



**Public Value Assessment and Market Impact Assessment of the re-invention of BBC Three online and related proposals**

**Executive summary**

Virgin Media welcomes the opportunity to submit its views on the Trust's review of the Public Value Assessment and Ofcom's Market Impact Assessment of the re-invention of BBC Three online and related proposals (the '*BBC's Proposals*').

**Impact on Virgin Media and its customers**

The BBC is a valued content partner of Virgin Media providing BBC publicly funded content to 3.7 million licence fee payers. In return, Virgin Media has driven technical innovation and consumption of Public Service content to ensure it is widely viewed and distributed for free over our broadcast platform to licence fee payers. Virgin Media and the BBC have partnered together on a number of successful initiatives including:

- Launching red button services in 2006;
- Delivering the first BBC HD channel to the market in 2006;
- Being among the first platforms to make iPlayer available to the public in 2007 via Liberate set-top boxes – this was the first 'big screen' version of iPlayer in the UK;
- Launching of the BBC 3D channel;
- Making available BBC iPlayer on the TiVo set-top-box;
- Enabling advanced TV red button functionality ahead of the Olympics; and
- Providing continued support for existing customers (on all legacy and current set-top-boxes) who choose to watch BBC content on linear TV in standard definition and high definition and for those who wish to listen to Radio on the linear schedule.

At the heart of the BBC's remit is to ensure that its content is universally available to licence fee payers regardless of the technology they choose to use. In our view, the BBC Three and related proposals potentially cut across this remit and are indicative of a first step towards the realisation of

a long-term strategic preference of the BBC Executive to establish the BBC iPlayer as the hub for all BBC services and ensure that BBC licence fee funded services are delivered exclusively via online technologies and solely within the BBC interface. If this aim is realised, this will not serve licence fee payers [Confidential].

We are concerned that the BBC is acting as a commercial distribution platform in its own right and in doing so is restricting platform choice and innovation in platform functionality. The BBC's statement that BBC Three *'may, subject to commercial agreement, be accessible on all relevant third party TV platforms'*<sup>1</sup> is concerning. The BBC should be innovating but also supporting the wider UK economy and those platforms which are also innovating to support the BBC's remit of widespread distribution of its content. Distribution of BBC content should not be conditional or subject to any commercial agreement or payment whatsoever. The BBC's remit is to create content and make it as widely available for free to all consumers as a 'quid pro quo' for licence fees set by government.

Licence fee payers expect the BBC to be distributing its publicly funded content in a technology neutral way so that they can access it via multiple consumption methods of their choosing, rather than confining it to exclusive distribution channels. It is incompatible with the concept of 'universality' to force viewers to consume BBC programming exclusively online. Widespread distribution of the BBC's content to those who provide the BBC with prominence also has the added benefit of stimulating competition in platform choice, which has delivered significant benefits to consumers in the UK. Any move to require viewers to watch all BBC content via the iPlayer will ultimately make redundant all other search and navigation methods to reach BBC content.

We do not believe that the BBC's proposals would increase consumer choice – in fact, if this strategy is realised it will:

- exclude many consumers, with licence fee payer content not available to all end users;
- restrict consumers' ability to view BBC content in the manner they choose, on the platform of their choice which will ultimately distort platform competition;
- deliver variable quality of service which will depend on the user's broadband subscription and location. Although Virgin Media is currently spending £3bn to over the next five years to connect 4 million more homes and businesses to the cable network, there will still be slower broadband speeds on other provider's networks. A National Audit Office report of January 2015 highlighted that BT has only rolled out 'fibre to the cabinet' to 26% of cabinets, covering 22% of premises. Furthermore, the roll out of wide availability of BT's

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<sup>1</sup> Page 23, BBC Proposals

deeper fibre deployment is likely to be further delayed with BT's proposed expenditure significantly lower than previous government estimates<sup>2</sup>. Delivery OTT will mean that not all licence fee payers will be able to view BBC content online in the quality that licence fee payers currently receive or expect.

We consider that if the Trust approves the BBC's proposals this would set an unhelpful precedent which would 'smooth the pathway' to allow the BBC to place all BBC services online via only the iPlayer. The Trust should therefore be mindful that the impact of any such an approval will be wider than just the narrow issue relating to BBC Three and will inevitably set a precedent for future migration of other channels. The risk of unintended consequences is high and therefore any decision should not be taken in isolation of the BBC's wider strategy for taking all its services online.

We are also concerned that the BBC Trust has yet to consult on the next iteration of its syndication policy which will govern the principles under which the BBC should syndicate its content. We consider that the BBC Three and related proposals will potentially cut across a syndication policy which requires universal distribution of the BBC's content to platforms. We are extremely concerned that the BBC's Proposals include the possibility of individual syndication arrangements with third parties such that *'[s]ubject to agreeing appropriate commercial terms with YouTube, BBC Three may use YouTube to promote its single editorial pillar such as short form comedy made for YouTube'*<sup>3</sup>. Whilst the BBC can choose how to promote its service on third party services such as YouTube, if it is producing new content (such as short form comedy programming) it should be syndicating this content on an FRND basis to all platforms. Virgin Media would like the opportunity to deliver BBC short-form comedy content and does not consider that the content should be restricted to one platform, e.g. YouTube. The Trust therefore should not fetter its discretion by agreeing to the BBC's proposals ahead of an informed consultation about the direction of the Trust's syndication policy.

If the Trust decides to approve the BBC's proposals, it is crucial that ahead of any such approval the BBC submits detailed plans on how it is going to ensure increased take-up of broadband and iPlayer and this includes how it will partner with providers such as Virgin Media. In January 2015, Virgin Media attended the first TechUK meeting with the BBC about how the industry and the BBC could work together to ensure digital inclusion and greater take-up of broadband and connected TVs to ensure certain groups of consumers are not digitally left behind. The conversation is therefore just starting within the industry and it is likely to be many years before take-up of broadband is sufficient

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<sup>2</sup> Page 16 - 17 and Figure 4, NAO Report, <http://www.nao.org.uk/wp-content/uploads/2015/01/The-Superfast-Rural-Broadband-Programme-update.pdf>

<sup>3</sup> Page 32, BBC's Proposals

(and it may never be) to sway public opinion to permit a Public Service channel to broadcast exclusively OTT.

[Confidential]. The BBC should want to ensure a seamless viewing experience rather than seeking to create content walled gardens with the obligation placed on viewers to know where to find each provider's content. This will not enhance viewers connected entertainment experience and means that consumers will not be able to seamlessly switch from watching BBC programmes at home streamed from room-to-room and on the move. It also weakens the BBC's case that BBC Three should be an online only service if the BBC is not prepared to fully embrace the opportunities that other platforms such as Virgin Media bring to benefit the licence fee payer. We do not understand why the BBC has branding and navigation concerns which have clearly been overcome by other broadcasters, as demonstrated by the granting of rights from these players.

In relation to the launch of BBC One + 1, we see little benefit to our viewers of the launch of a further +1 channel, especially if it replaces BBC Three. Repeated programmes are no substitute for first run UK commissions. If the BBC wants to ensure it is maximising the opportunity of the benefits of a connected entertainment experience for licence fee payers, it should be working much more closely with platforms such as Virgin Media to highlight the advantages of the many existing opportunities for end users to consume time-shifted content, such as viewing on-demand, scrolling through the 'backwards EPG' to view missed programmes and recording via a PVR. [Confidential].

Given the range of options for all viewers on Virgin Media's platform to watch content outside of the linear schedule, we do not see value in launching another plus 1 channel to add to the 37 already on Virgin Media. Furthermore, should approval be granted, + 1 channels should not qualify for prominence on the Virgin Media EPG. To have repeated channels afforded prominence would reduce Virgin Media's ability to manage its EPG in the best interests of subscribers, other commercial broadcasters and other PSBs and not envisaged by the original prominence obligations contained within the 2003 Act.

We do not therefore concur with the Communications Chambers Report<sup>4</sup> and the conclusion that *'[w]e believe the impact on TV platforms (pay and free satellite, cable, DTT) will be minimal. This is on the basis that platforms 'will each lose BBC Three and gain BBC One + 1'.* Put simply, we do not consider that the downsides of removing BBC Three will be outweighed, or off-set, by the benefits of launching BBC One + 1. Furthermore, what is not considered as an impact at all within the Communications Chambers Report is that the BBC's Proposals will distort platform competition with

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<sup>4</sup> Forecast consumption and preliminary market impact assessment of revised BBC services, January 2015

viewers increasingly required to view BBC content on the BBC iPlayer rather than on a platform of their choice.

### Licence fee payers

The BBC cannot act in a vacuum isolated from the views of licence fee payers. It is concerning that the BBC is proposing to remove BBC Three from all existing platforms and move the channel online given that by its own evidence, 50% of consumers do not have access to iPlayer<sup>5</sup>. Part of a successful creative economy requires that vulnerable consumers are fully included. Virgin Media is mindful that the benefits of advances in technology have not been seen by all consumers. The BBC has a pivotal role to ensure that these consumers become increasingly 'connected'. At this time, given that 50% of consumers do not have iPlayer, we are not convinced that requiring consumers to go online to view content maximises value for licence fee payers as it excludes a large percentage of the population, many of whom are the most vulnerable customers. Although many 16 to 34 year olds (the target BBC Three audience), will have access to and be comfortable with using broadband, this group will also cover a number of more vulnerable consumers and those younger viewers who live within the c.50% of homes which do not have iPlayer or broadband. Viewing on a mobile device, whilst complementary, is no substitute for the choice or ability to view a broadcast of a linear channel.

The BBC should be mindful to ensure it reflects public opinion and that fewer than 40% of people rated the BBC's proposals regarding BBC Three favourably<sup>6</sup>. Key concerns were raised by consumers regarding the convenience of watching BBC Three content through a device and lack of availability of broadband (or ownership of devices to watch streamed content over). The BBC has not demonstrated that penetration of broadband and connected devices is at such a point that this is the optimal choice for all licence fee payers and to ensure there are not groups of consumers who are digitally left behind.

In summary, we consider that the Trust should not approve the BBC Proposals. If the Trust decides that cost arguments 'trump' concerns voiced by viewers over the exclusionary effect of moving BBC Three online, the Trust must also consider how the BBC will work with third party platforms including Virgin Media to ensure that:

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<sup>5</sup> BBC analysis states that 48% of homes do not have access to BBC iPlayer on their TV set (Pg 5, BBC's Proposals).

<sup>6</sup> Section 5.2, BBC's Proposals

- (i) BBC content is distributed in a platform neutral manner without favouring any particular platform or distribution technology;
- (ii) BBC iPlayer content (including BBC Three) is fully distributed including within Virgin Media's TV Anywhere service; and
- (iii) The BBC makes full use of Virgin Media's future features which are in development and designed to make TV content easily accessible to viewers outside of existing linear technologies. Such functionality will ensure the widest available access to public service content and in innovative ways.

We set out below our comments on each of the BBC's Proposals

### **BBC Three Online**

To ensure the BBC fulfils its public service remit, the Trust needs to ensure that the outcome of the PVT process reflects the diversity of licence fee-payer preferences and needs and reflects changes in the market, particularly the way in which consumers search for, access and view content.

We reiterate our core thesis, consistent with our previous representations - namely that the BBC must recognise that it is as a result of its gifted licence fee status that the BBC is able to produce content the market may not otherwise and it is through the mechanism of universal distribution of that content for free to licence fee payers, in a platform neutral manner, that the BBC can best deliver its core six 'public purposes', whilst minimising the competitive impact it has on the wider market. It is, in particular, vital to ensure widespread distribution of BBC content given it is 'must have' and therefore this gives the BBC the ability to influence the desirability (and viability) of alternative platforms.

Consumers are watching an increasing amount of content via mediums other than on a traditional "TV set" on a linear schedule and therefore expect the full range of BBC and other PSB content as an integral part of any TV service at home and 'on-the-go'. However, this does not mean that linear television is a legacy distribution mechanism. As the BBC statistics indicate, 84% of viewing still takes place over linear TV<sup>7</sup>. This underlines the critical importance that the BBC should syndicate its content widely to ensure consumers can choose the technology they feel most comfortable using to view BBC content and that the BBC should enable distributors of traditional 'big screen' services (e.g. cable) to also distribute OTT versions of the BBC's services, such as through the Virgin Media TV Anywhere App and PC.

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<sup>7</sup> Page 44, BBC's Proposals

Virgin Media's converged and managed TV service provides an intuitive and easy way for consumers to bridge the gap between traditional linear TV and on-demand content both in and outside the home. Should the Trust approve the move of BBC Three online, it is imperative that Virgin Media's connected entertainment capabilities, such as its enhanced search functionality, are utilised by the BBC to promote to Virgin Media's viewers that BBC Three is available through Virgin Media. This is surely in the BBC's, Virgin Media's and ultimately consumers' best interests. [Confidential].

We are concerned that the BBC's Proposals are non-committal and unspecific about how it will utilise the benefits of third party platforms:

- (i) The BBC is unclear whether the entire catalogue of BBC Three content will be available and how consumers will be able to search for that content within the EPG:

*'In line with the BBC's Syndication Guidelines some content will be available on third party platforms and services. How viewers would be able to navigate and access BBC Three content from the main TV platforms (e.g. potentially accessing it from the traditional EPG) is currently under consideration'<sup>8</sup>.*

The BBC states that it *'will also work with TV platforms such as Sky, Virgin, YouView, Freesat and Freeview to provide access to BBC Three content via their interfaces, for example by the use of the Red Button as a discovery mechanism'.<sup>9</sup>*

- (ii) It is unclear whether BBC Three content will be included for viewers to watch on the move via portable devices:

*'BBC Three content may also be included in mobile platform offerings. All such syndication will be in line with BBC Trust policy'<sup>10</sup>.*

[Confidential].

#### Virgin Media costs

[Confidential]. Distributing a linear channel via IP multicast is far more expensive than via linear broadcast and we are concerned that this trend will continue and for IP delivery to become 'the norm' for channel distribution. The BBC has not provided any analysis of the efficiency of

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<sup>8</sup> Page 29, BBC's Proposals

<sup>9</sup> Page 34, BBC's Proposals

<sup>10</sup> Page 34, BBC's Proposals

broadcasting channels via IP – i.e. “multicast” (where each different viewer needs a separate feed) compared to the more efficient traditional “broadcast” linear delivery technology. [Confidential].<sup>11</sup>

### Regulatory landscape

Finally, the Trust must consider the wider regulatory environment. BBC iPlayer is not a designated ‘must offer’ or ‘must carry’ service under s.272 and s.64 of the Communications Act 2003 respectively. [Confidential]. To ensure that the objectives of the ‘must offer’ and ‘must carry’ regime are met the Trust must ensure that BBC iPlayer content (such as that on BBC Three) should be ‘must offer’ in its own right, i.e. this includes the content within the iPlayer and the content outside of the iPlayer application, subject to appropriate BBC branding. To fulfil the BBC’s public service remit and the spirit of the Communications Act 2003, the BBC iPlayer must be fully distributed within platforms to ensure this publicly funded content is as widely available as possible.

As stated in the summary above, if the BBC’s Proposals are approved by the Trust, placing BBC Three exclusively online should be subject to the requirement that the BBC must work closely with third party platforms such as Virgin Media to ensure full integration of the entire suite of BBC content within the range of features that Virgin Media chooses to make available to its subscribers who are also licence fee payers.

### **BBC One + 1**

In relation to the launch of BBC One + 1, Virgin Media questions both the public value to consumers and the cost to platforms such as Virgin Media of having a time-shifted channel distributed over linear television taking up valuable capacity rather than the BBC prioritising making widely available new and original public service content such as that on BBC Three. Virgin Media does not consider a further +1 channel is an optimal use of licence fee payer funds. Such a channel occupies valuable spectrum and provides little extra benefits to viewers when they are already embracing viewing over VOD or using PVR functionality (these are well established technologies which the BBC should make use of). Furthermore, Virgin Media’s consumers are able search for content which has already been broadcast via scrolling through the ‘backwards EPG’. Making use of on demand technologies is the optimal way for BBC to enable viewers to catch-up on programmes that viewers have missed. Plus 1 channels are a poor substitute for ‘catch-up’ content and are a product of a pre-on demand TV platform and only exist on Virgin Media as part of a commercial deal where the channel seeks to extend its linear ratings to gain advertising share.

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<sup>11</sup> [Confidential].

There seems to be an inherent schism in the BBC's proposals. Whilst the launch of BBC One + 1 is designed to ensure that the 50% of people who are not online or have access to BBC iPlayer have more opportunities to watch BBC content (by time-shifting BBC One by an hour), putting BBC Three online impacts all consumers by denying them the opportunity to watch publicly funded content via linear television. Put simply, the move of BBC Three online will mean that some licence fee payers will not be able to watch the channel. A reduction of BBC Three's viewing share of 0.87 percentage points due to the move online cannot be 'made up' by an increased incremental viewing share 0.82 percentage points following the launch of BBC One + 1 given the move online denies some viewers the opportunity to watch BBC Three content altogether and BBC One +1 just shows time-shifted content<sup>12</sup>. In any case, we do not believe that the BBC should be justifying its proposals based on seeking to gain viewing share. This is not the function of a publicly funded broadcaster. If the BBC is seeking higher ratings it should make its programmes widely available and ensure that BARB (the BBC is a shareholder) captures on-demand viewing to ensure all viewing is measured. In any case, there are other methods to capture on-demand viewing which the BBC should embrace.

The BBC's statistics indicate that the BBC One + 1 channel will capture 1.6% of viewing, of which 70% will be incremental as opposed to cannibalised from BBC One<sup>13</sup>. This is a very small incremental amount of viewing which does not justify the trade-off of putting BBC Three online. We fundamentally disagree with the BBC's statement that the launch of BBC One + 1 *'is part of the BBC's strategy to appeal more to younger audiences.....This is because other +1 channels are significantly more popular with younger audiences relative to their parent channels'*<sup>14</sup>. If anything, younger viewers are far more ready to embrace catch-up content or viewing via Apps and mobile than a +1 channel.

Virgin Media customers already have access to PVR, backwards EPG and catch-up programming and therefore the value to our customers of a further +1 channel is far less than those customers on other platforms which do not have access to such functionality. It is concerning therefore that the majority of viewers on Freeview (55% – 60%)<sup>15</sup>, i.e. those viewers who are most likely not to have access to iPlayer will not be able to watch BBC One + 1 for many years to come due to spectrum restrictions on DTT. The Trust should question why the BBC is launching a service which is only available at the outset to 50% of DTT customers where arguably there is the greatest need for a time-shifted channel.

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<sup>12</sup> Page 67 - 68, BBC's Proposals

<sup>13</sup> Page 11, BBC's Proposals

<sup>14</sup> Page 44, BBC's Proposals

<sup>15</sup> Page 36, BBC's Proposals

Virgin Media would like to be working more innovatively with the BBC on how to profile the BBC's catch up programming and see the launch of this channel as very much in the 'wrong' direction. Viewers want to see new content being broadcast and prominently displayed on the EPG, not time-shifted linear channels.

### **Premiering content online on the iPlayer**

The BBC's overall proposals also include enhancing the iPlayer by (i) premiering programmes online ahead of the linear schedule and (ii) including content within the iPlayer from third parties.

As stated above, we are concerned that the BBC's long term strategic plan envisages the iPlayer as a 'gateway' for all BBC content. There should be more than one access point to discover and view BBC content. The BBC has no public service remit to drive the consumption of popular content via online only channels. Nor does it have a public remit to advance a strategy to ensure that publicly funded content is put behind a BBC gateway such that viewers have no alternative but to view BBC content on the iPlayer rather than through a BBC branded environment on third party platforms.

The BBC has explained its rationale as follows:

*'As we move to a world where more video is watched online, BBC iPlayer will become increasingly important to the BBC's ability to deliver its public service mission. It's the gateway for people who increasingly want to watch and listen to what they want, when they want it – on tablets and mobiles as well as other screens'<sup>16</sup>.*

We are concerned that although the proposal to premier content is limited at the outset, if given approval by the Trust this will further cement and validate the BBC's strategy of moving its content online. The Trust must decide in principle whether the BBC should be able to offer an online only service and at what point in the take-up of broadband this would be appropriate. Before the Trust approves the BBC's Proposals it needs to set clear boundaries of what the BBC is permitted to do combined with a vision of how BBC content should be distributed. For example, if BBC content is to be premiered online first, Virgin Media would want the opportunity to make this available to our consumers via our platform and also potentially allow the episode to become immediately available via catch-up TV on all platforms at the same time to enable as many licence fee payers as possible to access this content.

Specifically, the proposals in relation to 'premiering' content on iPlayer are vague and not sufficiently developed, in our view, to allow the Trust to approve. For example, Virgin Media does

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<sup>16</sup> Page 3, BBC's Proposals

not understand how the BBC would properly assess which programmes it would premier and the criteria involved in such an assessment. The BBC has stated it will not premier programmes online which undermine *'the sense of a shared viewing experience'* which the BBC states includes programmes such as *'The Voice'* and *'The Apprentice'*. However, we consider this stated criteria to be far too subjective. Premiering online could have a significant financial impact on platforms such as Virgin Media if licence fee payers feel that they cannot get BBC content through the Virgin Media linear service.

### **Third Party Content**

Concerning third party content, we welcome the fact that if approved by the Trust the BBC has stated this content would not be made exclusively available. However, we consider the criteria for inclusion of third party content within the iPlayer to be extremely vague:

*'Content delivers audience value; and*

*'The content must be distinctive and aligned with the BBC's editorial strategy'<sup>17</sup>.*

[Confidential]. We are also concerned about the BBC's proposals with YouTube to *'promote its single editorial pillar such as short form comedy made for YouTube'<sup>18</sup>*. The BBC should ensure that it is not partnering with one particular commercial provider over another and we would request that the BBC clarifies its position before approval by the Trust.

### **CBBC hours**

We are delighted to support the BBC's ambitions to extend the hours of the CBBC [Confidential]. This is exactly the type of content the BBC should be producing and distributing widely.

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<sup>17</sup> Page 42, BBC's Proposals

<sup>18</sup> Page 32, BBC's Proposals