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Impact of proposed changes to the BBC's Public Service programme release policy

A report for Pact
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Summary

ITV and the BBC have announced the launch in the UK of their co-owned SVoD service, BritBox, which will carry classic ITV and BBC programming as well as new, exclusive commissions.

As part of the introduction of BritBox, the BBC has proposed changes to its Public Service programme release policy to allow the sale of secondary SVoD rights to BBC-commissioned programmes to take place 12 to 18 months after initial broadcast (currently in the holdback period). The BBC has set out criteria against which SVoD services wishing to purchase rights in this window must qualify, namely: that the purchased programming carries prominent BBC branding, and that the service supports the UK PSB ecology, provides the BBC with data insight into programme performance, and gives the BBC some oversight in areas including prominence and windowing.¹

In practice it is likely that BritBox would be the only service to qualify under these criteria; as the only buyer BritBox would be able to set prices, potentially preventing rights holders from achieving full market value for their programmes. It is therefore important to understand the potential value of this new window.

O&O commissioned a consumer survey of 7,852 UK respondents in order to understand levels of consumer appetite for BritBox, the importance of early availability of programmes after the initial catch-up period, and the potential churn from existing SVoD services. The BritBox proposition as it currently stands has the potential to attract consumers away from competing SVoD services. Our survey results indicate that 12 per cent of people are interested in taking a subscription to BritBox on top of their existing SVoD or pay-TV subscriptions, and an additional seven per cent might cancel other subscriptions to accommodate BritBox. In terms of churn of existing SVoD subscriptions, between 325k and 484k SVoD subscriptions, and between 215k and 320k pay-TV subscriptions could be cancelled by people wishing to accommodate a new BritBox subscription.

We also asked a range of UK independent producers to report the value of secondary rights sales for individual series or titles over time (UK-only and SVoD-only where possible); we were able to extrapolate from this data to estimate the uplift in value of the proposed window versus the current first SVoD window. From these two pieces of research we conclude that a new 12- to 18-month SVoD window would be highly valuable, would be important for attracting consumers to BritBox, and would impact the value of the current first SVoD window (for comparison this is the six-month period beginning 18 months after first broadcast, unless a reduced holdback period has been negotiated).

The new SVoD window would be highly valuable – but would also damage the value of the current first SVoD window

The value of SVoD rights diminishes over time. Based on the relative values that producers currently derive across SVoD windows over time, we estimate that the potential value of a 12- to 18-month window could be 20 per cent higher than the current first six-month window, with services willing to pay more for fresher content.

This is driven by consumer demand for content at the earliest possible opportunity, which itself would be a key driver in securing subscriptions to BritBox. Of those consumers expressing an interest in subscribing to the new service, 80 per cent cited the ability to watch BBC and ITV content that has been recently removed from the broadcasters' catch-up services as a factor that was likely or very likely to make them subscribe. Sixty-nine per cent said another reason for subscribing would be if they were able to access content six months to a year before it was available on other services such as Netflix or Amazon. This suggests that earlier availability of content is an attractive proposition which makes an SVoD service stand out from its competitors.

¹ Ofcom, *BritBox materiality assessment: Relationship between BritBox and the BBC's Public Service activities* (19 July 2019), p. 7.

At the same time however, the introduction of this earlier window would diminish the value of the current first window (18 months after initial broadcast). Therefore, if producers sold into the new window, its value would be important for producers looking to maximize the value of their rights.

It's likely only BritBox would meet the BBC's qualifying criteria for SVoD rights in the new window

When deciding on which services qualify to bid for rights in the new window the BBC has committed to using criteria that are fair, reasonable and non-discriminatory, and has stated that 'compliance may be a matter of degree'.² However, few services are likely to meet the criteria, as they would be unwilling to give the BBC such a degree of oversight, particularly with regards to branding, as well as giving up valuable audience data. In practice the only service, or one of the only services, consistently likely to qualify would be BritBox. ITV and the BBC have said that they 'will pay market rate fees for all content provided by ITV, BBC and other rights owners' on BritBox;³ nevertheless, as a situation is most likely to emerge in which there is a single buyer, that buyer will effectively be able to set the price for rights in the new 12- to 18-month window.

As the only buyer for this unique window BritBox can pay a very low fee, essentially setting the price somewhere just above the lost income to producers from a lower market price for the 18- to 30-month window

In a scenario in which the value of the window beginning 18 months after first broadcast is diminished, the new first window takes on especial importance – but with BritBox as a likely single buyer, it is unlikely that the full value of the new window will be achieved. On top of this, Ofcom recently approved the BBC's request to extend the period in which content is available on iPlayer to 12 months. If content has been available for free for a year, then for a further six months on an SVoD platform, before non-qualifying services even have a chance to get their hands on it, the value of later windows is likely to diminish further.

But the price BritBox offers for their unique window will not reflect the full value of that content to BritBox, but rather it will be set just above the lost income to subsequent windows – especially the 18- to 30-month window i.e. just enough to make it worthwhile to the producer to release it to BritBox rather than simply waiting for the 18- to 30-month window. The difference between the value to BritBox and the low incremental price paid by BritBox to compensate for lost income in subsequent windows would represent a direct subsidy from producers to BritBox, which in turn would distort the UK SVoD market.

FRND rights fees will need to be set at industry level – and Ofcom may need to intervene

The only way to correct for this undervaluation will be to ensure a fair, reasonable and non-discriminatory price is paid. The impracticality of trying to monitor this for each programme deal and the likelihood that there will be systematic under payment from BritBox without intervention implies an industry-wide solution is needed, perhaps along the lines of mandating the 12- to 18-month window price must always be 20 per cent above the 18- to 30-month window price when there has been no exploitation of the 12- to 18-month window (this 18- to 30-month price should be available and is competitively set).

² Ibid., p. 6.

³ ITV Press Centre, 'Full stream ahead for BritBox in UK as ITV and BBC sign agreement', 18 July 2019, <https://www.itv.com/presscentre/press-releases/full-stream-ahead-britbox-uk-itv-and-bbc-sign-agreement>

The alternative would be to allow more services to use the 12 to 18 month window by reducing the restrictions or simply ending the holdback altogether.

1 Introduction

As part of its proposals for a new SVoD service (BritBox), the BBC has proposed changes to its Public Service release policy to allow the sale of secondary SVoD rights of BBC-commissioned content within the 12- to 18-month period after first broadcast, normally a period of exclusivity (the holdback period, unless a reduced holdback has been negotiated). This document supports Pact's submission to Ofcom's materiality assessment of that proposed SVoD service. It sets out what the proposals are, what they may mean for the value of secondary SVoD rights, and the likely impact they could have on SVoD rights and the SVoD market as a whole.

1.1 Outline and methodology

The BBC and ITV have announced the launch of BritBox, an SVoD service which will carry 'the largest collection of British boxsets' and exclusively commissioned content.⁴ The BBC Board has undertaken a materiality assessment of BritBox and has concluded that, although it constitutes a new commercial activity, it is unlikely to 'distort the market or create an unfair competitive advantage as a result of its relationship with the Public Service' and therefore would not constitute a material change to the BBC's commercial activities.⁵ Ofcom is currently undertaking its own materiality assessment of BritBox and has provisionally concluded that, indeed, the service would not constitute a material change. However, it has identified several potential concerns, and has invited stakeholders to comment.

One of the concerns highlighted by Ofcom regards the proposed changes to the BBC's programme release policy; these changes would enable producers to sell SVoD rights to BBC-commissioned programming in the 12- to 18-month window after first broadcast, provided that the buyer meets certain criteria. Ofcom has provisionally concluded that these changes are unlikely to cause significant market distortion.⁶ However, O&O believes that the proposed changes to the programme release policy could cause significant harm to the value of secondary SVoD rights with a knock-on effect for independent producers. As BritBox is the only SVoD service likely to meet the BBC's criteria for companies who are able to purchase in this window (prominent BBC branding, commitment to support the UK creative industries and PSB ecology, and providing the BBC with data insight and some control of prominence and windowing), it is likely to be one of the only purchasers of rights in this six-month window. This may lead to a non-competitive environment where effectively BritBox sets the price at which rights are sold in this new window. At the same time, an earlier window would diminish the value of secondary SVoD sales in the 18-month window and beyond.

To demonstrate the potential harm this could have on producers, O&O has estimated the potential value of this 12- to 18-month window using two approaches. Firstly, we gathered data on secondary sales (SVoD-only and UK-focused sales where possible) from independent producers across a range of turnover bands, splitting out sales by year. We then extrapolated from this information to estimate the uplift in value of this new window versus sales post-18 months. Secondly, we conducted a survey of 7,852 UK respondents to understand consumers' appetite for BritBox, and whether it would be an addition to or a substitute for existing SVoD subscriptions.

1.2 About O&O

O&O is a leading independent advisor to the media, entertainment and sport sectors, with a focus on strategy, policy and commercial issues. We have an in-depth understanding of the competitive dynamics of the UK's TV, radio, news and online sectors, having been a leading advisor to the European independent production sector for over two

⁴ 'Full stream ahead for BritBox in UK as ITV and BBC sign agreement', <https://www.bbc.co.uk/mediacentre/latestnews/2019/britbox-agreement>

⁵ Ofcom, *Relationship between BritBox and the BBC's Public Service activities* (19 July 2019), p. 4.

⁶ *Ibid.*, p. 10.

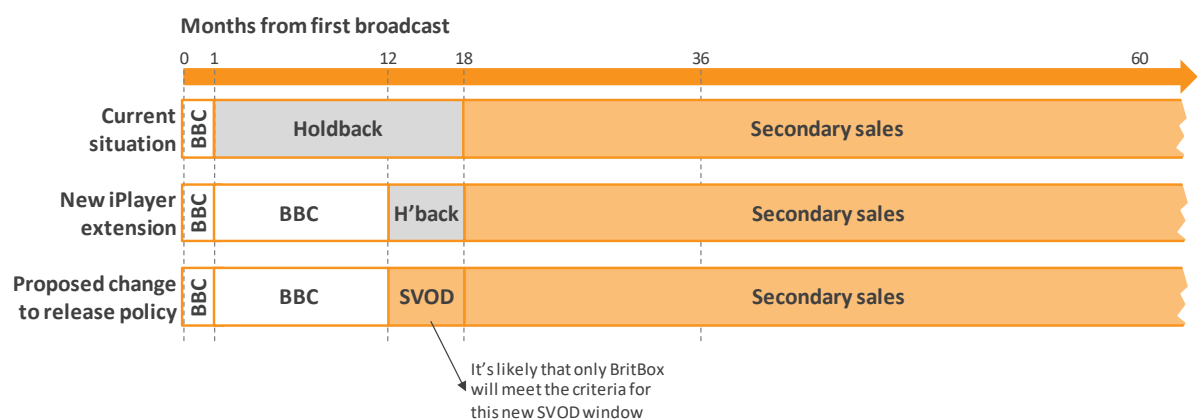
decades. We have worked for all of the super-indies and many other leading players, providing support for numerous transactions in the European production sector for both buy and sell side, as well as developing production strategies for major broadcast groups. We have supported Pact through the development of the UK Terms of Trade, conducted the annual Pact Census for almost ten years, and recently worked alongside Pact on the BBC's proposals to extend the exclusive iPlayer window.

Beyond our TV production work, we have advised all the major UK commercial media players and a large number of global media, entertainment, telecoms and tech groups on strategy, acquisitions and policy issues at a UK, European and global market level.

2 BBC's proposed changes

The BBC has recently proposed several changes to the ways in which handles rights, both of which could have a detrimental impact on the independent production sector. These changes are illustrated in **Figure 1** and are outlined in this Section. The first proposal – to extend the iPlayer window to 12 months after first broadcast – has already been subjected to an Ofcom BCA (BBC Competition Assessment), and while it is not the focus of the present report, it provides important context in which to consider the changes to the programme release policy.

Figure 1 BBC-commissioned content windowing: recent and proposed changes



Note: The holdback period for children's programming is 60 months

2.1 Extension of the iPlayer window

The BBC recently proposed to extend the period in which content is available on iPlayer from one month after initial broadcast, to 12 months; it argued that these changes were necessary in order to adapt to changes in audiovisual consumption habits, and to compete with global SVoD services. After asking the BBC to conduct a Public Interest Test into the proposed changes, Ofcom performed a BCA and invited input from stakeholders; O&O provided support for Pact's submission to the process.

Although Ofcom's review only focused on competition issues, O&O argued that the extension of the iPlayer window is likely to have a substantial effect on the value of secondary rights, as buyers are less likely to purchase rights to programming that has already been available for a year for free.⁷ With producers of all sizes reliant to different extents on deficit financing, the fact that they would be less likely to guarantee secondary sales could have a serious impact on their ability to generate funding. Additionally, the holdback period (the period in which the BBC retains exclusivity but the programme is not available on iPlayer unless it has been repeated on linear TV) is often used to negotiate rights fees – in exchange for reduced fees, producers can sometimes negotiate a reduction in the holdback period allowing them to exploit secondary rights earlier. Extension of the iPlayer window reduces the holdback period to six months, giving producers less room to negotiate.

Ofcom's final determination concluded that, while there could be some material impact on competition, any negative impacts would be outweighed by the public value generated,⁸ and subject to certain conditions it allowed the BBC to proceed with the proposed changes.

⁷ O&O, *The impact of the BBC iPlayer proposals on production financing* (April 2019).

⁸ Ofcom, *BBC iPlayer Competition Assessment: Final determination* (1 August 2019), p. 2.

2.2 Proposed changes to programme release policy and Ofcom's initial response

More recently the BBC and ITV announced the launch of BritBox, a new SVoD service with British boxsets and new commissioned content. The BBC Board has conducted a materiality assessment of the proposals and has concluded that, while constituting a new commercial activity, the impact of the service on the market would not be material. On a provisional basis, Ofcom has agreed with the BBC Board's conclusions.

One area in particular has the potential to impact both independent producers and the SVoD market as a whole: the BBC's proposed changes to its Public Service programme release policy, to allow secondary SVoD sales in the 12- to 18-month window after first broadcast. SVoD services wishing to purchase rights within this window must satisfy qualifying criteria. They must:

- '[O]perate under a corporate strategy designed specifically to invest in and support the UK creative industries and PSB ecology as a whole', with a 'core editorial strategy [...] aimed at providing UK-focused multi-genre content from UK providers'
- '[C]arry prominent and approved BBC branding at a service and content level'
- '[P]rovide the BBC with data-based insight' into content performance
- Allow the BBC 'a material degree of oversight in relation to the prominence, attribution, promotion, windowing and scheduling of BBC content on its service'⁹

As SVoD services other than BritBox are unlikely to meet these criteria, there is a danger that it will be the only buyer, or the only significant buyer, of secondary SVoD rights in this window and therefore able to set the price. Additionally, early release of SVoD rights to this small group of qualifying services would make rights less attractive to other services after 18 months. Ofcom has recognised that these issues may arise but concludes market distortion is unlikely to happen. Concerning BritBox's potential power to set market price Ofcom notes that 'the impact on rights prices may be limited as producers have the option of waiting until month 18' as, if the proposals to extend the iPlayer window are approved, rights would already have been withheld for a year. With regards to diminishing the value of post-18 month rights, Ofcom argues that, as UK PSB content only makes up a small proportion of the libraries of Netflix, Amazon and Now TV, and other PSB VoDs use content from their parent broadcaster, the proposed changes will not place them at 'an appreciable competitive disadvantage'.¹⁰

However, to persuade producers to not simply wait until the 18- to 30-month window, the value paid in the new window only needs to be enough to make risking diminished later sales worthwhile. As argued in the next Section, this only needs to be the (likely small) difference between the value producers would get if they waited until 18 months, and the diminished value of the 18- to 30-month window. Buyers in this new window therefore need only pay the difference in value, rather than the real market value, leading to distortion of the SVoD market.

⁹ Ofcom, *BritBox materiality assessment*, p. 7.

¹⁰ *Ibid.*, pp. 9-10.

3 Likely outcome of the proposed changes and the impact on the SVoD market

This Section sets out the likely outcomes of changing the current programming release policy, demonstrating that a single-buyer scenario is the most likely situation to arise, resulting in distortion of the SVoD market.

3.1 A single buyer emerges – likely to be BritBox

When deciding on which services qualify to bid for rights in the new window the BBC has committed to using criteria that are fair, reasonable and non-discriminatory, and has stated that ‘compliance may be a matter of degree’.¹¹ Nevertheless, few SVoD services are likely to meet the BBC’s qualifying criteria – prominent BBC branding, commitment to supporting the PSB ecology, some BBC control over prominence, and providing data insight – as companies would not be willing to sacrifice this level of control to a competitor. Effectively, the only service that will consistently meet these criteria is BritBox. If BritBox is the only buyer of rights in the 12- to 18-month window it will have price setting capabilities, and the full market price may not be reached.

At the same time, the new extension of the iPlayer window to 12 months means that the BBC has market power in that period too, as they have the exclusive ability to exploit SVoD rights. The result is that independent producers are squeezed from both sides; they are unable to negotiate a reduced holdback period in order to sell rights elsewhere, and the new window which is supposed to provide an opportunity for additional rights exploitation will be controlled by a single buyer.

3.2 BritBox is an attractive service – but having access to early content will be especially valuable

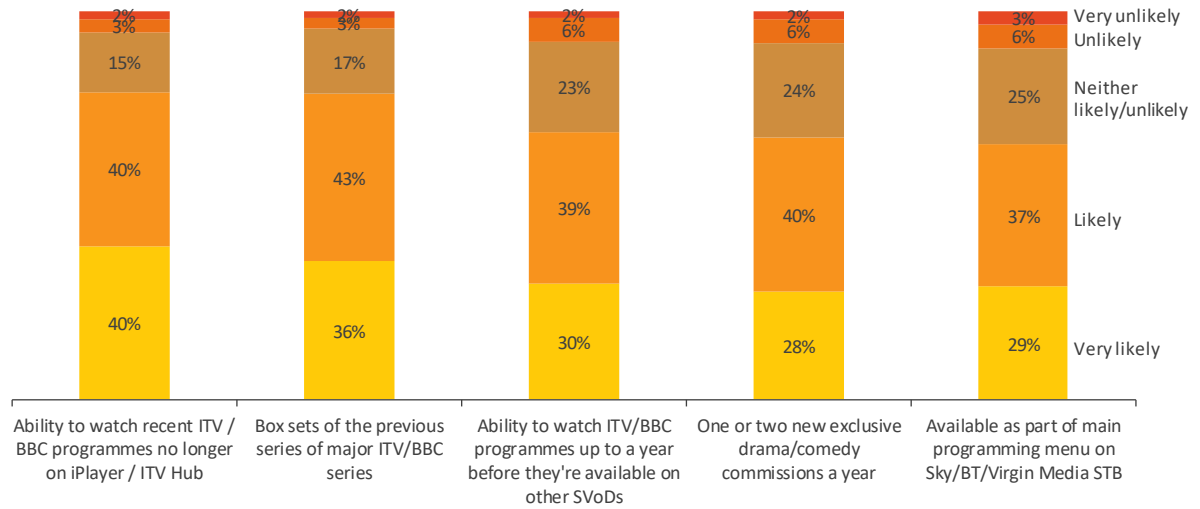
From our consumer research we found that 19 per cent of UK adults would consider subscribing to the proposed BritBox service; of this 12 per cent would subscribe and keep their current TV or SVoD subscription(s), while seven per cent would cancel some or all of their current subscriptions.¹²

When asked about the attributes which would make them most likely to subscribe, 80 per cent of respondents rated the ability to watch recent programmes no longer available on iPlayer or ITV Hub as very likely or likely to make them subscribe (**Figure 2**). This suggests that the window shortly after the period in which programmes are on the PSBs’ catch-up services is key to attracting subscriptions, and that the 12- to 18-month window would be highly valuable. Furthermore, 69 per cent cited the ability to access content before it becomes available on other SVoD services as a potentially attractive feature of BritBox – again showing that the earlier window is important to consumers, and therefore extremely valuable to an SVoD service looking to attract subscribers.

¹¹ Ofcom, *BritBox materiality assessment*, p. 6.

¹² Consumer research conducted on behalf of Oliver & Ohlbaum by FlyResearch, n=7,852.

Figure 2 Attributes of BritBox which make potential customers most likely to subscribe



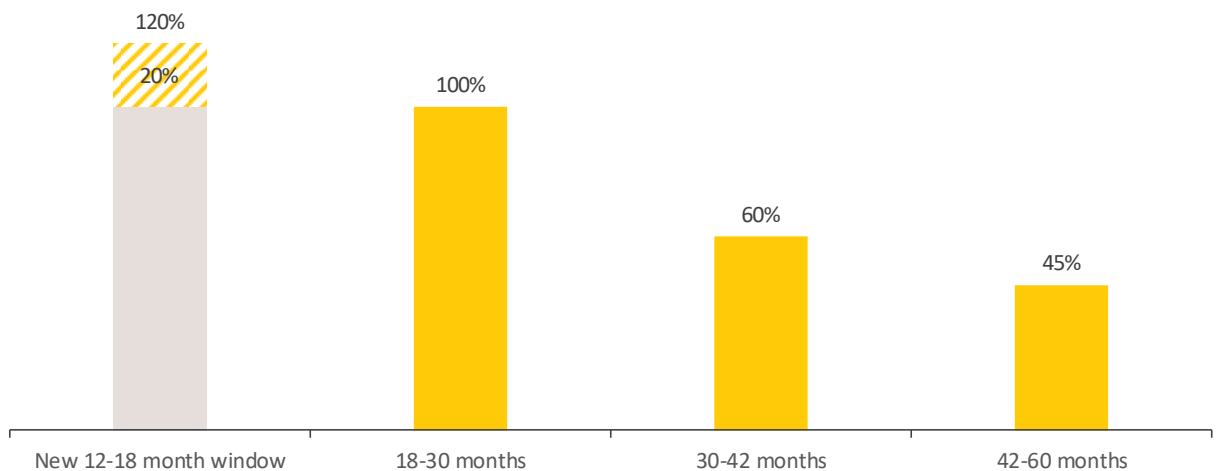
Note: Individuals who expressed interest in subscribing to BritBox
 Source: FlyResearch (n=1,518), Oliver & Ohlbaum analysis

In terms of churn of existing SVoD subscriptions, between 325k and 484k SVoD subscriptions, and between 215k and 320k pay-TV subscriptions could be cancelled by people wishing to accommodate a new BritBox subscription. Of the SVoD subscriptions, around 60 per cent are for Netflix or Amazon.

3.3 The new window will be as valuable – if not more so – than the current first SVoD window

At present, producers can sell secondary rights to BBC-commissioned programming before the 18- to 30-month window, if they negotiate a reduced holdback period with the BBC. Producers reported that the value of this window is the same or slightly greater than that of the 18- to 30-month window, and we can assume that the market value of the new window would be similar.

Figure 3 Indicative uplift in the value of the new window versus the current first SVoD window



Note: Percentages shown are values of a six-month licence per episode in each window, as a proportion of the current 18- to 30-month window. These are illustrative only; differences in value vary from title to title and across producers. Uplift of value of the new window is a range.

Source: Oliver & Ohlbaum analysis and research

At the same time, the value of the 18- to 30-month window would diminish slightly, as content becomes less attractive to SVoDs that don't qualify against the BBC's criteria the longer it has been available. Content could have been on iPlayer for 12 months, then on a "qualifying" SVoD for another six months before it is realistically available to the majority of the market.

However, the patterns we have seen across the value of 18- to 30-month rights for programming that has already been sold in an earlier window, suggest that the negative impact of early sale on the value of the "first" window is relatively small. This means that, as Ofcom has suggested, producers may simply wait until the 18- to 30-month window before selling rights for the first time.

3.4 Buyers in the new window need only pay a marginal incentive price, rather than full market price, to persuade producers to sell into the earlier window rather than wait for the later window

In order to make the early sale of rights worthwhile to a producer, the value offered for the early window only needs to be enough to compensate for the loss in value of the 18- to 30-month window. In other words, rather than paying the full market value, the buyer could simply offer producers the difference between the full value of the 18- to 30-month window they would have received had they held back their rights, and the diminished value of those licence fees once it has been relegated to a second window. For example, if the 18- to 30-month window was worth 20 per cent less because it was no longer the primary window and the 12 to 18 month window was worth 20 per cent more than the previous price for the 18 to 30 month window, when Britbox makes an offer for the 12- to 18-month window it need only offer the producer say 25 per cent of the previous 18 to 30 month value for the 12 to 18 month window. But the value of this window on the open market— if several bidders were able to exploit the 12 to 18 month window might be 20 per cent more than the current 18 to 30 month price.

This effectively means (indicatively) Britbox is getting a window for say £2,500 per series, which would be worth £12,000 per series on the open market, and where the second 18 to 30 month window might now be worth £8,000 per series. (£2,500 plus £8,000 is £10,500, £500 more than the previous £10,000 price for the 18 to 30 month window on its own – so it's in the producers interest to allow release for £2,500 even though the open market price would be £12,000).

3.5 Britbox access to the 12 to 18 month window at a price far below the market price represents a cross subsidy from producers to Britbox that distorts the SVoD market. It also represents a cross subsidy from the BBC licence fee payer to Britbox in so far as the original holdback was designed to preserve the value of the BBC licence fee services

Paying an incremental incentive price to secure the 12 to 18 month window rather than a market price is an unfair subsidy to Britbox which will distort the SVoD market in the UK in their favour versus other SVoD services—and the subsidy is at the expense of independent producers who could earn more from a competitive market for the 12 to 18 month window. While it's also a potential subsidy from ITV Studios and BBC Studios production/rights sales divisions compared to what they could make from a competitive market in exploiting the 12 to 18 month window, both benefit in return from the success of Britbox as shareholders.

It should also be pointed out that the holdbacks were initially introduced to protect the BBC's licence fee services from cannibalisation, presumably because this has a public benefit and a benefit to licence payers. The fact the BBC has decided to release this holdback just for Britbox represents a subsidy to Britbox from the licence fee payer.

- 3.6 To remedy the situation Ofcom either has to insist the BBC put far fewer restrictions on which other SVoD services can have the 12 to 18 month window or it has to intervene to ensure an FRND price is paid to producers – a price likely to be 20 per cent higher than the current 18 to 30 month window price, and certainly not lower than the current 18 to 30 month window price.**

4 Conclusion

The BBC's proposals to change its programming release policy by allowing secondary SVoD sales in the 12- to 18-month window following first broadcast, are likely to lead to a number of impacts which will ultimately result in distortion of the SVoD market.

Overall this window is potentially highly valuable – consumers rate access to content as soon as it has been removed from a broadcaster catch-up service, and the ability to access content before it's available on other SVoD services, as an important factor in persuading them to subscribe to BritBox. Currently, when producers are able to sell secondary rights before the 18- to 30-month first window, the rights are as valuable if not slightly more so than the first window itself.

At the same time, while an earlier window is likely to have a negative impact on the value of the 18- to 30-month window, that impact is unlikely to be significant in all cases, and therefore producers may decide to hold off selling their rights until they have the option of opening the sale to the whole market, not just to those services which meet the BBC's stringent criteria. In order to persuade producers to sell into the new window, Britbox need only offer the equivalent of the lost income from subsequent windows, rather than the full market value of the window, in order to make early sale worthwhile for the producer.

Considering that the stringent criteria to which prospective buyers must comply are unrealistic and the only likely bidder in the window is BritBox, the difference between price paid and market value would effectively constitute a subsidy of BritBox. The only way to correct for this undervaluation will be to ensure a fair, reasonable and non-discriminatory price is paid. The impracticality of trying to monitor this for each programme deal and the likelihood that there will be systematic under payment from BritBox without intervention implies an industry-wide solution is needed, perhaps along the lines of mandating the 12- to 18-month window price must always be 20 per cent above the 18- to 30-month window price when there has been no exploitation of the 12- to 18-month window (this 18- to 30-month price should be available and is competitively set).

The alternative would be to reduce the restrictions on the services than can exploit the 12 to 18 month window or just do away with the holdback altogether.

