

Submission to Ofcom Review into a
proposed BBC Three television channel

pact.

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Introduction

1. Pact is the UK trade association which represents and promotes the commercial interests of independent feature film, television, digital, children's and animation media companies.
2. The UK independent television sector is one of the biggest in the world. Despite the difficult economic climate, independent television sector revenues have grown to around £3.3 billion in 2019.¹
3. Pact works on behalf of its members to ensure the best legal, regulatory and economic environment for growth in the sector. Pact has around 500 member companies across the UK and the majority of these are SMEs (small and medium sized enterprises) with a turnover of less than £50m a year.
4. In 2019, the BBC spent £561 million on commissions from UK external producers.² BBC Commissions are important for independent producers as they account for 33% of all UK commissions, making the BBC the biggest UK buyer of content made by independent producers in the UK.³
5. Pact recognises the important role that the BBC plays in the UK television marketplace and how it nurtures and adds to the finely balanced TV production ecology in the UK.. Independent production companies and the content commissioned by the BBC helps it be a positive innovator and experimenter in the marketplace.
6. For further information, please contact Pact's Head of Policy, Emily Oyama, at emily@pact.co.uk or on 020 7380 8232

¹ Pact Census 2020

² IBID

³ IBID

Overview

Pact welcomes Ofcom's review into the proposed BBC Three Channel. We have long argued that a linear offering for younger audiences will be important to ensure it maintains engagement with this demographic along with any digital offer. Originally, we questioned the BBC's intentions when it moved to an online only offering in 2016. At the time we suspected that it was part of a wider cost cutting exercise rather than its proposed strategy to connect with younger audiences. Although how content is delivered is important to audiences Pact considers that the quality of content is what is important and is pleased that a reinstated BBC Three channel will restore the high-quality commissioning that is needed to retain and grow younger audiences.

Ahead of the launch of the channel Pact consider three key elements must be outlined:

1. Terms of Trade should apply to any commissioning of the new channel and should be applicable to any commissions that are currently underway. The Terms must also have equivalence between the PSB licenced BBC channels. Commissions should be offered a new rights package that allows producers to retain and exploit rights following an initial primary window. Without enabling external producers to control the intellectual property rights to the content which they produce, independent producers will not be able to raise the capital to invest in the research and development of ambitious ideas which they can put forward to the BBC to commission. Industry estimates suggest that today only 55 per cent of BBC commissions are fully funded, with the remaining 45 per cent depending on co-production or deficit finance. Equivalent Terms of Trade across all BBC channels are vital if the high quality of programming that audiences expect are to continue.
2. High origination must be outlined in the operating licence. The BBC should outline how it intends to update the operating licence with regards BBC Three origination targets to ensure these are held to account by Ofcom – currently BBC Three comes under BBC Online within the operating licence and lacks clarity. The splits in origination that the BBC has identified in the consultation document need to be formally recognized under the BBC's operating licence so that there is a guarantee that a per centage of hours meet the origination targets. Furthermore, the origination targets should be the same as when it originally launched as a linear channel – we understand that its current targets are lower than the original targets of 26% for first run originations..
3. Partnerships with other nations and regions channels should ensure fair commissioning deals and rights packages are agreed within the terms of trade. Commissioning via the nations and then broadcasting on BBC Three could lead to back door commissioning which means the BBC could use a lower tariff range to pay for programming. As part of the BBC's focus on partnering with the nations this must be avoided.

Question 1: Because the BBC's proposal involves the introduction of a new public service channel, we do not consider that further analysis is required to determine materiality. If you disagree, please explain why you consider the BBC's published proposals are not material.

1.1 Pact considers that the proposals for the BBC Three Channel are material and agree that further analysis is not required to determine materiality.

Question 2: Do you consider that the BBC's published proposals are clear in relation to their scale (both in terms of financial resource and in terms of reach and type of content) and the timescales for implementation? If not, please provide details of the areas where you feel more clarity is required.

2.1 Pact has considered the BBC's published proposals in relation to their scale and timescale for implementation. We agree with the timeline implemented which aims for January 2022 providing this allows for enough time to consider the full impact on competition and the wider market. In terms of financial resources and type of content however we continue to find some of its proposals vague and lacking in detail and ambition.

2.2 To ensure the full potential for public value is realised (including the industry value that the BBC Board has highlighted in the PIT) Pact considers that Terms of Trade should apply to any commissioning of the new channel and should be applicable to any commissions that are currently underway. The origination splits that the BBC has identified also need to be formally recognized under the BBC's operating licence so that there continues to be a guarantee that a percentage of hours meet the origination targets. Since we last assessed the plans, we have also concluded that the origination targets are also lacking in ambition given that they are lower than the original targets it maintained when BBC Three was previously a linear channel. We agree with Channel 4 that this needs to be higher if the BBC is to realise the delivery of industry value it has outlined in its PIT. Furthermore, we continue to consider that there should be clarity over the differences or origination targets for online only commissions and those for BBC Three linear commissions. It is unclear from the plans is what proportion of the budget will be for online only commissions and what proportion will be for linear commissions. The BBC state in their proposals that the proposal to reinstate the BBC Three linear channel will be in line with their projected budget for BBC Three. The BBC had decided to double the content budget by 2022/23.

2.3 Terms of Trade should apply to the linear commissions and we have long argued for a clearer framework for digital or online only commissions. Online-only commissions tend to have lower tariffs than content commissioned for linear broadcast. While the budgets for short-form content are usually lower than for long form content; Pact has not seen evidence of online-only commissions being less expensive to produce. This will make it more difficult for the producer to find the necessary finance for a production. If the producer cannot find the funding needed to bridge the gap between the commissioner's tariff and the full production budget, producers often end up forgoing any revenue, or cutting their research and development budget. Our members' experiences with BBC Three commissions in the last four years have been characterized by low tariffs and the

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BBC demanding additional rights and extensive and usage. If producers do not keep their rights or are not able to fully monetise them after a period of exclusivity on iPlayer, it is difficult to see how they will be able to sustain a viable business. Commissioning not conducted under the Terms of Trade (even so-called 'amended' Terms of Trade as outlined in the PIT) places producers at a disadvantage when negotiating with the BBC, and usually results in producers being unable to retain all of their rights especially if equivalence is not achieved with other fully licenced BBC channels.

2.4 We also understand that the BBC are wishing to have unlimited transmissions for its linear content on BBC 3 without wanting to pay for the necessary rights. This is unsustainable for our members and the wider production sector. Especially when the majority of BBC3 commissions are with smaller upcoming production companies who may not have the expertise to negotiate or have the financial backing to put up with an agreement that gives away rights.

Question 3: Did the BBC's consultation process provide a suitable opportunity for you to set out your views fully? If not, please provide details.

3.1 Yes.

Question 4: Please explain whether you consider Ofcom should undertake a BCA or a Shorter Assessment of the BBC's proposal.

4.1 Pact considers that a full BCA would allow for a more considered assessment of how best to achieve full value for its proposals.

Question 5: Do you agree with the BBC's assessment in its public interest test about the potential public value and/or market impact of the proposal? Please provide any additional information you may have to explain your view.

5.1 Pact agrees with the BBC's acknowledgement that there would be public value in reinstating the channel to capture those demographics that continue to be light users of linear broadcast viewing. 85% of UK audiences continue to watch broadcast content once a week through freeview.⁴ 76% of 16-34 year olds also access broadcast TV weekly, this means that a linear channel with the right original and compelling content will benefit this younger demographic

5.2 In the BBC's assessment, it also outlines the industry value of the proposals, namely, the opportunities the production sector would have in exploiting secondary markets with the commissions of content. Pact cannot fully agree with this statement as the BBC has not indicated that there would be a terms of trade with full equivalence to those terms currently being achieved on other BBC channels.

5.3 Only until this is confirmed can Pact consider the BBC Three proposal as being a good opportunity for producers. As the BBC will understand enabling companies to exploit

⁴ Ofcom, Small Screen: Big Debate Consultation—The Future of Public Service Media (8 December 2020)

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their secondary rights to increase secondary revenue streams is vital for a business to recoup on investments and build up reserves for R&D purposes.

- 5.4 Onward rights exploitations for indies will mean more incentives to take risks and develop further high-quality content for future commissions for the channel which can in turn benefit audiences with new and original content that reflects their lives. Culturally this could mean more diverse voices being given the opportunity to grow their business and develop ideas to bring to the market and the BBC.
- 5.5 On the benefit the proposals will bring for those in the nations and regions, Pact has long argued that the benefits of this will only be realised if the commissioning tariff is applied fairly. If commissioning is going to be via a partnership with nations and regions channels there must not be back door commissioning which could mean the BBC could use a lower tariff range to pay for programming.
- 5.6 Pact understands that BBC internal co-commissions are becoming more common. They are confusing and lack transparency. A project tends to start out as a Nations commission which is then co-commissioned by a BBC network channel. The tariff does increase but the producer has no transparency on the real tariff versus what might had been achieved if the tariff had included a Nations commissions plus an uplift which is normally how producers negotiate tariffs when Nation commissions are then subsequently shown on a network channel. There is a concern that BBC3 will co-commission with Nations - and get cheap product to show repeatedly on Network.

Question 6: Does this proposal highlight any significant market impact concerns which might affect your products and services? Please provide any additional information you may have to explain how you consider the launch of BBC Three television channel could affect you if it goes ahead

- 6.1 If equivalence is maintained on Terms of Trade, origination targets are increased and that any opportunities for those commissions Pact considers that these proposals would have a positive impact on the production sector.