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Director of Broadcasting Competition  
Ofcom  
Riverside House  
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07 December 2020

### **BBC Studios Review: Call for Evidence**

Dear [&lt;],

I am writing in response to your recent call for evidence on the interaction between BBC Studios and the BBC Public Service.

Overall we consider that the main areas you have highlighted as your focus – operational separation, supply and pricing of goods and services and rates of return – clearly map to the areas covered by your Trading and Separation rules, which you have set under Clause 28 (1) of our Agreement with DCMS. These are areas we have discussed extensively with you since you took over responsibility for BBC regulation in 2017. As we have previously set out, we have in place a robust compliance framework to ensure there is appropriate operational and financial separation between the BBC and its commercial arm. In many areas our procedures pre-date Ofcom’s regulation of the BBC and/or are driven by other requirements (e.g. the BBC Board’s clear remit to ensure the BBC’s commercial activities generate appropriate financial returns).

We will continue to engage with you and provide the information you require to complete this work. We note that this process is already underway. We welcome your intention to minimise the impact on the BBC and BBC Studios by relying wherever possible on information you already hold and other relevant work undertaken in this area, such as our Commercial Review in 2018. Given the ongoing impact of Covid-19 across the BBC we consider it is especially important that Ofcom takes a proportionate approach to this work at this time.

In our response to your recent consultation on proposed changes to the Trading and Separation rules relating to the lines of business in BBC Studios, we raise several points in response to your theory of harm that BBC Studios access to a back catalogue of “public service content” might give rise to a risk of market distortion or necessitate additional reporting requirements. We urge Ofcom – when conducting this review – to

ensure that it considers the weight of evidence carefully before coming to a view on whether any of our activities might give rise to a risk of market distortion, including evidence that other stakeholders may provide through this call for evidence. It is important that Ofcom fully justifies how any potential concern about the relationship between BBC Studios and the BBC Public Service might result in market distortion, and for this analysis to be firmly rooted in the dynamics of the markets in which BBC Studios operates.

Finally, we have several brief comments on the scope proposed in your call for evidence:

- Ofcom must give full consideration to the potential challenges of providing guidance on what a ‘commercial rate of return’ might be for any of the BBC’s commercial subsidiaries or lines of business. The BBC already undertakes this analysis each year – as required by your Trading and Separation rules – based on all relevant available information. We do not consider that Ofcom has yet demonstrated what value it or other stakeholders could gain from Ofcom repeating the exercise, especially given that rate of return information does not directly reveal any information about inappropriate use of the licence fee. We are also unclear on the legal status that any such guidance would have. Ofcom does not have, for example, the power to set a price control for BBC Studios.
- The BBC’s participation in BritBox UK is clearly not relevant to a review focussing on the relationship between the BBC Public Service and BBC Studios. The BBC’s stake in BritBox UK is held by BBC Commercial Holdings Limited, not BBC Studios. It is therefore clearly out of scope for a review focussing on the interaction between BBC Studios and the BBC Public Service.
- We are concerned that Ofcom are again inviting views on the BBC’s commissioning process. Ofcom undertook a review of BBC Commissioning in 2018 and concluded that no additional regulation was required. This followed months of engagement between the BBC and Ofcom, including us providing extensive access to BBC commissioners and information on our processes. In its recent annual report on the BBC, Ofcom stated that it had “not received any complaints from stakeholders about those processes failing to meet the requirement to be FRNDT and we have not opened any investigations into non-compliance” and “no significant issues about the FRNDT basis of the BBC commissioning process have been raised with us”. The BBC has in place a robust framework to ensure that commissioning is Fair, Reasonable, Non-Discriminatory and Transparent, including a complaints framework to resolve any issues. We are proud to work with more independent producers and more small indies than any other broadcaster and are making good progress towards achieving our obligations under Schedule 3 of the Agreement. Against this background, inviting comment creates the misleading impression that the BBC’s performance in this

area is open to question and risks inviting complaints which have to date not been raised with the BBC directly.

We look forward to continuing to work with you on this review.

Yours sincerely,

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