VIII Market impact assessment

Introduction

8.1 In this section we consider the likely impact of the BBC's proposed Digital Curriculum service. The service is yet to be introduced, and is taking place in a period of significant market development and therefore any assessment relies on a balance of judgements about possible future scenarios. It should also be reiterated at this point that our assessment has been made without the benefit of views from commercial suppliers of educational resources.

8.2 We identify the potential impact of the BBC's proposed Digital Curriculum service by answering the following questions:

- is the proposition sufficiently different from the probable supply in the market to constitute a significant innovation/development;
- what would be the impact on relevant, and related, markets resulting from the introduction of the service; and
- would the BBC's proposed Digital Curriculum service impact competition adversely in the market?

Summary conclusion

8.3 We believe the BBC's proposition to be a significant, distinctive development in the market. If successful, the BBC's proposed Digital Curriculum service could also lower barriers to market development, and hence contribute to an expansion in the size of the relevant, and related markets. More specifically, if successful, it is likely to increase the acceptability and understanding of teachers of online provision, lower the overall costs of commercial suppliers, further develop the market for content production, reduce uncertainty and thus investment risk for commercial suppliers, improve ICT skills in the UK and contribute to the increased uptake of new technologies.

8.4 The BBC could gain a significant market position[84] over time given the strength of its brand and the free and universal availability of the proposed Digital Curriculum service, although it is certainly not assured of success. Whether any significant position developed by the BBC would confer market power is highly uncertain since the service would be introduced into a dynamic market and would not be fully rolled-out for at least five years. However, we believe there are factors that are likely to prevent the BBC developing market power and more importantly, prevent it eliminating competition through engaging in anti-competitive — particularly exclusionary — conduct. These factors include the limitations on the scope of the service, the extensive regulatory framework which governs the BBC's behaviour, the positive impact on the market described above and the increased government funding, which will make commercial products de facto free to schools, thereby facilitating market entry and competition to the BBC. Hence the principal advantage of the BBC's proposed Digital Curriculum service — free at the point of use — would, in part, be mitigated.

Is the proposition sufficiently different from the probable supply in the market to constitute a significant innovation/development?

8.5 The size of the educational software resource market in schools is determined, in the most part, by government policy. The demand for educational software resources in schools is directly related to the policy objectives of government and the resultant level of funding. This is the case irrespective of the BBC's involvement and it is difficult to predict how government policy objectives might change in the future.

8.6 In general, the long-term prospects for the educational software resource markets look sound. The use of PCs in everyday business and in schools and homes suggest that it is increasingly becoming an accepted part of life. According to a survey undertaken by the NGfL[85] , 98% of young people used a

[84] The term 'significant market position' in this context refers to a high level of uptake and usage of the service in the relevant markets defined in Section VI (i.e. within schools and homes).

[85] *"Young People and ICT"*, NGfL Research and Evaluation Series, 2001.

computer either at home or at school. General familiarity with online provision is likely to increase expectations and acceptability within schools, supported by a positive government policy towards the sector.

8.7 However, the immediate future for the educational online resource sector is uncertain. Experience in recent years in other areas of e-business has been mixed. The optimism that accompanied initial attempts to exploit perceived online business opportunities has receded in light of experience and a re-estimation of the attraction of internet services. There are also factors, so-called 'barriers to development' that will continue to hinder the expansion of the educational online resource sector. The factors, which we discuss in more depth in Appendix 1, include:

- the inadequacy of ICT infrastructure in schools (e.g. poor network capacity, lack of multimedia PCs);
- the slow roll out of broadband; and
- the reluctance of some teachers to move from teaching methods that have succeeded in the past. Teachers may also lack training and confidence in ICT.

8.8 We understand that individual parts of the proposition are already partially developed or capable of development by other firms. Given that we have been unable to interview commercial suppliers, we cannot provide detailed comment on their likely future strategies with regard to the educational software resource market(s). In general, we would expect commercial suppliers to expand their online offering (stimulated by increased government funding), to cover a greater breadth and depth of curriculum subjects, whilst maintaining a strong focus on the core GCSE subjects of mathematics, English and science. It is difficult without discussions with the commercial sector to state whether suppliers will participate in the full range of GCSE courses, including non-core and minority subjects. However, we doubt that any one supplier would offer the breadth and depth of coverage provided by the BBC's proposed Digital Curriculum service, or the same level of commitment to minority subjects and special needs pupils.

8.9 In summary, we believe the proposition to be a significant, distinctive development in the market on the basis of the:

- greater breadth and depth of coverage of curriculum subjects;
- free availability at the point of use to all schools and homes in the UK;
- universal availability over time, to all schools and homes in the UK; and
- more coherent approach to the development of the educational online resource sector.

8.10 We regard the BBC's proposed Digital Curriculum service to be a significant development in the market although some aspects of it, would not, in our view, be 'innovative'.

What would be the impact on relevant, and related, markets?

8.11 Before assessing the impact on the market as a whole, it is important to draw a clear distinction between the impact of the BBC's service and the impact of general changes in the market.

Impact of general changes in the market — a baseline view without the BBC

8.12 In Section IV, we estimated that the educational software resource market in schools is currently worth around £80 million per annum. This figure incorporates an estimate of schools delegated resource expenditure plus a provision for 15% of (Grant A) NGfL Standards Funds to be spent on educational software resources. It does not include the possible expenditure of eLCs on such resources. Assuming that eLCs are spent in their entirety on educational software resources, the market would grow by a further £50 million per annum following their introduction later this year[86]. We estimate that total expenditure on educational software resources by schools could be in excess of £150 million per annum by the school year 2004/5[87].

86 This assumes that the level of eLC funding announced for 2002/3 is continued into the future.

87 This is based on a (conservative) 10% overall growth in total expenditure per annum on educational software resources. It also assumes a continuation of the expected level of 'Grant A' NGfL funding beyond 2002/3.

8.13 In Section IV, we also estimated that total expenditure on educational software resources in the informal learning environment, primarily CD-ROMs and DVDs, would be approximately £35 million in 2002. Given the increasing penetration of PC's and internet connections at home, we would expect educational online resource sales to increase faster than sales of other software resources such as CD-ROMs.

8.14 As noted above, given that we were unable to interview commercial suppliers, it is difficult for us to comment on the likelihood of commercial suppliers offering particular courses. We expect that commercial suppliers will gradually cover a greater breadth and depth of subjects as the market grows while maintaining a strong focus on the core GCSE subjects. The incentive for commercial suppliers to provide minority subjects is less clear.

Quantifying the market impact of the BBC's proposed Digital Curriculum service

8.15 There are two factors to consider in order to quantify the impact of the BBC's proposed Digital Curriculum service:

- the "value" of the Digital Curriculum service itself; and
- the "value" of the wider impact of the Digital Curriculum service on the development of the market.

Value of the Digital Curriculum service

8.16 It is very difficult to estimate the value of the Digital Curriculum service itself[88]. It is insightful, however, to compare the size of the BBC's proposed expenditure with total sales in the two educational software resource markets. The expenditure of £150 million from existing licence fee funds over a five-year period on both content and content delivery equates to an outlay of around £30 million per annum by the BBC, compared to a combined (formal plus informal) educational software resource market size estimated to be in excess of £100 million in 2002 and potentially growing to at least £185m[89] in the school year 2004/5.

8.17 It is also noteworthy that approximately £40-45 million of the BBC's total expenditure on content over the five years — up to £9m per annum on average — would accrue to third party producers of content. Hence, the content production market would be a beneficiary of the BBC's proposed Digital Curriculum service[90].

Value of the wider impact of the Digital Curriculum service on the development of the market

8.18 In the medium term, the impact of the BBC's proposed Digital Curriculum service on the development of the relevant markets would depend on the level of quality, and uptake, of the service. We consider two scenarios, which provide the parameters for assessing the potential impact of the BBC's proposition i.e. 'failure' and 'success'.

8.19 In the 'failure' scenario, we assume that the BBC's Digital Curriculum service would only be used by a small proportion of schools and homes. Hence there would be no stimulus to the development of the relevant, or related markets. There could be an adverse impact on competition in the relevant markets as a result of other suppliers being deprived of the opportunity to provide smaller scale services although this would be reduced as a result of the increased government funding via eLCs and the NGfL Standards Fund.

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88 The BBC's proposition would be free at the point of use and hence estimating the 'value' of the service cannot be based on projected sales (or turnover), as might be the case for other propositions. Furthermore, there is limited data available for other measures of output (e.g. usage). Hence a 'bottom-up' valuation is neither conceptually applicable nor practical.

89 This figure is a combination of our estimates of £150m expenditure on educational software resources by schools in school year 2004/5 and a conservative steady state estimate — £35m today and going forward — of the value of the informal educational software resource market.

90 In its response to the Government's Curriculum Online consultation paper, the National Union of Teachers noted that the BBC's proposition for the commissioning of content will provide both encouragement and support for the developing industry and effective use of the BBC's in-house production expertise. Furthermore, in response to the same consultation, the Press Association and the British Educational Suppliers Association noted that a public service provider should commission not less than 50% of the development work from the commercial sector in order to ensure that skills are developed for the long term interest of the sector.

8.20 In the 'success' scenario, the majority of schools and homes would adopt the BBC's Digital Curriculum service. A free, critical mass of content covering a significant breadth and depth of coverage of each curriculum would gradually be made available for teaching. Through improving the understanding of teachers, and the usability and coverage of online provision, the 'vicious' circle of low teacher acceptability, low demand, would be replaced by a 'virtuous' circle of increased acceptability and increased demand. One of the key barriers to the development of the relevant market(s) would be significantly reduced. As a result, the BBC's Digital Curriculum service would provide seed capital, lowering barriers to entry in the market, thus encouraging schools to spend more money on educational software resources and network infrastructure. This would increase the market size by inducing increased demand from schools, to the benefit of commercial suppliers.

8.21 The factors above are arguably less credible in the context of justifying a strong, positive stimulus for the home market although we could foresee a situation whereby the BBC's service enhances the appreciation of the benefits of e learning by parents and independent learners thus encouraging further expenditure on commercial educational online resources.

8.22 More generally, the BBC's announcement of its future plans to DfES and DCMS would probably reduce uncertainty and thus investment risk for commercial suppliers, and the licensing of the BBC's content would probably lower the overall costs of other suppliers and could help them develop comprehensive online offerings of their own.

8.23 The freedom for schools to allocate greater amounts of expenditure to educational software resources is limited by the 'fixed' nature of their funding sources. However, the increasing autonomy that schools have over how they spend their money means that there is some scope for redistribution. If, for example, just 0.3% of schools resource budgets were redistributed to ICT, an additional one billion pounds could be available for alternative expenditure by the school year 2004/5[91]. It could be possible that a further £30 million per annum would be made available by schools for expenditure on educational software resources for the school year 2004/5 given certain assumptions with regard to the proportion of the extra funds[92] that would be spent on educational software resources.

8.24 Parents display a fairly high propensity to spend on their children's education. In 2000, over £8 billion[93] was spent on educational services, such as school tuition fees[94]. If an additional amount equivalent to just 0.1% of this educational spend was made available for educational software resources then the informal learning environment could receive an injection of almost £10 million per annum in 2005[95].

8.25 Therefore, the 'success scenario' could result in the BBC's proposed Digital Curriculum service generating an additional (£10 million + £30 million) £40 million of extra expenditure per annum on educational software resources by 2004/5. In reality, the impact of the BBC's proposed Digital Curriculum service will probably lie somewhere between the 'failure' and 'success' scenarios. It is impossible with any degree of accuracy to estimate where.

8.26 It is noteworthy that in both scenarios, any adverse impact on competition in the relevant markets as a result of the free provision of the BBC service would be reduced as a result of both the limitations on the BBC service described below and the increased government funding of electronic learning resources in schools.

8.27 In December 2001, the British Government pledged £50 million in the form of eLCs to the acquisition by English schools of electronic learning resources from private sector suppliers in the first year of

91 In 1998/9, approximately £21 billion was available to UK schools via delegated budget allocations. We have assumed a 9% annual growth rate up to 2004/5.

92 We have assumed that educational software expenditure would account for between one-quarter and one-third of total (additional) ICT expenditure by schools.

93 Source: "Quarterly national accounts, 3rd quarter 2001", ONS.

94 This does not include the expenditure by households on educational resources, such as books or CD-ROMs and other educational products such as stationery and clothes.

95 Based on an estimated annual growth rate in expenditure on children's education of 3% (i.e. in line with the average annual growth rate from 1997-2000).

Curriculum Online. We understand that in their current form, eLCs are[96]:

"money for schools to buy digital curriculum resources."

8.28 In its response to the Government's Curriculum Online consultation, the Publishers Association and the British Educational Suppliers Association noted that:

" Long term viability requires a demand-side model and private sector investment. The commercial industry cannot compete with free-at-delivery material unless earmarked funding is available to schools, backed up by an effective e-procurement mechanism".

8.29 As such, the use of eLCs should provide schools with the choice to purchase the best products from commercial suppliers. eLCs have an almost zero 'opportunity cost' to the user. This means that the teacher has an incentive to spend the grant on commercial provision or it will be lost. Expenditure using eLCs in effect makes commercial provision 'free to the user.' Hence, teachers have a choice between the BBC and commercial provision. This choice would mitigate, in part, against the advantages to the BBC of its service being free.

8.30 As noted in Section IV, the minimum level of NGfL funding for software or 'digital content' should increase by at least £10 million for the school year 2002/3. As a result, the increase in funding through the provision of eLCs and NGfL grants could generate an additional £60 million for schools to purchase educational software resources in 2002/3[97]. Hence the market should continue to expand[98] irrespective of whether the BBC's service is approved and introduced. Without any such central funding[99], commercial suppliers would have far less incentive to supply the market.

Impact on related markets

8.31 There are wider potential benefits that the BBC's proposed Digital Curriculum service would confer if introduced and developed successfully. These include:

- an increased uptake of new technologies — given the ongoing convergence of computing and telecommunications, the BBC's proposed Digital Curriculum service could be accessible in the medium-term via an interactive TV or a mobile phone. This would have a positive impact on the growth in usage of these delivery channels; and
- an improvement in ICT skills — it could assist with the development of the next generation of 'knowledge workers' and greatly improve the nations PC literacy. It is noteworthy that the average salary of jobs in the information technology sector in the more technologically advanced US market, is over 75% higher than the national average salary[100].

8.32 We have not measured quantitatively the impact of the BBC's proposed Digital Curriculum service on any related markets given the practical difficulties involved.

Would the BBC's proposed Digital Curriculum service impact competition adversely in the market?

BBC's current position in the market

8.33 In Section IV, we concluded that most of the educational resource sectors are highly fragmented. Whilst individual companies have strengths in particular sectors, no one organisation has a strong position across all the educational resource sectors.

8.34 We concluded in Section VI that the relevant markets could be grouped to be at least as wide as the supply of educational software resources to formal and informal learning environments (e.g. schools and homes respectively) in the UK. We also concluded that there is some evidence to support a more

96 Hermes — UK Government press release, 10 December 2001.

97 Assuming that the eLC's are spent in their entirety on educational software resources before the end of the school year 2002/3.

98 Assuming a continuation of this level of government funding,

99 Indeed, we understand that there is considerable uncertainty as to whether the national assemblies in Scotland, Wales and Northern Ireland will take the DfES's lead and introduce a form of eLC.

100 "Technology in K-12 Education: Envisioning a new future", David D Thornburg.

definitive product market definition, which would include educational printed resources (e.g. textbooks).

8.35 The BBC's share of these relevant markets is currently very small. In Section VII we concluded that existing barriers to market entry are relatively low, and therefore potential competition is likely to constrain the development of significant market power by incumbent suppliers. The sector is already served by a number of large companies (such as Pearson and Reed Elsevier) with trusted reputations and strong brand recognition. Most are present in the supply of educational printed resources and appear well placed to increase their involvement in the educational software resource market(s). Hence we believe that the BBC currently has no market power in the relevant economic markets'.

Impact of the Digital Curriculum service on the BBC's market position

8.36 Any assessment of the market power to be gained from an innovation that is yet to take place will be generally limited by the lack of evidence. The situation is no different for the BBC's proposed Digital Curriculum service.

8.37 The BBC's proposed Digital Curriculum service benefits from the use of public funds, the strength of the BBC brand and the universal availability free to the user. This represents a strong advantage over commercial competitors. If there is a high uptake and level of usage of the service in schools and homes, it could gain a significant market position over time[101]. However, the success of the service is not guaranteed given factors outside of its control. For example, the service faces the constraint of the inadequacy of ICT infrastructure in schools and there is uncertainty as to its acceptability by teachers. An unsuccessful service would not confer a significant market position, or market power upon the BBC.

8.38 Whether any significant position developed by the BBC would confer market power is highly uncertain since the service would be introduced into a dynamic market and would not be fully rolled-out for at least five years[102]. Initially, the BBC's proposed Digital Curriculum service would not represent a significant change from existing provision in the market. The service would be introduced gradually into a growing market whose expansion it may stimulate further. In that period it may be adapted in response to further innovation in the sector. The long roll-out period suggests that potential suppliers would be able to monitor developments for commercial opportunities using any existing content and software they may have, and develop new products over time.

Would opportunities exist for the BBC to eliminate competition?

8.39 Within a dynamic market analysis framework, it is not possible to engage in anti-competitive conduct unless a firm's innovation gains significant market power. We have noted that it is highly uncertain as to whether the BBC will gain market power over time. For completeness, therefore, we examine whether any potential anti-competitive opportunities might exist for the BBC. This analysis is important in the light of the fact that the service would be free, cover a significant part of each curriculum and be universally available. It, therefore, might be argued to have an exclusionary impact on commercial suppliers.

8.40 Potential anti-competitive conduct by an individual firm can be divided into two broad categories, which we consider in turn, that is:

- exclusionary conduct; and
- exploitative conduct.

8.41 We conclude by considering the regulatory factors that would further constrain the BBC's ability to eliminate competition in this way.

Exclusionary Conduct

8.42 Exclusionary conduct is behaviour that keeps a potential competitor from entering the market, for example, by refusing access to an input necessary for the competitor to supply. The three main

[101] It is noteworthy that the strength of the market position gained by the BBC may be reduced since a 'successful' service is likely to provide seed capital to stimulate the overall development of the markets.

[102] As we discuss below, there are a number of factors that not only limit the BBC's ability to act anti-competitively but also significantly reduce the likelihood of it developing sufficient market power in the first place.

factors, which we discuss in turn, that are likely to prevent the BBC engaging in exclusionary conduct are:

- the scope of the service the BBC intends to include in its approval application;
- government funding stimuli; and
- the absence of proprietary technology.

8.43 Indeed, the first two factors are likely to prevent the BBC developing market power in order to be able to act anti-competitively in the first place.

Scope of the service

8.44 Firstly, the BBC's proposed Digital Curriculum service would take at least nine months to launch and would be built up gradually over a five year period. As such, other suppliers will have plenty of time to launch their own, competing services.

8.45 Secondly, the BBC has placed constraints on the scope of the service that it intends to include in its approval application. The BBC service will cover no more than 50% of the learning objects for any given course or Key Stage. Suppliers will, therefore, have opportunities to supply those learning objects and whole courses that are not included within the Digital Curriculum service. They will also have the opportunity to provide alternative ways of meeting the learning objects covered by the BBC and to supply whole courses where the BBC has restricted itself to only half courses. It is also noteworthy that just 25% of the BBC's projected expenditure is earmarked for the most commercially attractive core GCSE subjects — English, mathematics and science — with 40% of content spending committed to provision of minority courses and provision for minority groups such as those with special needs.

8.46 Thirdly, the BBC would announce its content provision plans to DCMS and DfES in advance of introducing the material online. Information could then be made public by either of these government departments. Pre-announcements of a supplier's plans can, in theory, have exclusionary implications, should other suppliers decide that they could not compete with the proposed service offering. In the case of the BBC's proposal, however, exclusionary effects are unlikely. This is because commercial opportunities will remain even if the BBC is supplying a particular element of a course. Moreover in this case, pre-announcement will reduce commercial risk, thereby stimulating commercial investment.

8.47 Fourthly, subject to certain terms and conditions, third parties could obtain up to 20% of their requirement for materials of a specific asset type from the BBC for use in their own products/services. Hence a potential new entrant could have access to some 'ready-made' content at the launch of the service[103].

8.48 Finally, there is evidence to suggest that the demand for content is greater than just for online provision. As such, there are other opportunities for suppliers to market their educational software resources.

Government funding stimuli

8.49 We conclude above that government funding provision should provide a significant stimulus to the commercial sector irrespective of the BBC's service. Moreover, government funding should ensure that commercial suppliers can compete with the free BBC service.

Absence of proprietary technology

8.50 The BBC has informed us that it is committed to:

- initially developing a limited "free to air" VLE for use only with the BBC's materials and services and for materials self-authored by teachers;
- offering to any commercial suppliers (provided they are Curriculum Online approved) all the BBC's Digital Curriculum materials for caching locally and for BBC-branded presentation to schools,

[103] The unbranded content would not be free, but licensed subject to a fair (market) price and a limit would be placed (10%) on the overall proportion that can be acquired from the BBC's total portfolio.

alongside other materials;

- working with the DfES-led working group to define the technological, functional, data and branding standards which should apply to any Curriculum Online approved iLMS; and
- reviewing its plans, following an independent review of the iLMS provision for Curriculum Online, which is scheduled to be conducted in the early years of the initiative.

8.51 We therefore believe that the BBC's proposed Digital Curriculum service would not require the installation of any proprietary technology or software in schools or homes that could act as a 'gateway' to the consumer. Although there are no plans for the BBC to develop a more advanced VLE that integrates with a school's management information system, should this change, then we would need to review our conclusion.

Exploitative Conduct

8.52 The BBC's proposed Digital Curriculum service would be provided free to the consumer. There is therefore little opportunity to exploit the end user, other than through the delivery of a lower quality product or service. This would be offset by pressure to maintain the BBC's reputation and brand.

8.53 The BBC might be in a position to exploit suppliers, particularly of content, for example by extracting low supply prices, or favourable contractual terms. There could also be anti-competitive effects should a third party be granted long-term exclusive rights to the exploitation of ancillary services related to the proposed Digital Curriculum service. The UK and EU Competition authorities are increasingly clamping down on contracts of an excessive duration and scope. Further problems could arise should these rights be granted to a subsidiary of the BBC. However, as discussed below, the BBC's behaviour is constrained by an extensive regulatory framework.

Regulatory factors

8.54 The BBC's Fair Trading Commitment constrains the general conduct of the BBC. The proposed Digital Curriculum service would be subject to this Commitment. The BBC's Head of Fair Trading is responsible for ensuring compliance with the Fair Trading Commitment, which is made operational by the Commercial Policy Guidelines. A sub-committee of Governors, the Fair Trading Compliance Committee, monitors BBC compliance and issues public reports quarterly on fair trading challenges received by the BBC.

8.55 The BBC will also continue to be subject to UK and EU competition law, and scrutiny from DCMS of any conditions granted as part of the approval process.

Conclusions

8.56 We believe the proposition to be a significant, distinctive development in the market on the basis of the breadth and depth of coverage of each curriculum, the universal access to the service, the zero cost at the point of use and the incentive it will provide for the coherent development of the educational online resource sector. If successful, the BBC's proposed Digital Curriculum service could also lower barriers to market development. More specifically, if successful, it is likely to:

- reduce the barriers to development by increasing the acceptability and understanding of teachers of online provision, and educational software resources more generally, thus helping to replace the vicious circle of low teacher acceptability, low demand, with a virtuous circle of increasing acceptability and understanding. In particular, this is because of the universal availability and the breadth and depth of coverage of the BBC's service;
- contribute to an expansion in the size of the relevant and related markets, as a result of significant seed capital;
- lower the overall costs of commercial suppliers and help them develop more comprehensive online offerings of their own, as a result of the licensing of the BBC's content;

- further develop the market for content production with benefits for both suppliers and other purchasers through the BBC's external commissioning of 50% of the content for its proposition;
- reduce uncertainty and thus investment risk for commercial suppliers through the BBC's announcement to DfES and DCMS of its future plans;
- improve ICT skills, help develop the next generation of knowledge workers and greatly improve PC literacy skills; and
- contribute to the increased uptake of new technologies, given that the BBC's proposed Digital Curriculum service could be accessible through devices such as interactive TV and mobile telephones in the future.

8.57 At present, the BBC has no market power in the relevant markets defined in Section VI. The BBC could gain a significant market position over time given the strength of its brand and the free and universal availability of the proposed Digital Curriculum service. However, the success of the service is not guaranteed given factors outside of its control such as the dependency of the uptake of the service on the adequacy of ICT infrastructure in schools.

8.58 Whether any significant position developed by the BBC would confer market power is highly uncertain since the service would be introduced into a dynamic market and would not be fully rolled-out for at least five years. However, we believe there are factors that are likely to prevent the BBC developing market power and more importantly, prevent it eliminating competition through engaging in anti-competitive — particularly exclusionary — conduct. These factors include the extensive regulatory framework governing the BBC, the positive market impact described above as well as:

- **The limited scope of the service the BBC intends to include in its approval application.** The BBC's proposed Digital Curriculum service would take at least 9 months to launch should approval be given and would be built up gradually over time. The BBC would offer a service, which covers no more than 50% of the learning objects for any given course or Key Stage. Around 40% of the total content spend would be allocated to minority areas and subjects. In addition to the learning objects and whole courses that are not included within the Digital Curriculum service, there is the opportunity for other suppliers to provide alternative ways of meeting the learning objects covered by the BBC. Subject to certain terms and conditions, third parties could obtain up to 20% of their requirement for materials of a specific asset type from the BBC for use in their own products/services. Hence a potential new entrant could have access to some 'ready-made' content at the launch of the service;
- **Government funding stimuli.** The increased funding through the NGfL and the provision of eLCs could generate an additional £60 million per annum for schools to purchase educational software resources, thereby facilitating market entry and competition to the BBC; and
- **Absence of proprietary technology.** We understand that the BBC's proposed Digital Curriculum service would not require the installation of any proprietary technology or software in schools or homes that could act as a 'gateway' to the consumer.

8.59 Hence the principal advantage of the BBC's proposed Digital Curriculum service — free at the point of use — would, in part, be mitigated.