

Submission to Ofcom's provisional
determination on BBC Three television
channel competition assessment

pact.

October 2021

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 just under £3 billion in 2020.¹
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 800 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 2020, the BBC spent £508 million on commissions from UK external producers.² BBC Commissions are important for independent producers as they account for 36% 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 2021

² IBID

³ IBID

Overview

1.1 Pact thanks Ofcom for giving the opportunity to comment on the competition assessment of the relaunch of BBC Three as a television channel in January 2022. We have specific concerns that we wish to bring to the attention of Ofcom specifically under question 4 and have kept our response short to raise issues regarding the conditions that the BBC must meet to adhere to the operating licence.

Commissioning content on BBC Three

- 1.2 Pact agrees with Ofcom on the need to increase the origination target and welcomes this move. No matter how the BBC chooses to meet the 75% target that Ofcom has set out, if the BCA is to be approved, Pact would like to ensure that the Terms of Trade would apply to both linear and digital commissions on BBC Three and that any nations and regions Commissions are applied a network rate.
- 1.3 Previously Pact has also been concerned at the lack of transparency from the BBC on how they intend to plan for BBC Three commissions when it was a purely digital service. At that point BBC Three's spend and budget were amalgamated with BBC online services and it made it difficult to hold the BBC to account on how they were spending for the digital channel.
- 1.4 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.

First-run origination

- 1.5 High origination must be outlined in the operating licence. Pact welcomes how Ofcom 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. Ofcom's requirement that the originations target should be lifted to 75% is also welcome. However Pact is concerned that a minimum quota for First-run originations will not be required and that it will be up to the BBC to decide how best to meet origination. Furthermore, we consider the first-run 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.
- 1.6 Instead of a first run- origination target Pact notes that Ofcom is proposing an Operating Licence condition which would require the BBC to provide a range of

newly commissioned first-run UK content across a mix of different genres and that Ofcom would expect the BBC to set out detail in its next Annual Plan around the volume of new UK content that it is commissioning for the channel, and report on delivery of this. If the BBC is able to hit first-run origination targets across BBC services will this mean less opportunity for new commissions and a lower volume of first-run originations than is currently required on channels? We are also concerned that this will mean the BBC is able to programme and commission lower budget content than they currently are able to as they would be able to fill off peak schedules with first run – origination content. At the very least the BBC should confirm that all first run- origination commissions no matter how it is broadcast/streamed will be subject to the terms of Trade. Commissioning not conducted under the Terms of Trade places producers at a disadvantage when negotiating with the BBC, and usually results in producers being unable to retain all of their rights. This makes 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. Previously our members have experienced BBC Three commissions which have been characterized by low tariffs and the 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's difficult to see how they will be able to sustain a viable business.