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WELSH INDEPENDENT PRODUCERS

Response to BBC Trust Consultation on the assessment of BBC Studios

November 2016

Comments on BBC Trust Consultation on BBC Studios submission

1. Context

- 1.1. TAC represents the independent TV production sector in Wales, which is comprised of around 60 companies making content for all the UK Public Service networks, plus BBC Wales and S4C, as well as being involved in international co-productions.
- 1.2. TAC has previously registered concern at the potential impact on the market of a large publicly-funded competition suddenly appearing on the market.
- 1.3. Since then the decision by the UK Government to open up 100% of non-news and news-related current affairs programming, to competition from external suppliers, has at least ensured greater access for the indie TV sector to pitch ideas for a wider range of BBC programmes.
- 1.4. During the Charter Review process TAC was not advocating the BBC moving to a full publisher-broadcaster model. We feel that the existence of Studios needs to be handled carefully and correctly. This will require both the relevant boards and of course Ofcom to act responsibly according to robust and quantifiable measures, if Studios isn't to act as a counter to the continued development of one of Britain's most successful economic sectors.
- 1.5. All comments in this paper are in response to statements made in the BBC document: 'BBC Studios: 4CC Main Case', August 2016.

2. Maintaining the distinctiveness of BBC content

- 2.1. The BBC document¹ reiterates the requirements for BBC Studios to, among other things:
 - 'fit with the BBC's Public Purposes – there must be clear strategic alignment between the public and commercial activities of the BBC necessary to ensure that the commercial activities support the fulfilment of the public purposes'
 - 'not jeopardise the good reputation of the BBC or the value of the BBC Brand'
- 2.2. These are important points, as they highlight the fact that whilst the aim of Studios is to compete to make programmes for other broadcasters, this can only be done where such content fits with the BBC's overall brand.
- 2.3. Relating the above to BBC Studios' plans for growth in the wider market, the document arguably contains some conflicting approaches:

¹ BBC submission to the BBC Trust 4CC process for BBC Studios. August 2016 p6

‘Both in the early years and the longer term, the BBC is expected to be BBC Studios’ most important potential customer; therefore, BBC Studios will continue to focus on the distinctive requirements of the BBC Group’²

‘Over time, it is expected that BBC Studios will grow its presence in the wider market, and begin to produce for third-party broadcasters as well as for the BBC’³

- 2.4. Clearly the BBC as a distinctive broadcaster has its own specific requirements which, whilst similar to the other PSBs in various, and differing respects, are in some cases unique. Therefore Studios will need a clear strategy which allows it to make programming suitable for other broadcasters whilst also retaining the integrity of the overall BBC brand and Public Purposes. This will clearly mean a careful targeting of specific types of programmes and slots. And obviously such a strategy should also make clear the types of content where it may not be appropriate for the BBC to become involved. This will need especially careful monitoring and the right of appeal by the independent sector where it feels the BBC is moving beyond its remit and Public Purposes by pitching for a given programme or slot.
- 2.5. Contrastingly, one of the advantages of the indie sector is that it can work on a wide and diverse range of innovative productions for the likes of Channel 4, ITV, Sky and other broadcasters. This is another reason why it is important that BBC Studios doesn’t go beyond these important boundaries as it seeks to obtain commissions from other broadcasters.
- 2.6. A further potential point of tension is indicated where the document states that ‘BBC Studios will appoint a senior lead for Brand and Marketing issues on the BBC Studios Senior Leadership team’, and that; ‘That role will have a reporting line to the Director of Marketing of the BBC Group to ensure that any trade-offs between individual programme brands and the BBC Group’s overall objectives can be satisfactorily resolved.’⁴
- 2.7. Regarding the second statement, given that the latter role will be the senior executive to the former, and that their overriding imperative will be to gain as much business for BBC Studios as possible, we wonder if there isn’t a tension here that could lead to valid concerns about compromising the BBC Brand being sidelined. We would therefore like more detail on the ability of the ‘senior lead’ to seek second opinion outside their own reporting structure.
- 2.8. We also note the document talks about ‘moving to 100% competition except where the new unitary BBC board identifies value for money exceptions.’⁵ TAC accepts that the new draft Framework Agreement provides for such exceptions, but in order

² BBC submission to the BBC Trust 4CC process for BBC Studios. August 2016, p31

³ BBC submission to the BBC Trust 4CC process for BBC Studios. August 2016, p31

⁴ Both quotes from BBC submission to the BBC Trust 4CC process for BBC Studios. August 2016 p48

⁵ BBC submission to the BBC Trust 4CC process for BBC Studios. August 2016 p11

to avoid any doubt around the validity of such decisions, would call upon the Trust and subsequently Ofcom to formulate very specific criteria concerning under what circumstances the Board would be able to take such a step.

2.9. This will be crucial to maintaining trust in the BBC, and to prevent any suspicion that these decisions are being made for reasons of pure market advantage as opposed to genuine value-for-money reasons. Any such decision should be made fully transparent in terms of the evidence base used. We would ask the Trust to recommend to Ofcom paying special attention to this.

2.10. The document states that ‘BBC Studios is 100% British owned, whereas around 60% of external suppliers are internationally owned.’⁶ This figure is not evidenced and whilst we are not aware of a definitive figure on the ownership of indies in the UK, we would like to see greater evidence of how this figure was arrived at. For example it is not clear whether the figure was done on a turnover basis involving non-qualifying as well as qualifying indies, rather than the number of individual companies. Either way we would point out that despite its comment on the changing nature of the sector Ofcom did not see this as cause to alter any significant regulatory provision, including the provisions in the Communications Act relating to the terms of trade.

2.11. The document states that: ‘not all genres provide substantial commercial reward, and there is a risk that competitiveness will reduce in those genres that are less commercially rewarding. Ofcom, again, states that: “There is a growing risk that consolidated companies focus on the most commercially attractive genres, leading to a lack of innovation in the less commercially attractive genres.”’⁷

We would ask the Trust to note that this quote refers specifically to consolidated companies. As Channel 4 has demonstrated in particular, through working with a wide range of companies around the UK, such a risk can be countered by encouraging new entrants and exiting company development. In Wales, a number of indigenous independent production companies focus on reflecting Welsh life, its language and culture to the nations, the rest of the UK and abroad. They can do this very well, as, unlike the BBC TV production base which is based almost exclusively in Cardiff, several Welsh independent production companies are based around the nation.

3. Level Playing Field

3.1. Regarding the statement that: ‘There should be regular reviews by the BBC’s regulator Ofcom regarding the arrangements for securing separation between BBC Public Service and BBC Studios, the pricing and terms given by the BBC to BBC

⁶ BBC submission to the BBC Trust 4CC process for BBC Studios. August 2016 p21

⁷ BBC submission to the BBC Trust 4CC process for BBC Studios. August 2016 p23

Studios in comparison to other external suppliers and the operation of the commissioning framework as described in this document.⁸

Of key importance here is how information about new commissioning rounds and tenders is managed, to ensure that all producers are simultaneously informed of these things. Specifically - will independent companies know at the same time as internal BBC studios production teams of the timelines regarding tendering processes and how will this be managed? Also it is important that any pre-conditions linked to tenders need to be made clearer from the outset. Ofcom should be provided with procedural information that assures them of this principle, including the BBC having a complaints process for any concerns from external (or internal) producers to be responded to in a timely and well-evidenced fashion.

3.2. In addition TAC is concerned at the implication in the BBC submission that Studios has a fundamental imperative to be allowed to be successful, due to its wider impact: 'Without the foundational role that BBC Studios plays in supporting production activity around the UK, training new talent, and maintaining expertise across a range of specialisms in less commercial genres, there is a risk that over time the UK independent production sector would be weakened as a result of BBC Studios' decline.'⁹

3.3. If BBC Studios is to be genuinely competitive, it cannot establish a rationale that makes it a special case. Through the wide range of programmes they deliver to audience of not just the BBC but all PSBs, as well as commercial broadcasters, indies have shown they have developed to the point where many people pursue their careers entirely within the indie sector. Whilst the BBC does carry out training, still, this is training which is suited to working on productions specifically within the BBC. Outside the BBC, indies not only develop production talent but also people learn a variety of tasks including how to run a business efficiently and produce a wide range of content.

4. Fulfilling the BBC's out-of-London obligations and representing the nations and regions of the UK

4.1. The provisions in the BBC Charter also mean that the BBC's public purposes will include a requirement 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'*.

⁸ BBC submission to the BBC Trust 4CC process for BBC Studios. August 2016 p17

⁹ BBC submission to the BBC Trust 4CC process for BBC Studios. August 2016 p29

- 4.2. The document states: ‘BBC Studios’ breadth of activity will be matched to the BBC’s requirements. For example, BBC Studios will retain bases in the Nations and Regions where the BBC has significant programming quotas’¹⁰
- 4.3. We question whether this strategy fully meets the objective of the out-of-London spend quotas, and of the public purpose on the nations, which are not solely concerned with making sure that Licence Fee money is spent outside the M25. Rather, those measures seek to ensure that, through greater investment in the creative sector, a wider range of voices, ideas and perspectives from around the UK are present in the BBC’s output.
- 4.4. Wales’ own indie TV sector is comprised of around 60 full-time companies plus others which operate on a more flexible basis. Keeping in mind the new public purpose requirement, quoted above of encouraging the creative economy, we would argue that the spend requirements are partly to ensure that more companies around the UK nations and regions are given the opportunity to win commissions and bring new talent, stories, perspectives and ideas to viewers. So maintaining a strong in-house base is actually detrimental to this aim rather than, as is implied in the BBC document, enabling it to be met.

5. Market Impact Assessment

- 5.1. Whilst BBC Studios’ role is fairly precisely defined, there is the potential for its Board to seek changes to its operations over time. In such cases we would hope, due to Studios’ remit to uphold the core BBC brand, that this should involve the wider BBC Unitary Board as BBC Studios is a fully owned subsidiary. On such occasions we have a concern that such decision may not be subject to suitable market impact assessment. We would argue that there should be a role for Ofcom in the carrying out of such MIAs.
- 5.2. We feel that any substantial decisions would require the approval of Ofcom, in order to determine their likely impact on the independent sector, and ask the Trust to recommend a clearer determination of this in the final Charter and Framework agreement, or failing this in the guidelines to Ofcom in terms of its responsibilities.

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¹⁰ BBC submission to the BBC Trust 4CC process for BBC Studios. August 2016, p31