends not only on the content it carries but also on the level of awareness. In this sense, brand matters. The broadcast schedule still plays a central role in directing viewers to on-demand offers that would otherwise struggle to compete. This is because online television services are primarily a *delivery* rather than a *discovery* mechanism. Nevertheless, room exists for discovery and it is young adults who are somewhat more likely to do so. It may be that as VOD services mature, audiences use them as a destination in their own right, one that facilitates discovery in much the same way that we flick through channels with a remote control today. Over time this behavioural shift may reduce one of the barriers to broader uptake, but in the meantime, broadcast promotion is important and the impact of its loss is difficult to determine.

The Executive has proposed a range of measures to promote awareness, including a branded area on BBC Online, the use of third-party sites and late night slots on BBC One and BBC

¹³ Ofcom, Adults' Media Use and Attitudes, 2015, pp.83.

Two.¹⁴ We agree that this will help to generate awareness and build an audience that might not otherwise exist. In the case of the broadcast slots, it will also maximise the availability of content and reach a wider audience – shows that transfer from BBC Three to BBC One and BBC Two generally tend to maintain their share of viewing among young adults. However the proposal does not entail a firm commitment to the use of the slots on a more permanent basis and we believe this will hamper efforts to build awareness and drive usage. We note moreover, that the use of broadcast slots would also help to address the remaining two barriers to broader use that relate to *acceptability* and *accessibility*, which are discussed below.

- (ii) **Acceptability:** while young people watch less and they tend to watch later, they nevertheless still *watch*. This may be anchored in the ability of television to satisfy a broad range of audience needs. Core viewers value BBC Three as a reliable 'go to' channel that satisfies a particular mood or 'need state'. Viewing levels for BBC Three rise gradually throughout the evening and peak between 11pm and midnight.¹⁵ During this time, viewers tend to prefer a 'lean back' experience. One that is social and communal and requires minimal effort – the essential characteristics of the broadcast service. One of the barriers to broader uptake therefore is the ability of the online offer to satisfy these different need states.

Younger viewers are more likely than other age groups to use on-demand services and somewhat more likely to watch programmes they have not seen on television. What is lacking is an experience that reproduces those essential characteristics of the broadcast service. This points to large screens, which enable shared viewing, but in an online world, they must be connected. A growing number are: 38% of UK households has an internet-enabled set-top-box.¹⁶ While smart televisions are in a modest 12% of all households, they are rapidly gaining share and represent 45% of all television sales.¹⁷ This in turn is opening new areas for online content and enabling more traditional ways in which it can be watched. We recognise that such a shift is likely to be gradual and depends crucially on an experience that is easy to use. A shift is certainly already underway however, and it provides a reasonable indicator of future viewing behaviour.

- (iii) **Accessibility:** absence of an adequate broadband connection is a barrier. Over 90% of 16-34 year-olds have a household broadband connection¹⁸ but variations in speed and performance persist, and the problem has both a socioeconomic and a geographic dimension. Thus, a move online at this time has to be evaluated in the context of the BBC's duty to provide free-to-air services universally across the UK (which we refer to as 'universality'). For those who do not have a reliable internet connection, continued access to BBC Three programmes on the broadcast schedule is one way to address this barrier.

3.2.7 While the PVA focussed on the proposal's impact on younger viewers it also had regard to the impact of an online offer on the ability of the BBC to develop talent and build upon the reputation of the broadcast channel. As noted above, we recognise that an online offer has potential to develop new forms of content but also see a risk that it may have less appeal to producers, writers and actors, impacting the shows that are commissioned.

¹⁴ BBC Executive, Public Value Assessment of the Reinvention of BBC Three Online and Related Proposals, 2014, pp.29-30.

¹⁵ BARB, 2014.

¹⁶ Estimates from Decipher, quoted in Ofcom, Communications Market Report, 2014, pp.131.

¹⁷ Ofcom, Communications Market Report, 2014, pp.132.

¹⁸ 94% for those aged 16-24 and 92% for those aged 25-34, Ofcom, Communications Market Report, 2014, pp.264.

Value for money

- 3.2.8 BBC Three online will cost £30m per annum but since it is likely to have a much smaller audience than the broadcast channel it is replacing, the PVA concluded that it offers low value for money. However, we recognise this is often the case with new services before they attract more users. Furthermore, the Executive could maximise the benefit of its investment by making content more widely available on broadcast channels and this would in our view secure greater value for money. We also recognise that the closure of the broadcast channel and its reinvention online would generate a net saving of £30m per annum to offset financial pressures or for reinvestment in other areas of need.

3.3 Launch of BBC One +1

- 3.3.1 Our overall view is that the proposal offers low to medium public value. We recognise the need to deliver services in a flexible and convenient way but consider that the proposal runs counter to the broader trend towards online services. For those who want to watch BBC One programmes after they have been broadcast, BBC iPlayer offers much greater flexibility. Encouraging audiences to go online to catch up is an important way to stimulate the online transition and BBC One +1 pulls in a different direction. Nevertheless not everyone has an adequate broadband connection and a +1 channel can provide a cost-effective catch-up option. But the proposal involves some difficult compromises. The putative benefit of BBC One +1 for those without access to BBC iPlayer is undercut by the need for 24% of UK television households to upgrade their equipment in order to receive it.

Quality

- 3.3.2 BBC One provides a wide range of high-quality output, enjoyed by audiences, but we consider that the proposed +1 variant will offer only low quality because it will (by definition) show only repeats of content on the main channel, and a failure to provide opt-out programmes for nations and regions weakens the overall value. While the channel will make some contribution to viewing share and reach, it does not satisfy the important criterion of distinctiveness, and the licence fee is specifically designed to liberate the BBC from the need to operate in a way that maximises share.

Reach

- 3.3.3 Certain aspects of reach were particularly relevant to our assessment of BBC One +1 – reach among young adults and those without access to BBC iPlayer. As noted above, not everyone has an adequate broadband connection and a +1 channel provides an alternative for those who cannot have, do not want or cannot afford internet access via broadband. It is less clear, however, that this group would benefit in practice. The need to broadcast on the PSB-3 multiplex means that the new channel will not be universally available on DTT from launch. Just under a quarter (24%) of all television households would need to upgrade their television or set-top box in order to access the channel.

Impact

- 3.3.4 Overall we concluded the channel would deliver low impact. Most participants in our quantitative study were favourable to the proposal, but support was lower among 16-24 year olds, and industry stakeholders were almost unanimously opposed. Given BBC One +1 will not better serve those who do not have access to BBC iPlayer and will only minimally improve reach among young adults, it is unlikely to provide sufficient mitigation for the loss of BBC Three as a broadcast channel.

Value for money

- 3.3.5 The proposal involves the establishment of a new channel at a relatively minimal cost. However, value for money is undermined by only marginal gains among key segments of the audience. Our overall conclusion therefore is that BBC One +1 delivers medium value for money.

3.4 Evolution of BBC iPlayer

- 3.4.1 The PVA concluded that there is a medium level of public value in the proposed development of BBC iPlayer.

Quality

- 3.4.2 We consider that the proposed changes will be of high quality. Online premieres and third-party content respond to the shift towards online viewing and aim to better serve a younger audience. BBC iPlayer is widely regarded as the best television catch-up service in the UK and this was reflected in responses to our public consultation. Many respondents reacted positively to the prospect of more choice and greater flexibility. The inclusion of third-party content meanwhile was broadly welcomed and several respondents praised the proposal for its ambition to showcase emerging talent and provide new artists with an established platform.
- 3.4.3 There were however some concerns about quality and whether (or how) the BBC would moderate content and the Executive would need to address this in the event of an approval. Furthermore, there were concerns about access and reliability, which relate in the main to broadband connections. There was a general concern that the proposal should not signal a more permanent shift online, and allied this to the issue of universality.

Reach

- 3.4.4 The changes are likely to have a relatively modest impact on usage and reach but will help to maintain the appeal and reach of BBC iPlayer and to its ability to deliver public value. The usage of third-party content is more difficult to quantify and is likely to be niche rather than mass-market.¹⁹

Impact

- 3.4.5 The proposal will have a modest positive impact on users of the service:
- a well-curated selection of early releases may help to improve BBC reach, among younger viewers especially
 - online premieres are a novel way of building an audience
 - the proposal is a practical, cost-effective way to generate interest with deeper engagement and more flexible access.
- 3.4.6 Some caution is required: the broadcast schedule drives online consumption and without strong promotion, new titles may struggle to attract viewers. Other concerns are that those without broadband access will be penalised; and there is a related risk that the widespread use of online premieres could undermine the concept of universality (although the small scale of the proposals means this second risk is minimal).

¹⁹ BBC Executive, Public Value Assessment of the Reinvention of BBC Three online and Related Proposals, pp.68.

- 3.4.7 Other wider benefits of the proposals include the likelihood that, by maintaining the relevance and appeal of iPlayer, they will attract audiences, who may in turn be guided by iPlayer to titles they may value but would not otherwise find. This is instrumental in enabling the BBC to deliver its public service remit in an online environment.

Value for money

- 3.4.8 The proposals can be implemented with minimal investment. The two cost areas relate to programme rights of [- REDACTED] per annum and incremental distribution costs in the region of [- REDACTED] per annum. This latter cost assumes c. 62m incremental hours of content consumed on BBC iPlayer by 2017/18. Given the potential benefits in terms of impact and quality, and the low cost of implementation, we conclude that the proposal offers medium to high value for money.

3.5 Extended hours for CBBC

- 3.5.1 Our overall view is that this proposal offers medium public value.

Quality

- 3.5.2 We consider that the proposal is of medium quality. We can see the value in expanding choice for younger viewers through utilising capacity freed up by closing BBC Three. That value is limited by the fact there is no additional programme budget, but it does provide a further opportunity to schedule distinctive and high-quality programmes at a time when children are more likely to watch. While the proposal has tended to polarise opinion, it secures greater public value from existing content with minimal investment. We do have some concerns about access to watershed content that may result from the extension and the Executive would need to consider how best to address this.

Reach

- 3.5.3 The impact on reach of extended hours is likely to be minimal, appealing more to the smaller number of children who already watch children's channels at this time,²⁰ but does to some extent militate against a general decline in viewing to CBBC and may support the transition of younger viewers from Cbeebies to the channel.

Impact

- 3.5.4 We recognise the importance of an effective transition for younger viewers and the need to militate against a general decline in their viewing²¹ but received a range of views on the value of extended hours. While around half of all adults considered that the extension could disrupt family routines, regular viewers and those with children tended to agree that it was beneficial. While the impact of the proposal is likely to be modest it is nevertheless worthwhile given the potential to retain reach among a younger cohort. Our overall conclusion therefore is one of low to medium impact.

²⁰ BBC Trust public value assessment of proposals for BBC Three, BBC One, BBC iPlayer and CBBC, 30 June 2015.

²¹ As highlighted in the BBC Trust, BBC Children's Services Review, 2013, pp6.

Value for money

- 3.5.5 The proposal can be implemented at minimal cost and represents a good use of licence fee funds. There is an implementation cost of [- REDACTED] to effect a change in the transmission hours of CBBC but no associated ongoing incremental distribution costs.

4. Summary of the market impact assessment

4.1 Introduction

- 4.1.1 The Trust has considered the findings of Ofcom's MIA in full in reaching its provisional conclusions. This section provides a summary to aid the reader.
- 4.1.2 An MIA assesses the effect of the proposals in the market on consumers and on other service providers (e.g. in terms of price and choice, competition and market development). This MIA identified the following providers of the following products and services as the most relevant:
- commercial broadcasting channels
 - video on demand and subscription video on demand services
 - pay television retailers
 - independent production companies
- 4.1.3 The MIA considers both **static impacts**, i.e. direct effects on those affected without considering how others in the market may respond, and **dynamic impacts**, i.e. effects resulting from changes in behaviour by others in the market. It also looked at **wider impacts** – e.g. impacts higher up the value chain, such as in the market for content rights, but Ofcom note that such impacts are subject to uncertainty (e.g. because rights negotiations are ongoing).
- 4.1.4 Ofcom's assessment was based on the proposals set out in the service description. Ofcom understood that the BBC continued to develop its proposals beyond the service description and that that may merit further assessment before being taken forward. In particular, after the Executive made its original application, it confirmed that the closure of BBC Three as a broadcast channel and its reinvention online would be delayed until the end of January 2016. The MIA stated that the impact of all service proposals was assessed on the assumption that they would be introduced in autumn 2015 but Ofcom considered that the announced delay had only a limited effect on the MIA's findings and conclusions.

4.2 Key findings

BBC One +1 and BBC One drama

- 4.2.1 In the view of Ofcom, the introduction of a BBC One+1 channel, combined with increased investment in BBC One drama, is likely to lead to an increase in BBC audience share. Further, the MIA considers that the launch of a BBC One+1 channel will create the greatest adverse market impact on commercial channels of all the proposed changes and is likely to result in reduced profitability. This is due either to a fall in commercial channel audiences, leading to an expected fall in advertising revenues or, more dynamically, to an increase in costs as a result of those channels choosing to invest in content designed to recapture lost audiences.²²
- 4.2.2 In addition, Ofcom considers that the impact is unlikely to be spread evenly over different channels. ITV, for example, is likely to be more affected because of the greater direct competition between its main channel and BBC One.

²² Ofcom estimate that the impact of launching BBC One+1 could equate to about 0.3% to 0.6% of net advertising revenue.

- 4.2.3 The proposed investment in BBC One drama may lead to a complex mix of effects. Ofcom's analysis shows that it will heighten the impact of the proposed introduction of BBC One+1. Ofcom also notes historical data that in its view indicates that overall spending by BBC One and by ITV tend to track each other, and an uplift in total BBC One spend on first run programmes may cause ITV to follow suit, in order to maintain its advertising revenue, but not necessarily by increasing its spending on drama.

Closure of BBC Three as a broadcast channel, its reinvention online and changes to BBC iPlayer

- 4.2.4 The proposed changes to BBC Three are likely to have a positive market impact for rival TV channels. Ofcom's analysis of the changes to BBC iPlayer suggests that these will not have a noticeable market impact because of their limited scale.
- 4.2.5 Ofcom's consumer research suggests that although BBC iPlayer is increasingly used to browse for content, typically consumers still see it primarily as a place to seek specific titles. This limits the impact of the proposals relating to BBC iPlayer. However, Ofcom's view is that, if the shift in consumer behaviour towards browsing accelerates, as could happen partly due to the reinvention of BBC Three online changing the perception of BBC iPlayer, then there could be a greater impact on commercial channels and on-demand providers.
- 4.2.6 Ofcom states that the research indicated that the existing BBC Three broadcast channel is perceived as primarily a 'flicking channel' where viewers stumble across content. Given the BBC's plans to transfer some BBC Three programmes to other BBC channels, the recently announced loss of BBC Three's most popular content (*Family Guy* and *American Dad*), and the availability of alternative 'flicking channels' (such as E4 or Dave), Ofcom says that existing BBC Three audiences may be less likely to follow BBC Three content online (or to BBC iPlayer).
- 4.2.7 As to the inclusion of selected third-party commissioned content on BBC iPlayer, Ofcom regards the criteria proposed by the BBC for selecting third-party partners to be imprecise and subject to interpretation. Without a clearer proposal (and more precision around the criteria for selecting third-party partners), Ofcom identifies a risk of discrimination which could result in some potential partners being unfairly excluded from having their content included in BBC iPlayer.

Extended hours for CBBC

- 4.2.8 Ofcom considers that the market impact of the BBC's proposal to extend CBBC broadcast hours is likely to be very small.

4.3 Recommendations

- 4.3.1 Ofcom concludes that the proposals, notably BBC One+1, will result in a net negative impact on commercial broadcasters, particularly commercial PSBs, and that this may have implications for investment in content. Ofcom states that the Trust will need to take account of these effects, alongside the outcomes of its own PVA, in forming its overall PVT decision. Ofcom's recommendations focus on the following areas:

- commissioning of on-demand content production
- syndication of BBC on-demand content
- inclusion of third-party content on BBC iPlayer; and
- cross-promotion between BBC broadcast channels and on-demand content.

- 4.3.2 **On-demand content production:** the existing framework for BBC commissioning of content from independent production companies excludes the commissioning of on-demand only content. The shift of commissioning budgets from broadcast to on-demand could therefore lead to the loss of regulatory protection for independent production companies, which could result in less content being commissioned from the independent production sector and/or less favourable terms for independent production companies.
- 4.3.3 In addition, the BBC's current proposals for online commissioning are outside the existing commercial arrangements for repeat showings and the proposals to reinvent BBC Three online could result in content receiving increased online exposure due to the number of 30 day periods for which it will be made available, effectively increasing the number of repeat showings relative to broadcast, with a corresponding reduction in the value of secondary content rights.
- 4.3.4 Ofcom notes that the terms of trade between the BBC and independent production companies that govern these issues have been established through commercial negotiation and that the new arrangements that would be required by the service proposals are currently under negotiation. Ofcom considers that these are important commercial negotiations, which may address the issues identified, and recommend that the Trust monitors progress carefully before considering whether any further action is necessary.
- 4.3.5 **BBC on-demand content syndication.** Ofcom notes that the BBC's on-demand content [syndication policy](#) advocates standard syndication products, which in practice has generally meant standard BBC iPlayer 'over the top' applications, serving as a gateway to BBC content, rather than bespoke solutions integrated to each platform. In Ofcom's opinion, while this is beneficial to the BBC in managing its costs, in some cases this could mean that BBC content is not as fully integrated into these platforms, making it more difficult for some users to discover BBC content and navigate between BBC and other content.
- 4.3.6 In the context of the scope of the changes to BBC iPlayer, Ofcom consider that the risks identified are likely to be relatively limited. However, acknowledging the BBC's long-term strategy, Ofcom thinks that the terms on which platforms can access and integrate BBC on-demand content are likely to grow in importance. It notes that the Trust has recently opened a consultation on the distribution framework for BBC services and content. Ofcom believes this review is important in ensuring that commercial platforms are not unfairly disadvantaged by the way in which the BBC makes its content available.
- 4.3.7 **Third-party content on BBC iPlayer.** Ofcom considers that the proposals for third-party content on BBC iPlayer need to be developed further, particularly with regard to the criteria for selecting third-party partners, to ensure that these are clear, objective and do not result in prospective partners being unfairly excluded.
- 4.3.8 **Cross-promotion of BBC services.** Ofcom's assessment of market impacts assumes that cross-promotion between BBC broadcast and BBC iPlayer services fulfils a similar role as at present. However, Ofcom states that the Trust should note that extensive cross-promotion by the BBC may increase these impacts. It encourages the Trust to consider the role of cross-promotion as part of its assessment.
- 4.3.9 In conclusion, Ofcom believes the above recommendations will help the Trust to secure a balance between enabling the BBC to bring enhanced and new services to the benefit of licence fee payers while reducing the risk of adverse consequences for the development of commercial services. Ofcom does not recommend specific modifications to the proposals beyond the BBC clarifying its specific proposals for third-party content on BBC iPlayer. However given the BBC's long-term strategy, if in the future the BBC wishes to extend the scope of the BBC iPlayer proposals materially, Ofcom recommends that the Trust should consider the need to conduct a further PVT.

5. The Trust's decision

5.1 Introduction

- 5.1.1 Before concluding that any of the proposals should be approved, either with or without conditions, the BBC Trust *'must be satisfied that any likely adverse impact on the market is justified by the likely public value of the change'* (Clause 26(6) of the Framework Agreement). The Trust also has other legal duties including those in Article 23 of the Charter and its obligations in the general law, and accordingly must be satisfied that its decision would be consistent with those²³.
- 5.1.2 Our provisional conclusions are set out below. We first look at each element of the proposals individually, but the proposals were presented to us by the Executive as a package, so it is also necessary for us to consider all the elements together, in the round. Our consideration of this question is set out in section 5.7 below.
- 5.1.3 To be clear, these are provisional conclusions, and we are consulting upon them, and we retain an open mind until the end of the process, when it is open to the Trust to change any of the provisional conclusions reached at this stage.²⁴ We have asked the Executive to provide detailed information on some aspects of the proposal, which we will publish and take into account, along with consultation responses, in reaching our final decision.

5.2 Closure of BBC Three and its relaunch online

Summary of findings

- 5.2.1 We recognise the strength of the proposal as an innovative response to a structural shift in consumption and consider that a focus on high-quality factual and comedy output with fewer but more innovative titles will benefit the public. The trend in viewing has been towards a shift online, with young adults in the vanguard. There is clear evidence of a sharp decline in the last two years in viewing of the television set by the under-35s, most pronounced among those aged under-25. This group has a high level of internet access and is more likely than other demographics to use online video services, and to do so on a regular basis.
- 5.2.2 The proposal also has a financial context and is partly underpinned by a need to deliver savings.²⁵ A downward pressure on funding has generated a corresponding need to find savings within the existing portfolio. The Executive does not believe that it can maintain the quality of the main television services through marginal cuts to existing programme budgets. Alongside continued efficiencies, it suggests that sufficient savings within the portfolio can be found only by the closure of a television service.²⁶ A saving is therefore important, and the closure of BBC Three and its relaunch online will generate an estimated net saving of £30m per annum.²⁷
- 5.2.3 We accept that the BBC must find a way to modernise its portfolio in a financially challenging environment and we endorse the strategic rationale. The BBC has a proven record in developing digital offers and the changes may act as a catalyst for market development. We are satisfied

²³ See section 5.7 below.

²⁴ In particular, we are not compelled to approve every proposal that passes the public value test: factors relevant to our other duties (see section 5.7) can lead us to reject a proposal that passes the test.

²⁵ BBC Executive, Public Value Assessment of the Reinvention of BBC Three Online and Related Proposals, 2014, pp.2.

²⁶ BBC Executive, Public Value Assessment of the Reinvention of BBC Three Online and Related Proposals, 2014, pp.1.

²⁷ After the investment required to launch BBC Three Online is taken into account.

therefore that the direction of travel is online but our view is tempered by uncertainty as to how quickly the trend will progress. The move is earlier than the Executive would wish for or ideally plan and we are concerned that it will result in the loss of a significant segment of an important audience.

- 5.2.4 This concern has two related aspects. For many young people, broadcast television still remains important: it is an experience that is familiar, effortless and social. It also plays an important role in directing viewers towards online content. Further, not everyone has an adequate broadband connection.
- 5.2.5 Audiences across the BBC portfolio as a whole are already unevenly distributed demographically, with younger audiences underserved and generally hard to reach. Yet BBC Three has gained traction among young adults with a significant proportion of unique viewers who use no other BBC television service.²⁸ Our analysis supports the view that a significant proportion of this uniquely reached audience may simply be lost as a result of the move online.
- 5.2.6 While younger audiences are more likely to use an online service, BBC Three is regarded as a 'flicking' channel, and therefore it may be less amenable to an online-only offer. Furthermore, not everyone has access to an adequate broadband connection and this issue has a social and a geographic dimension. The BBC Three audience has a higher proportion of BAME and CD2E adults than other BBC television services and there is a risk that an online-only offer will marginalise those who cannot afford the additional cost of broadband access or who (for geographical reasons) do not have a reliable connection. Many of these concerns are embedded in the three barriers to use identified in the PVA, namely:
- (i) **Awareness:** high visibility, strong brand, ability to attract users in the absence of a broadcast schedule to drive online consumption
 - (ii) **Acceptability:** familiarity, ease of use, ability to satisfy different moods or 'need states' and enable shared viewing and a communal, social experience
 - (iii) **Accessibility:** an adequate, broadband connection or continued access to programmes on the broadcast schedule for those who do not have this
- 5.2.7 Our decision therefore involves judgments on future audience behaviour and the speed of the online transition. We believe that the success of BBC Three online will rest on the ability of the BBC to navigate the three barriers outlined above. Otherwise, there is a risk that an important and hard-to-reach audience will be lost, at least in the short-term. This consideration has been central to our deliberations and we return to it below.
- 5.2.8 Another important consideration for the Trust is to ensure that the creative risk-taking that has characterised BBC Three as a broadcast channel is retained online. We recognise that the Executive plan already foresees creative risk-taking in the online channel but we nevertheless have some concerns that the loss of the broadcast platform may result in less audience exposure to original content and make it more difficult for the BBC to attract and nurture talent. We have listened to stakeholders who are concerned that the online-only offer may have less appeal to producers, writers and actors as a launch pad for new programmes, and this may in turn impact the quality of the shows that are commissioned and reduce audience exposure to new talent. This issue may be compounded by the fact that the content budget is considerably smaller than that of the broadcast channel.

²⁸ Unique reach is proportionately higher among younger viewers, C2DE adults and those from black, Asian and ethnic minority (BAME) groups and it is important, given a more general challenge for the BBC to reach these groups. BARB, 2014.

Decision

- 5.2.9 In reaching our conclusions, we have considered the PVA and MIA in full, and the conclusions and underlying matters addressed in both, and specifically applied the requirements of Clause 26(6) in the Framework Agreement. We have also complied with our other legal duties including the general duties in Article 23 of the Charter and the general law, and are satisfied that our decision is consistent with those duties.
- 5.2.10 The PVA concluded that the core proposal for BBC Three has intuitive force and the potential to deliver greater public value over time. Viewing patterns are changing and they are most pronounced among those aged 16-34. But the move is earlier than the Executive would wish for or ideally plan. Not everyone has an adequate broadband connection and for many young people, television still remains important. The PVA concluded that further value could be unlocked with a more gradual transition that had regard to the importance of **awareness**, **acceptability** and **accessibility**. Furthermore, it recognised that the closure of BBC Three would generate a net saving of £30m for reinvestment in other areas.
- 5.2.11 Taking account of these considerations, the public value case is finely balanced but our overall conclusion is that the proposal is likely to deliver positive public value. Ofcom's market impact assessment indicates that any market impact is likely overall to be positive. Our provisional conclusion, therefore, is that the public value test is passed and we should approve the proposal.
- 5.2.12 The key risks we have identified relate to the loss of a hard-to-reach audience and the detrimental effect that the online channel may have on the ability of the BBC to nurture talent. We note the conclusion in the PVA that this risk could be ameliorated by addressing the barriers to success that have been identified. We are therefore minded to impose conditions in order to mitigate these concerns and safeguard public value.
- 5.2.13 Before we reach a final decision we wish to satisfy ourselves as to the likely effectiveness of our proposed conditions and guidance. Accordingly, we are requesting further information from the Executive to address the financial, operational and audience impacts of the proposed conditions.
- 5.2.14 The Executive should provide the above additional information requested by no later than **28 July 2015**. The consultation period will be extended to allow for the summer period and will run until **autumn 2015**. The Trust is keeping an open mind in relation to these provisional conclusions and the potential conditions, pending the outcome of the consultation responses and the Executive's response.

Conditions

- (i) **A gradual and well-managed transition:** this would allow the BBC to build awareness of the move and we would expect it to entail running the broadcast service and the new online offer in parallel for a period of time.

The Executive has previously indicated that a gradual winding-down of the broadcast service would not deliver the required savings and would reduce the strength of the broadcast channel offering. While we do not want to undermine the strength of the broadcast offer, we believe that a gradual transition is in the best interests of viewers. We therefore request that the Executive provides to the Trust a fully costed plan for executing and marketing the transition, which should evaluate options for a period of parallel running.

- (ii) **Programmes for the BBC Three audience on broadcast television:** this would entail the use of broadcast slots for BBC Three long-form programmes on BBC One

and/or BBC Two on a continuing basis. Wider availability of BBC Three branded content on the broadcast schedule would address the barriers identified in the PVA by raising awareness of the online offer (given that the broadcast schedule drives consumption) and ensuring that those without an adequate broadband connection can still watch BBC Three programmes on television.

We also require from the Executive a clear commitment to programming that will particularly appeal to those aged 16-34 in the schedules of the remaining broadcast channels to help retain reach among this group and ensure those without adequate broadband access are catered for to the greatest extent possible within existing budgets.

- (iii) **A commitment to a creative risk-taking space on television** where new talent and ideas can be tested and developed. This condition is designed to address concerns over the loss of talent as a result of the move online.

We propose to give effect to these conditions through amendments to service licences (subject to what is required by the Charter and Agreement). The proposed wording of the amendments will be published alongside the Executive's response to our request.

Additional guidance

- (iv) **Investment in drama:** although not a condition of approval, if the Executive choose to invest some of the £30m saved in drama, then we would encourage them to focus on drama that would particularly appeal to a younger audience.
- (v) **Watershed protection:** we recommend that the Executive addresses concerns about the loss of 'watershed' protection and the risk that younger viewers may have access to unsuitable content. We ask the Executive to provide further information on this, and any other ways in which it can ensure that younger viewers are not exposed to unsuitable content.
- (vi) **Attribution on third-party sites:** we ask the Executive to give further information on how it intends to tackle weak attribution to the BBC of its content on third-party platforms.
- (vii) **Use of spectrum capacity:** the Executive indicated in its application that it was considering a range of options for unutilised capacity following the closure of BBC Three and the extension of CBBC hours. We now require further information from the Executive on how the capacity could be used to secure public value.
- (viii) **Future developments on BBC Three online:** Ofcom made a recommendation concerning future developments. This is discussed at section 5.2.19 below.

Ongoing compliance

- 5.2.15 If final approval were subject to the above conditions, the Trust would monitor compliance with the new service licence requirements as part of its ongoing oversight for BBC One and BBC Two (and expect this to continue beyond the term of the current Charter) and would propose a service licence review within 12 months of its final decision. That review would focus on whether the Executive was succeeding in its appeal to younger audiences, with particular regard to the overall reach of the BBC to 16-24 year olds as the key indicator and to the audience numbers and reach for the new online service closely.

Ofcom recommendations

- 5.2.16 In the MIA, Ofcom makes the following recommendations in relation to the proposal:
- 5.2.17 Ofcom considered that the 'reinvention' of BBC Three online could have an adverse impact on independent producers who may lose certain regulatory protections over their terms of trade with the BBC, and also noted the consultation opened by the Trust in January 2015 on future arrangements for content supply. Ofcom stated that negotiations in relation to content-related contracts should be monitored closely, and responses to the consultation should be considered carefully, and the Trust should consider whether further action is required.
- 5.2.18 **The Trust is in the process of reaching its conclusions on content supply in the light of responses to its consultation.²⁹ The negotiation of terms of trade is essentially an operational matter for the Executive but the Trust notes Ofcom's observations and will ask for appropriate progress reports.**
- 5.2.19 Future developments of BBC Three online over the longer term (such as substantially increasing the amount of online-only content, making more channels online-only, or changing the type of content), alone or cumulatively, would represent a material change to the proposals assessed in the MIA, and the Trust would need to consider conducting a further PVT to assess the market impacts: the Trust 'should set clear boundaries on what the BBC is permitted to do... and at what stage further approval is required'.
- 5.2.20 **We appreciate that, if approved, an online version of BBC Three could evolve in a way that raised the question whether a 'significant' change had been made, at which point a new PVT would be required. We take the view that the regime of service licences set up by the Framework Agreement is an effective way of defining the scope of any BBC service, and hence of helping to identify any significant changes. In creating a licence to cover BBC Three's online version, we would consider Ofcom's recommendation and look to establish appropriate boundaries.**
- 5.2.21 Ofcom considers that extensive cross-promotion by the BBC of BBC Three as an online service may increase the impacts identified by Ofcom, and they encourage the Trust to consider the role of cross-promotion as part of its assessment of these proposals.
- 5.2.22 **As part of its assessment, the Trust has identified the need for appropriate cross-promotion of BBC Three online to help ensure that audiences are aware of it, but is also conscious of the need to have regard to the possible impact of cross-promotional activity on the wider market. The Trust has in place a code of practice on cross-promotion which is designed to ensure that no inappropriate cross-promotion takes place. The code makes clear that that the BBC should promote the ways in which viewers can access BBC services on-demand, but that in doing so it must ensure that it does not favour any particular platform over others. More broadly, the Trust is currently reviewing its fair trading framework (which includes the code), and will consult publicly on its proposals.**

5.3 Launch of BBC One +1

- 5.3.1 We concluded that the proposal for BBC One +1 offered low to medium public value. Having applied the test in clause 26(6) of the Framework Agreement, we are not satisfied that the likely public value generated by the proposal justifies the potential negative impact on the market. Our provisional conclusion is therefore not to approve the proposal.

²⁹ http://www.bbc.co.uk/bbctrust/news/press_releases/2015/distribution_framework

- 5.3.2 We accept that the launch of a BBC One+1 channel will create adverse market impact on commercial channels, likely resulting in reduced profitability, due to either a decline in their audience leading to an expected fall in advertising revenues or, more dynamically, to an increase in costs as a result of investment in content designed to recapture lost viewers. Ofcom identified this proposal as having the greatest negative market impact of any element of the package of proposals.
- 5.3.3 The proposal involved some difficult compromises. BBC One +1 would of necessity reflect the editorial values of its parent channel but a failure to provide opt-out programmes weakens the value of the overall offer. Part of the remit of BBC One is to reflect the whole of the UK in its output and the ability to do so forms one of the aims and objectives of the service.
- 5.3.4 Furthermore, the service would not be universally available at launch on DTT and 24% of all UK television households would have to upgrade their television equipment in order to receive it. The increase in reach that could be achieved moreover is relatively low (an increment in overall television reach of 0.3%. with a 0.5% gain in reach among those aged 16-34). Certain aspects of reach are particularly relevant to our consideration – reach among young adults and those without access to BBC iPlayer. However, the PVA concluded that BBC One +1 will not better serve those who do not have access to BBC iPlayer and will only minimally improve reach among young adults. It is unlikely therefore to provide sufficient mitigation for the loss of BBC Three as a broadcast channel. So while the proposal generates some public value, it is not sufficient to justify the negative impact on the market. Our provisional conclusion is therefore not to approve.
- 5.3.5 As noted above, as the proposals were presented to us by the Executive as a package, it is necessary for us to consider all the elements together, in relation to the public value test in clause 26(6) of the Framework Agreement. In particular, we need to be satisfied that the test would still be passed if we decided provisionally to reject the proposed new BBC One+1, but to approve the other elements (in some cases, with conditions). Our consideration of this question is set out in section 5.7

5.4 Evolution of BBC iPlayer

- 5.4.1 Having applied the test in clause 26(6) of the Framework Agreement, our provisional conclusion is that the likely public value generated by the proposals justifies the potential negative impact on the market. In particular, we consider that there is public value in developing BBC iPlayer beyond its original remit, and that the changes would result in a stronger offer on more flexible terms, delivered at minimal cost.
- 5.4.2 We are satisfied that the proposed changes are too limited in scale to have a notable market impact. The MIA found that while BBC iPlayer is used increasingly to discover content, catch-up remains its core function. In Ofcom's view this limits the impact of the proposals although should the shift in consumer behaviour accelerate (for example as a result of the BBC Three online proposals) there could be a greater impact on commercial channels and on-demand providers.
- 5.4.3 In relation to the inclusion of third-party content, we agree with Ofcom's recommendation regarding the need to set clear, objective criteria in relation to third-party content, and consider that it is appropriate to make this a condition of our approval. Our provisional conclusion is therefore to approve this proposal, subject to this condition.
- 5.4.4 We are also satisfied that there is sufficient public value in the iPlayer proposal by virtue of its contribution to the digital public purpose and its potential to stimulate creativity. By enhancing a service that provides access to the full range of BBC content, the changes will help to safeguard the delivery of all of the purposes in an online world. While the changes are likely to have a relatively modest impact on usage and reach, they will help to maintain its appeal in a

competitive environment. This aspect of reach is particularly relevant and we consider that the introduction of premieres will help to maintain reach and sustain the ability of BBC iPlayer to deliver public value. Younger viewers are proportionally more likely to use catch-up and a well-curated selection of early releases may help to improve BBC reach among this group. Online premieres are a novel way of building an audience and the proposal is a practical, cost-effective way to generate interest with deeper engagement and more flexible access.

5.4.5 We do have some concerns however that those without an adequate broadband connection will be penalised and foresee a related risk that the widespread use of online premieres could undermine the concept of universality and the importance of live viewing. Given the small scale of the proposals, we consider this second risk to be minimal.

5.4.6 After weighing up the public value in this proposal against the limited adverse market impact our provisional conclusion is that we should approve the proposal. However, we note the recommendations made by Ofcom, and the concerns expressed in the PVA, and we consider that any approval should be subject to the following condition:

Condition

- (i) **Third-party commissioned content on BBC iPlayer** - the Executive should clarify to the satisfaction of the Trust the clear, objective criteria it will use for selecting third-party partners and explain how it will guard against the risk of third-party partners being unfairly excluded. This condition responds to Ofcom's recommendation on this point.

Additional guidance

5.4.7 The Trust also expects the Executive to observe the following guidance in the event of final approval being given:

- (ii) **Moderation of third-party content:** the Executive should clarify to the satisfaction of the Trust how it will moderate third-party content.

Ofcom recommendations

5.4.8 In the MIA, Ofcom makes the following recommendations in relation to the proposal:

5.4.9 Ofcom suggests that if the Executive wants to make further enhancements to the BBC iPlayer, it should consider whether these changes could, alone or cumulatively, result in a potentially significant change to the BBC's UK public services, and the Trust would need to consider conducting a further PVT to assess the market impacts: the Trust 'should set clear boundaries on what the BBC is permitted to do... and at what stage further approval is required'

5.4.10 **While beyond the scope of the present assessment, we appreciate that such further enhancements could raise the question whether a 'significant' change had been made, at which point a new PVT would be required. We take the view that the regime of service licences set up by the Framework Agreement is an effective way of defining the scope of any BBC service, and hence of helping to identify any significant changes.**

5.4.11 Ofcom concludes that, given the prevalence of BBC iPlayer, the precise detail of how BBC content is syndicated on television platforms (and other devices) is likely to become more important. For example, the ability to navigate easily between BBC content and non-BBC content are likely to be of key importance to viewers and television platform providers. These issues should be considered in the context of the distribution framework consultation, with particular attention

given to how the BBC's online services fit within these to ensure that commercial platforms are not unfairly disadvantaged when the BBC makes content available.

- 5.4.12 **The Trust is in the process of reaching its conclusions on its distribution framework for BBC services and content, in the light of responses to its recent consultation. However, the underlying principle that the BBC should make its on-demand content widely available on platforms and devices in a fair, reasonable and non-discriminatory manner is not something the Trust is seeking to change.**
- 5.4.13 Ofcom considers that extensive cross-promotion by the BBC may increase the impacts identified by Ofcom, and they encourage the Trust to consider the role of cross-promotion as part of its assessment of these proposals.
- 5.4.14 **The Trust notes and accepts these points, and appreciates their relevance to the market impact of BBC iPlayer. The Trust has in place a code of practice on cross promotion which is designed to ensure that no inappropriate cross promotion takes place. The code makes clear that that the BBC should promote the ways in which viewers can access BBC services on-demand, but that in doing so it must ensure that it does not favour any particular platform over others. More broadly, the Trust is currently reviewing its fair trading framework (which includes the code), and will be consulting publicly on its proposals.**

5.5 Extended hours for CBBC

- 5.5.1 Our provisional conclusion on the changes proposed to CBBC, having applied the test in clause 26(6) of the Framework Agreement, is that the likely public value generated by the proposals outweighs the potential negative impact on the market.
- 5.5.2 Central to this provisional conclusion is the likely net benefit generated for audiences by this proposal. We are satisfied that the market impact of the proposal to extend CBBC broadcast hours is likely to be small. We are also satisfied that there is sufficient public value in the proposal by expanding choice for younger viewers, made possible only by the spare capacity that results from the closure of BBC Three as a broadcast channel.
- 5.5.3 In the absence of a new programme budget, the value that obtains may be more limited but it does provide a further opportunity to schedule distinctive and high-quality programmes at a time when children are more likely to watch. While the proposal has tended to polarise opinion, it secures greater public value from existing content with minimal investment. The impact on reach, while minimal, does help to some extent to militate against a general decline in viewing to CBBC and may support the transition of younger viewers from CBeebies to the channel.
- 5.5.4 After weighing up the small adverse market impact of the CBBC proposal against the public value in it, our provisional conclusion is that we should approve the proposal. We note that the extension of CBBC's hours is dependent on the closure of BBC Three as a broadcast channel, due to the use of BBC Three's spectrum. Therefore, if our final decision is to reject the closure of BBC Three as a broadcast channel, then the CBBC proposal will need to be revisited.

Additional guidance

- 5.5.5 **Future developments to CBBC:** in response to Ofcom's recommendation in the MIA, the Trust considers that (similar to the BBC Three and iPlayer proposals) the Executive should bear in mind that if it proposes to make further changes to CBBC, it should consider whether these changes could result in a potentially significant change to the BBC's UK public services. If so, it should refer the proposals to the Trust, which will determine whether the proposed changes are indeed

significant,³⁰ and require a PVT. The Trust may also require the Executive to provide information on future changes to CBBC.³¹

5.6 Equality and diversity impact assessment

- 5.6.1 In relation to all of the proposals, we took into account the Equality Impact Assessment (EIA) conducted as part of the PVA. It was not clear that the public sector equality duty³² applied to this PVT, as arguably our function in deciding whether or not to approve the proposals was 'a function relating to the provision of a content service', and so excluded.³³ Nonetheless, given the importance of properly evaluating how, and to what extent, the proposals would, if approved, affect particular sections of the BBC's audience (which is also relevant to the BBC's Public Purposes), we decided to evaluate the impact of the proposals on diverse groups.
- 5.6.2 The EIA conducted by the Trust Unit found that some groups had more relevance than others:
- **Age** was particularly relevant, as the BBC is closing a broadcast service primarily aimed at young people (BBC Three), and it is likely that not all of BBC Three's younger viewers will migrate across to the new BBC Three online service (partly because of issues around broadband internet access) or other BBC channels, such as BBC One and Two (which have a much older average viewer).
 - **Ethnicity** was also a potentially relevant group, as BBC Three has better reach to BAME audiences than any other channel, and as with younger viewers, BAME viewers will likely not all migrate across to other BBC services (because of issues around broadband internet access). The viewer profiles of other BBC services are also a concern in this group.
 - **Disability** was also particularly relevant, because accessing online content is more difficult for viewers with some disabilities. There were also concerns that the quotas for subtitling, signing and audio description, which currently apply to broadcast television channels, would not cover some online content.
 - The EIA also identified that the proposals could impact viewers in **rural areas** and in the **C2DE socioeconomic group** because issues with broadband access (including affordability) and speed may prevent these groups from successfully viewing online content, and it is less likely that the latter group will have the right equipment to receive the proposed BBC 1+1 channel.
- 5.6.3 The EIA made a number of recommendations to attenuate the risk that an online offer posed to those with a disability or without access to an adequate broadband connection and minimise the potential adverse impacts on these groups.
- 5.6.4 On access to the proposed services, we have imposed provisional conditions (set out above) to our decision to encourage migration of young and BAME audiences online and ensure (for those without an adequate broadband connection) that BBC Three programmes are still available on the broadcast schedule.
- 5.6.5 In relation to the accessibility issues identified in the EIA, we agreed that an increased focus on online content may pose difficulties for people with no (or a limited) broadband connection and those without access to the latest technology. However, our provisional condition (as above) to

³⁰ According to clause 25 of the Framework Agreement.

³¹ As provided for by the BBC Trust's assessment processes guidance document, pp. 3.

³² Equality Act 2010, section 149.

³³ Equality Act 2010, Schedule 19.

make available on an ongoing basis BBC Three programmes on either BBC One or BBC Two should address these concerns. We do not therefore believe further conditions are necessary.

- 5.6.6 Overall, we are satisfied that any potential adverse impacts on diverse groups are balanced by the overall public value of the proposals, which includes value for members of these groups (and which was calculated in the PVA paying due regard to their best interests) and by the proposed conditions.

5.7 The proposals as a 'package'

- 5.7.1 So far we have analysed the proposals individually, as explained above, and reached provisional conclusions on each. However, as the proposals were presented to us by the Executive as a package, it is necessary for us now to consider all the elements together, in relation to the public value test in clause 26(6) of the Framework Agreement. In particular, we need to be satisfied that the test would still be passed if we decided provisionally to reject the proposed new BBC One+1, but approve the other elements (in some cases, with conditions).
- 5.7.2 In our view, taken as an overall package, the gains and losses are unevenly distributed. The impact on the market would be broadly neutral but is skewed by the BBC One +1 proposal. This is because, as we have explained above, this element of the package is likely to have a negative impact on the market, and also delivers limited public value, while the other elements of the package may offer more public value. We have therefore considered whether we can reject the BBC One +1 proposal, effectively detaching it from the rest of the package.
- 5.7.3 First, we note that part of the rationale for BBC One +1 was that it might mitigate the drop in reach to a younger audience that will result from the closure of BBC Three as a broadcast channel. However, our analysis suggests it would only minimally improve reach to a younger audience and is unlikely to provide sufficient mitigation for the loss of BBC Three as a linear channel. Second, another aspect of the rationale for BBC One +1 was to provide an alternative to iPlayer as a way of catching up with BBC One content. However, the proposal involves some difficult compromises (i.e. it has to be delivered via the BBC B multiplex), which mean that those without access to BBC iPlayer are unlikely to benefit. Therefore our provisional view is that neither factor justifies maintaining BBC One +1 within the package of proposals.
- 5.7.4 Our provisional view is that the package as a whole generates public value, which would justify the market impact. Rejecting the BBC One +1 proposal does not affect this conclusion, as doing so would only reduce the market impact, such that the package would pass the test more readily. We concluded that, while finely balanced, the BBC Three proposal does deliver public value and other proposals offer clearer public value: e.g. the proposal to extend the broadcasting hours for CBBC provides greater flexibility and a transition path for 6-9 year-old viewers while the evolution of BBC iPlayer enhances the current offer with greater choice and more content.
- 5.7.5 We have therefore taken the view that the package is separable, and in particular we are satisfied that the test would still be passed if we detached the proposed new BBC One +1.
- 5.7.6 The Trust has reached its provisional conclusions on the proposals having considered the PVA and MIA in full, including their conclusions and the evidence and other matters underlying them. We have taken the view that the package is separable and have assessed both the individual elements and the package as a whole (in the sections above). In applying clause 26(6) and generally in reaching our decision, we have also considered our general duties under Article 23 of the Charter and our other legal duties. In our view, particularly given the matters considered in the PVT, our provisional conclusions would (if finalised) be consistent with these duties. In particular (but non-exhaustively), we are satisfied that we have:

- represented the interests of licence fee payers in considering the value that would accrue to them from the proposals, if approved
- secured the independence of the BBC through the proper application of the PVT process
- assessed, and will continue to assess, carefully and appropriately the views of licence fee payers through formal consultation
- exercised rigorous stewardship of public money through the value for money analysis we conducted in the PVA. This is also a reason for requesting further information from the BBC Executive
- had regard to the competitive impact of the BBC's activities on the wider market through our consideration of Ofcom's MIA
- ensured that the BBC observes high standards of openness and transparency through the publication of this and other documents arising from the PVT process; and
- had due regard to the findings and conclusions of the EIA and to the requirements of the public sector equality duty.³⁴

³⁴ See the Equality Act 2010. As explained above, it was not clear that the public sector equality duty applied to this PVT, but we decided to evaluate the impact of the proposals on diverse groups, and an EIA was an appropriate way in which to do this.

6. Service Licences

- 6.1 Each element of the package of proposals would require changes to the relevant service licence(s), as follows.
- Since the BBC Three proposal involves the closure of a broadcast channel and the launch of an online offering, it would require changes to its service licence to accommodate this;
 - The potential conditions relating to the approval of the BBC Three proposal would require modifications to the service licences of BBC One and Two;
 - The iPlayer proposal would be likely to require amendments to the service licence for BBC Online; and
 - The CBBC service licence would require modifications to reflect the longer broadcasting hours.
- 6.2 If the BBC One +1 proposal were to be approved, it would require a new service licence as it would involve the creation of a new channel. However, in light of our provisional conclusion that the BBC One +1 proposal should not be approved, we do not propose to consult on a draft service licence for BBC One +1 at this stage.
- 6.3 **The proposed wording of the service licence amendments will be published after we have received the additional information that we have requested from the Executive**
- 6.4 We will then consult publicly on the proposed amendments to the service licences as part of our consultation on these provisional PVT conclusions.

7. Next steps

- 7.1 The timetable for this PVT anticipated from the outset that the Trust would consult on its provisional conclusions for 28 days. However, before the consultation commences, the Executive will have an opportunity to provide the additional information and evidence specified by the Trust in connection with the proposed conditions for BBC Three. We have asked the Executive to provide its response by **28 July 2015**.
- 7.2 The Trust will publish the Executive's response, along with proposed service licence amendments and our consultation questions. We expect the public consultation on the provisional conclusions to commence soon after. The consultation will be extended to allow for the summer period and will run until **autumn 2015**.
- 7.3 Following the end of the consultation, we will consider representations received. We presently intend to publish our final conclusions in the **autumn of 2015**.

Glossary of terms

BAME	Black, Asian and minority ethnic groups
BBC iPlayer	BBC on-demand video service, accessed online, which primarily allows users to watch BBC programmes from the previous 30 days
Broadband	<p>Always on, high-speed connection to the internet, capable of supporting high bandwidth services such as video.</p> <p>Where we refer in this document to an 'adequate broadband connection', we mean a connection that is both reliable and fast enough for the delivery of on-demand video services, including when such services are possibly in competition with other services accessed by other members of the household, and we recognise that people may lack such a connection for reasons of technical availability, including geographical location, or affordability.</p>
Curation	The way in which content is organised and displayed by a content provider such as the BBC
DTT	Digital terrestrial television (known also as Freeview) – digital television delivered via a conventional aerial and on terrestrial (as opposed to satellite) frequencies
EPG	Electronic programme guide
FRND	Fair, reasonable and non-discriminatory terms
HD	High-definition
IP	Internet protocol, a method by which data (e.g. email, video) is sent from one computer to another on the internet
IPTV	Internet protocol television, digital television delivered over a 'closed' IP network infrastructure and engineered to provide service to a high quality to the subscriber
LFPs	Licence fee payers
Broadcast content	Refers to scheduled broadcast television content

Long-form content	Full-length programmes or episodes, typically more than 30 minutes in duration (also known as long-form programmes)
MIA	Market impact assessment undertaken by Ofcom to assess the market impact of new BBC proposals. This forms part of the public value test (see PVT)
Multiplex	A multiplex is a bundle of television services that has been digitised, compressed and combined into a data stream for transmission to viewers over a single channel
New-form content	New-form content includes but is not limited to text-based content (articles, blogs, tweets), images, video clips, animation, and interactive content that, for example, allow users to vote for or comment on programmes
Next-generation access	Next-generation access, a significant upgrade to the broadband available, which represents a step-change in speed and quality of the service
On-demand	Allows users to select, stream, download, store and view film and television programmes, usually within a certain timeframe, using a digital cable box or online service
OTT	'Over the top' – in relation to an online service, this means that the service is delivered as part of the general traffic on a network (and so competes for capacity with all other data, including other audio-visual content services), as distinct from being delivered via reserved capacity
PVA	Public value assessment undertaken by the Trust to assess the value of BBC proposals including value to licence fee payers, value for money and wider societal value. This forms part of the public value test or PVT (see PVT).
PVT	Public value test – the means by which significant proposals for changes to the BBC's UK public services takes place.
SD	Standard definition
Service licence	The Trust aims to ensure that the BBC offers high quality and original services for all licence fee payers. To help deliver this, it sets out the remit and expectations for each BBC service – and how that service will create public value – in a published licence.
Short-form content	Short audio-visual programmes which have a narrative arc
Smart television	A stand-alone television set with inbuilt internet functionality. Users connect to the internet via a broadband router or modem.
VOD	Video-on-demand