

Your response

Question	Your response
<p>Question 1: Do you agree with our proposals to:</p> <ul style="list-style-type: none"> place a requirement on the BBC to publicise its planned changes to public services? provide further guidance on how the BBC should set out information about its planned changes? <p>If not, please explain which changes, if any, should be made to the guidance and where appropriate, provide relevant evidence supporting your view.</p>	<p>Confidential? —Y/ N</p> <p>1.1 We have previously raised issue with a lack of transparency from the BBC. This lack of transparency has, at times, made it difficult for us to engage with the BBC and assess the full impact of its plans may have on our members and the wider sector. The BBC is the largest individual commissioner of new content in the UK¹ and it's important for the sector to understand planned changes given the size and scale of the BBC.</p> <p>1.2 We are pleased that Ofcom will be requiring the BBC to publicise its planned changes to public services, and provide further guidance on how the BBC should set this information out. We note that the BBC have been taking more open to taking stakeholders concerns on board and making information on their future strategy and plans available online, for example the 'BBC Across the UK' plan. However, transparency around future plans is vital, particularly following changes to the BBC's operating licence and as the BBC moves to a 'digital first' model.</p> <p>1.3 Ofcom's consultation document states that Ofcom '<i>would expect the BBC to explain what the change consists of, to allow stakeholders to comment on any concerns they have regarding the potential impact of the BBC's plans on competition.</i>'² Ofcom give the example of the BBC's annual plan as a good way for the BBC to publicise its plans.</p>

¹ Pact Census 2021, September 2021

² How Ofcom regulates the BBC's impact on competition: Proposals for changes to guidance and requirements, Ofcom, November 2022, p27

	<p>Currently, the BBC does not have a formal consultation process for its annual plan and while we understand, that the formal consultation process can sometimes be lengthy; it's important that there is dedicated route for stakeholders to comment on plans.</p>
<p>Question 2: Do you agree with our proposals to put in place more guidance about how stakeholders and the BBC should engage during the assessment of materiality by the BBC?</p>	<p>Confidential? – Y/N</p> <p>2.1 Pact agrees with Ofcom's proposal to put in place more guidance relating to stakeholder engagement. Previously we have found engagement with the BBC difficult on certain issues. We are particularly pleased that the guidance will now include the addition '<i>where appropriate, the BBC should consider whether it should adjust its proposed change to reduce the impact on stakeholders.</i>'³ Ofcom should make clear what will happen in cases where the BBC is found to not have engaged effectively with stakeholders. Currently, it's not clear if Ofcom will step in and/or if the implementation of the proposal would be delayed if sufficient engage has not happened. Ofcom should also set out what would happen if there is evidence that the proposal would impact competition and the BBC does not consider making any changes to limit the impact on stakeholders.</p>
<p>Question 3: Do you agree with our proposals to include further guidance on what the BBC should include in its public interest test consultation?</p>	<p>Confidential? – Y/N</p> <p>3.1 Pact has also previously raised issues with the Public Interest Test that the BBC carries out. These often lack detail and do not provide opportunity for stakeholders to comment on plans in sufficient time. We are pleased that Ofcom's proposals clearly set out what will required of the BBC's Public</p>

³ Ibid, p29

	<p>Interest Test. However, Public Interest Tests often do not take into account the impact the BBC's proposals could have on the production sector and competition.</p>
<p>Question 4: Do you agree with our proposals to provide more detail in our guidance about the materiality assessment process?</p>	<p>Confidential? – Y/ N</p> <p>4.1 Pact agrees with the proposals to provide more detail in guidance about the materiality assessment process. In particular, we are pleased that Ofcom will <i>'expect the BBC to send the materiality assessment to Ofcom for review.'</i>⁴ It's important for Ofcom to give stakeholders confidence in the materiality assessment process. While we understand that it may not always be appropriate for Ofcom to publish their view on the BBC's materiality assessment, in cases where stakeholders have raised serious concerns, it would be beneficial and help give stakeholders a better understanding of Ofcom's views.</p>
<p>Question 5: Do you agree with our proposal for additional flexibility for Ofcom to determine whether it is necessary to consult on materiality following a PIT in which the BBC has determined the change is material?</p>	<p>Confidential? – Y/ N</p> <p>5.1 Pact understands that consultations can be resource intensive and can slow down implementing changes in some cases. However, given the size and scale of the BBC, it's important that proposals and their impact on competition are taken into consideration and stakeholders have the opportunity to comment.</p> <p>5.2 We note that Ofcom's proposed updated guidance states that if third parties are invited to comment there will be a limit of two weeks to respond.</p>

⁴ IBID, p31

	<p>In some cases, two weeks may not be enough for stakeholders to assess whether the BBC's proposal for change is material. Ofcom's updated guidance should offer some flexibility on this. Pact often consults with members when assessing the BBC's proposals, and it's vital that we have sufficient time to take producers views into consideration.</p>
<p>Question 6: Do you agree with our proposals to add further guidance on our expectations for the BBC's public value assessment?</p>	<p>Confidential? – Y/N</p> <p>6.1 Pact agrees with Ofcom's proposal to add further guidance on their expectations for the BBC's public value assessment. As Ofcom will be aware, Pact has often raised issue with the BBC's Public Interest Test process and have found that there is very little consideration given to the production sector. We are pleased that Ofcom have recognised this and that Ofcom will now expect the BBC to consider the 'public value arising from the production of the service.'⁵</p>
<p>Question 7: Do you agree with our proposal to make it clear that the transfer pricing rules apply when the public service is supplying content or IP for secondary exploitation?</p>	<p>Confidential? – Y/N</p> <p>7.1 Pact agrees with Ofcom's proposal around transfer pricing when the BBC's public service is supplying content or IP for secondary exploitation. Pact have long argued that there is no other entity in the UK production market that would have access to the output deals that the BBC enjoys. As we set out in our response to Ofcom's Review of BBC Studios, we consider that BBC Studios has been gifted output deals and that all IP from BBC Studio goes to its own in-house distributor, something which</p>

⁵ IBID, p33

	<p>is not common practice in the market. We are pleased that Ofcom have picked up on these concerns and will be monitoring as the BBC puts in place a formal process to help address concerns around secondary exploitation.</p> <p>7.2 We note that there is still a question on whether some of the revenue BBC Studios earns from previous series of Public Service IP programmes should remain with BBC Studios. While we do agree that revenue from secondary content sales typically declines over time in some cases,⁶ it's difficult for us to assess whether this does actually suggest that the revenue that BBC Studios is retaining is small and will decline over time given commercial sensitivities. Ofcom should ensure they monitor this and give assurances to stakeholders.</p>
<p>Question 8: Do you agree with our proposal to add a requirement that allows Ofcom to direct the BBC to undertake a review of its internal controls and accounting processes to ensure they are adequate and enable the BBC to comply with the transfer pricing requirements?</p>	<p>Confidential? – Y/ N</p> <p>8.1 Pact agrees with Ofcom's proposal to add a requirement that would allow Ofcom to direct the BBC to undertake a review of its internal controls and accounting processes. In our response to Ofcom's Review of BBC Studios, we raised concerns around transfer pricing and called for a fuller independent audit and review of transfer pricing arrangements that looks at the whole system. We are pleased that Ofcom will be reviewing the BBC's internal audit findings and the actions the BBC has taken to address concerns. It's important that Ofcom can provide stakeholders reassurance that the changes the BBC has made are satisfactory and are</p>

⁶ IBID, p41



sufficient to address stakeholders and Ofcom's concerns.