

Ofcom review of proposed BBC Scotland
television channel

pact.

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Introduction

- 1) Pact is the trade association that represents the commercial interests of the independent production sector across the UK. Pact has 500 members including around 40 companies, largely small and medium sized businesses, based in Scotland across TV, film, digital, animation and children's production.
- 2) The UK independent television sector is the second largest in the world, with revenues growing over the last ten years to around £2.5 billion in 2016 with international revenues largely driving growth.¹
- 3) UK TV exports are also a success story with international revenues from the sale of UK TV programmes and associated activities at £1.3 billion in 2015/16, up an impressive 10% from the previous year.
- 4) In 2015, the Scottish original production market was worth approximately £190 million, and has grown by 9% per annum since 2009 (rising from a low base following the introduction of network quotas for the UK Nations by the BBC and, later, Channel 4).² Scotland now has an increasing number of producers able to compete nationally and internationally across a number of genres. Pact modelled that the production market in Scotland could rise to £250m if a number of recommendations in the Pact report '*Building a sustainable independent sector in Scotland*' were implemented.
- 5) Pact is pleased that the BBC has committed to both more investment in Scotland and to ensure that proportionately more of the licence fee raised in Scotland is spent on dedicated services in Scotland (currently 72% according to the latest BBC Annual Report³).
- 6) The BBC has a Public Purpose to support the creative economy across the UK and overall the new channel should be a positive catalyst for the creative industries in Scotland including independent production. Investment in the local production sector will bring a diverse range of quality content to audiences in Scotland, the UK and internationally.
- 7) Pact's key areas of concern in the context of content production market competition are:
 - Current levels of investment and channel cost per hour
 - Implementation of full contestability in programming and the 25% indie quota in the line with the current BBC Charter
 - Continuation of the Terms of Trade framework for producers
- 8) For further information, please contact Pact's Director of Nations and Regions, Rosina Robson, at rosina@pact.co.uk or on 020 7380 8248.

¹ Pact Census Independent Production Sector Financial Census and Survey 2016, by Oliver & Ohlbaum Associates Limited

² Building a Sustainable Independent Production Sector in Scotland, Pact (Nov 2015)

³ BBC Annual Report and Accounts 2016/17

<http://www.bbc.co.uk/aboutthebbc/insidethebbc/howwework/reports/ara>

Overall approach

- Pact is pleased that the BBC has committed to more investment in Scotland through the new BBC Scotland channel. We welcome increased funding for production which we believe overall will benefit Scotland's production sector and the creative economy as a whole.
- Our key concerns relate to competition within, and the potential impact on, the content production sector, including:
 - i) *Current levels of investment and channel cost per hour:* There is a risk that smaller producers in particular will end up deficit financing content for the BBC to achieve appropriate levels of content quality. At the same point, economies of scale enjoyed by producers of scale, such as BBC Studios/Pacific Quay Productions, might enable them to aggressively price in contract negotiations with BBC Scotland, thereby capturing a greater scale of the new Scottish market. This could act to mitigate and claimed public benefit for the new services by reducing the diversity of supply from across Scotland.
 - ii) *Contestability and indie quota:* The new channel should be subject to 100% contestability as set out in the BBC Charter. This should apply to both TV and digital content (e.g. short form, online first content) too; the 25% indie quota should also apply. We also welcome an early resolution on the definition of 'non-news related current affairs' and clarity around the programming strands that will be open to full contestability in this area.
 - iii) *Terms of Trade framework:* The new channel should be subject to the existing Terms of Trade framework. This is a key principle for Pact and independent producers. There should also be a fair deal for online producers when the BBC commissions for digital content, which is not currently covered by Terms of Trade.
- Pact has serious concerns around the potential designation of content produced for the new channel – which is a local service for audiences in Scotland - as network content simply because the new BBC Scotland service is not a variation to an existing service. This will have implications for the current operating licence. We agree with the BBC that this is entirely counter intuitive and counterproductive in supporting the creative economy in Scotland. Ofcom should consult with Pact before any final decisions on this issue are reached.

Review questions

1. 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.

1.1 Pact believes that the BBC proposals are relatively clear but require further clarifications in some areas. There are a number of areas which are important from a competition point of view where Pact would ask for further information. These are in the following three areas:

Cost per hour and investment

- 1.2 A key concern for producers, and one that we raised in our response to the BBC, is how BBC Scotland will achieve high quality output on a £32m budget. We do not doubt the ability of producers in Scotland to rise to the challenge of providing excellent content for the channel. However, the funding would leave less investment per hour⁴ to fund content. Especially compared to well-funded content on BBC1, BBC2 and BBC 4 as well as the commercial public service channels. We recognise that the BBC itself has described the investment as a starting point and Pact would encourage the BBC to build on this in the future in the best interests of Scottish audiences.
- 1.3 In particular, there is some concern within the production community of an expectation to create editorial of a high standard on a narrow budget. Low margins can be anticipated and resale value of BBC Scotland content is notoriously low; this impacts on sustainability for suppliers and their contractors. Output produced on or about this cost per hour in prime time risks not meeting audience expectations or delivering the other public benefits the BBC anticipates.
- 1.4 Working at this price point may also impact on the sustainability of production companies that win commissions from the new service particularly if they have to deficit finance content in order to deliver quality content and protect the reputation of their companies. Squeezed company budgets could then have a knock on impact on working conditions and the training and development opportunities they provide to staff. Under the BBC's Public Value Assessment the BBC set out the market impact of this new Service. The BBC indicates that the new BBC Scotland will support the creative economy across the UK (the BBC's fourth Public Purpose). Pact would argue that such support should be sustainable and commercial.
- 1.5 Suppliers of scale, including BBC Studios/Pacific Quay Productions in Scotland, could more likely be in a position to deliver economies of scale or even a more competitive price for content to secure tenders. This may impact on a desired shift towards a genuinely sustainable production base across Scotland, as outlined in our previous report, a cluster of larger companies of scale and a wider base of smaller companies providing a supply of new companies and talent.
- 1.6 Pact notes that BBC has shifted partly in response to concerns raised around the budget by changing the original content/acquisitions vs repeats ratio from 60/40 to 50/50. This will reduce the amount of original content being commissioned and may increase the cost per hour in the budget but the funding level is still lower than that achieved by the BBC and others for comparable services (such as S4C). Given the BBC justifies the market impact of the new service via its utility in delivering a range of Public Purposes, it is not clear to Pact how this will be fully achieved on current levels of funding.
- 1.7 In addition to concerns around the current budget we would reiterate our reservations expressed to the BBC around the decision to opt for standard definition (SD) and not HD, which we fear does not reflect the quality and ambition the BBC has set out for the new

⁴ Estimated cost per hour; £27,845 based on 4 hours of non-news programming per night at 60% originations = 876 hours of origination per year. 60% target includes acquisitions so estimating 50 hours of acquisitions per year leaving 826 hours of commissioned originations per year.

channel or the expectations of audiences in the era of Netflix, Amazon and 4K. We appreciate the need for BBC Scotland to control the budget but believe that this decision should be kept under review if the BBC is committed to representing the most creative, high quality and distinctive output from Scotland to the audience in Scotland.

Contestability and indie quota

- 1.8 The new channel should be subject to the same 100% contestability arrangements as set out in the BBC Charter. This should apply to both TV and digital content (i.e. short form, online first content) too.
- 1.9 Given that the channel will have a strong focus on news and news related current affairs programming we would welcome an early resolution around the issue of the 'non-news related current affairs' definition. This is important because non-news related current affairs programming is open to full contestability whereas news-related programming is not. It is important for the BBC to publish a clear definition here and provide examples of specific programmes that apply under each definition. As with the current BBC Charter, the 25% indie quota should also apply.

Terms of Trade framework:

- 1.10 The new channel should be subject to the existing Terms of Trade framework. This is a key principle for Pact and independent producers and one that BBC Scotland accepts.
- 1.11 Pact calls for a fair deal for online production when the BBC commissions digital content on the new channel; online content is not currently covered by the Terms of Trade framework.

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

2.1 Yes, Pact was content with the BBC consultation process. We had the opportunity to meet with representatives from the BBC in person and submit views in writing. The deadline for responses was not a long period of time but enough time to collate input from members. We appreciate that the BBC is aiming to launch the channel in autumn 2018.

3. 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.

3.1 Pact agrees with the Ofcom analysis here.

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

4.1 Pact notes that the BBC has concluded that the BBC Scotland proposals are 'not likely' to have an adverse impact on fair and effective competition including in the content production sector. Pact's view is that the likelihood of an adverse impact will be dependent

on how the BBC commissioning process for the new service operates, specifically with regard to the concerns raised in the submission.

4.2 Pact would be content with Ofcom carrying out a shorter competition assessment of the BBC's proposal, for the reasons that we have outlined. We appreciate that carrying out a longer BCA could delay the launch of the channel.

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 is particularly interested in how the new channel will help the BBC achieve its public purpose of *'to show the most creative, highest quality and distinctive output and services'* given the concerns we have already raised around tight budgets for the channel and the possible impact on quality of content.

5.2 In terms of the public purpose - *'To reflect, represent and serve the diverse communities of all of the United Kingdom's nations and regions and, in doing so, support the creative economy across the United Kingdom.'* We agree that the channel will help provide more content to reflect the lives of different communities in Scotland. However, we would reiterate comments made in our submission to the BBC that content should be commissioned in a way that appeals to a UK and international audience too and allows companies to build sustainable businesses – representation is important but it should not limit the creative or commercial ambitions of the new BBC Scotland service or its suppliers. The concerns raised about the overall budget for the new service are genuine. There is a risk that this could undermine the delivery in part of the public values set out by the BBC.

5.3 In terms of supporting the creative economy in Scotland, we reiterate our concerns expressed around channel budgets. Despite these concerns, Pact encourages the BBC to take risks with new and emerging companies and talent from across Scotland, not just within Glasgow, including with short form and digital commissions. This sits at the core of the PSB broadcasting purpose with BBC playing a big role in nurturing a diverse range of creative talent both on and off screen.

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 a new BBC channel for Scotland could affect you if it goes ahead.

6.1 Pact would reiterate the comments made in response to question 1 with regard to potential market impact on the content production sector, particularly the potential for producers of scale, such as BBC Studios, to be the primary beneficiaries of the new service.

6.2 Overall, despite our concerns as expressed, the new channel will have a positive impact on Scotland's creative economy, creating a more competitive local content market and increasing the capacity of producers in Scotland. If successful, the existence of the new

channel should encourage ITV/STV, Channel 4 and other broadcasters to commission more from Scotland to preserve their share of Scottish audiences.

- 6.3 On balance, Pact considers that the BBC has a positive impact on the wider market. There are however, some areas where it is not clear how its investments have benefited the wider creative ecology of the whole of the UK, in part because of the lack of transparency around this. This is of particular concern with regards to the benefits beyond the BBC of its investments in media hubs outside of London
- 6.4 Volume supply arrangements where producers rights are assigned to the channel creates issues from both a producer and broadcaster point of view because the broadcaster is unable to benefit from higher value content due to the lack of additional investment sourced from pre-sales as the producer has no rights to exchange.
- 6.5 Producers are also concerned about the risk of a volume deal with BBC Studios in Scotland and the impact that this would have on competition in Scotland. Transparency as far as possible is important for producers and we acknowledge that recently the BBC in Scotland has worked to improve this. Early information on commissioning rounds or opportunities should be made available if the channel is to be up and running by autumn 2018.
- 6.6 In order to encourage competition, lessons could be learned from the BBC UK wider tender process by not issuing tenders all at the same time to give smaller companies in particular a chance to pitch for a range of genres and opportunities available. Tenders should aim to deliver creative content that attracts audiences and promotes the BBC's public purposes as well as delivering value for money.
- 6.7 Pact recognises that BBC Studios will also be pitching for opportunities within the new channel. We are continuing to work with BBC Scotland on improving the level playing field between Indies and BBC Studios. For example giving Indies more open access to Pacific Quay where BBC Studios and BBC commissioners are based. We would also seek parity with regard to the provision of audience research and other factors that influence commissioning decisions and set strategy for commissioning. We welcome further information around how pass access will be organised to ensure independent producers have the same level of access to Pacific Quay as BBC Studios staff.

7. Implications for Ofcom's operating licence

- 7.1 Pact is deeply concerned that programmes commissioned for the proposed new BBC Scotland channel could be classed as network programmes. As the BBC highlights in its submission this is counterintuitive and would be counterproductive – reducing the BBC's investment in the UK's nations and regions by setting local content against a network quota: *'definitions of regional and network programming in the BBC Agreement taken together confine regional programming to only those programmes shown on a variation to an existing service. Under these definitions we would expect that programmes on the proposed BBC Scotland channel would, somewhat counter-intuitively, be classed as network programmes.*

7.2 Pact's understanding was that the new channel would be allocated as a local service in addition to the existing opt out budget and current 9% BBC network spend in Scotland as outlined in the recently agreed BBC service licence. Pact requests that Ofcom clarify the position of content commissioned for the new BBC Scotland service as a priority and expects that such content will, correctly and logically, be considered local, non-network content.

7.3 Pact would welcome being included in this important consultation process and we welcome further information about timings for decision making. Ofcom should classify programmes on the channel as non-network for the purposes of monitoring the BBC's percentage of network production produced outside of London, in line with its current treatment of BBC Alba. Doing otherwise, could have important repercussions for both network investment in Scotland but potentially the wider out of London quotas too.