

**Submission to BBC Trust Public Value
Test on proposed changes to BBC
Three, BBC iPlayer, BBC One and
CBBC**

pact.

February 2015

Executive summary

Pact understands the difficult financial pressures which face the BBC. As a result of the 2010 settlement, the BBC Executive has lost 26% of its revenue and as a consequence, it has had to find efficiencies of £700 million and make difficult decisions about how it can best serve the needs of licence fee payers.

The proposal to close the linear BBC Three broadcasting channel is the most dramatic of the measures put forward by the BBC Executive in order to reduce its costs. This is the first time in the long history of the BBC that it has proposed cutting a television service.

Pact is concerned that this proposal would disproportionately impact younger viewers, given that BBC Three has a target demographic of 16 to 24 year olds (and a median age of 33). Eighty one percent of BBC Three viewing is of its linear television channel. Closing this channel is, in our opinion, a strategic error which undermines the relationship between the BBC and a large proportion of its current and future audiences.

Given the potential significance of this measure, Pact is concerned that so much of the information provided in the BBC Executive's package of proposals to the BBC Trust has been redacted. Without being able to see all of the financial information, it is extremely difficult for interested parties such as Pact to comment fully on the impact which these proposals might have.

Furthermore, rather than presenting this as a package, we consider it more appropriate for each of the BBC Executive's proposals to be considered separately, so that their potential market impact and value to licence fee payers can be fully assessed. Pact is concerned that the BBC Executive's proposal as currently drafted lacks focus. We believe that each of the changes proposed merits careful consideration and we do not necessarily share the BBC Executive's view of cross-dependencies across services.

Pact welcomes the BBC Executive's move towards developing a digital strategy in order to attract younger audiences. This digital ambition is timely and Pact is committed to working with the BBC Executive in order to deliver such a significant move which will benefit both audiences and suppliers. If the BBC was to commission more digital content under the Terms of Trade this would act as an important catalyst in the UK digital economy, enabling British businesses to build scale, both domestically and internationally.

However, Pact does not support the BBC Executive's proposal to close the linear BBC Three service. For a number of reasons, outlined below, we do not think that

the closure of this television service will be in the best interest of licence fee payers, or of the BBC's suppliers, who contribute significantly to the British economy.

We think that - given the relatively small financial saving which the BBC will gain from this package of measures (£34 million – or 2% of the BBC's television content budget in 2014)¹ – the case for closing a linear television service has not been convincingly made in the BBC Executive's proposal. To put the potential financial saving into context, the BBC spent £49 million on pension deficit payments in 2014 and £10 million on restructuring costs.

Pact notes that another of the reasons put forward by the BBC for the closure of BBC Three and its reinvention online is that this would enable it to reach younger audiences in innovative ways. We fully support the BBC's aim to attract younger audiences, which was one of the key recommendations by the BBC Trust following its review of BBC television services in 2013. However, we do not consider that the closure of BBC Three would meet this aim. In fact, it is likely to have the reverse effect, given that BBC Three has the youngest audience share of any BBC service and that 81% of all viewing is from its linear service. Consumer research conducted by GFK on behalf of Pact found that BBC Three was the seventh most popular television service with audiences, behind ITV 2, but ahead of BBC Four and ahead of its closest competitor, E4.

The BBC Executive states that the closure of BBC Three as a linear service is the "least worst option" in order for it to meet its target savings. However in the submission it does not provide details on which alternative options it has considered, and what the benefits and implications of each of these might be. Without publishing a breakdown of the running costs of BBC Three as a linear channel, it is not possible for external stakeholders to assess whether efficiencies could be made which would go a long way towards achieving the savings required, at much lower risk.

Pact wishes to better understand why BBC Three has been selected for closure, as opposed to other options. For example, BBC Four has a lower audience share (14% as opposed to 20%), and a lower rate of live viewing. Seventy seven percent of BBC Four viewing is live, as opposed to 81% of viewing for BBC Three. Without the publication of further information about all of the options which the BBC has assessed, and the rationale for putting these forward over others, it is extremely difficult for external stakeholders such as Pact to assess whether this proposal is the "least worst option", as the BBC Executive claims.

It is important to reiterate that Pact does not wish to prohibit distribution of successful BBC Three content to wider audiences. We welcome the BBC's ambition to deliver a

¹ BBC Annual Report and Accounts, 2013/14

broader range of content for audiences online and independent producers would seek to work with the BBC in order to enable them to develop and deliver this content. However, we do not consider that the BBC Executive's proposals as currently drafted present the best way of meeting this objectives.

Pact considers that it will be extremely difficult for BBC Three to meet its public service objectives of universality by delivering content online-only. This is in part because access to these services will depend on the availability of broadband. Furthermore, audiences will be required to pay twice in order to access this BBC content – first through their licence fee and again through the cost of having to have a broadband subscription.

One of our principal concerns from a supplier point of view is that the BBC should not be able to use BBC Three commissions as a means of funding and producing content for BBC Three which is in fact primarily aimed at late-night audiences on BBC One and BBC Two. This method of 'back door commissioning', where content budgets would be stretched and therefore presumably equate to lower licence fees – could be used as a means of cutting costs by the BBC, but this would not best serve the interests of viewers, nor of the BBC's suppliers.

If these proposals are accepted by the Trust and the BBC wishes to transmit content originally commissioned for BBC Three on BBC One or BBC Two, then it must negotiate additional rights packages with producers in order to do so. Transmission on linear channels as a narrative repeat can not form part of the primary rights packages for content commissioned for BBC Three, without an additional payment for this use.

As a public service broadcaster, all content commissioned for the BBC Three should be done under the regulated Terms of Trade. Should these proposals receive Trust approval and be delivered, Pact would seek to work with the BBC to ensure that all content commissioned for BBC Three from external suppliers who were qualifying independent producers was subject to the Terms of Trade.

Furthermore, it is important that the new BBC Three online service would adhere to the relevant PSB quotas so as to safeguard diversity of supply, and therefore achieve a greater representation of British audiences on screen. In order to meet its PSB objectives, Pact considers that BBC Three online should continue to commission a minimum of 25% of its content from qualifying independent producers. We also believe that it should ensure that a significant proportion of its content is produced outside of the M25, as per the BBC's nations and regions quota.

Pact is concerned about the BBC's proposals to distribute BBC Three content on online platforms such as YouTube. We understand the BBC's intention to reach audiences in different ways. However, given that certain online distribution platforms,

such as Instagram, are not able to geo-block, this could lead to an imbalance whereby international audiences could access BBC content online, but certain licence fee payers could not due to limited broadband availability. In addition, the secondary distribution rights to content created for the BBC belong to the producer. The BBC would therefore not be able to redistribute content branded as BBC Three on social media and online platforms without seeking the necessary rights use packages from the underlying rights holders.

Finally, although we welcome the BBC Executive's proposal to invest to increase an additional £10 million on drama on BBC One, we note that under the current arrangements drama is the area in which the contestable window of creative competition (WoCC) is most stretched. For the last two years, external producers have won 100% of drama commissioned under the 25% WoCC. Should the current arrangements remain in place, an additional £10 million investment in drama would put the WoCC under even greater strain.

Whilst welcoming any increase in the BBC's content budget, we are concerned that this investment will disproportionately benefit the BBC's in-house production department over external competitors. This in turn will benefit BBC Worldwide.

For these reasons, we do not support the BBC Executive's package of proposals, as currently presented to the BBC Trust, including the closure of the BBC Three television channel. This is because, on balance, Pact does not consider that these proposals are in the best interest of licence fee payers, or of the wider creative sector. Furthermore, we consider that the closure of the BBC Three linear service will significantly reduce the BBC's ability to reach 16-24 year old audiences.

Pact has also submitted a response to Ofcom's Market Impact Assessment of these proposals.

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 from £1.3 billion in 2005 to over £3 billion in 2013.²
- 3) In 2013, the BBC spent £476 million on commissions from UK independent producers. In 2013/14, the BBC commissioned 45% of eligible television content from external producers³.
- 4) BBC Commissions are important for independent producers as they account for 27% of all UK commissions, making the BBC the biggest buyer of content made by independent producers in the UK.
- 5) Pact is a supporter of the licence fee and recognises the important role that the BBC plays in British broadcasting. As such, we would support an increase in the BBC licence fee in line with inflation at the time of the next licence fee settlement.
- 6) For further information, please contact Pact's Head of Policy, Emily Davidson, at emily@pact.co.uk or on 020 7380 8232.

² Pact Census Independent Production Sector Financial Census and Survey 2014, by Oliver & Ohlbaum Associates Ltd (July 2014)

³ BBC Trust Content Supply Review, January 2015

Pact comments on section 1: Background and overview of the public value test

1.1 Pact notes the proposals recently made by the BBC Executive to the BBC Trust to:

- Close BBC Three as a broadcast channel in the autumn of 2015;
- Reinvent BBC Three as an online-only offer;
- Evolve the BBC iPlayer from primarily a catch-up service to one that also offers online-first BBC content and selected third-party content;
- Launch a +1 channel for BBC One;
- Extend the hours of CBBC; and
- Increase investment in drama on BBC One.

1.2 Pact welcomes the BBC Executive's move towards developing a digital strategy in order to attract younger audiences. This digital ambition is timely and Pact is committed to working with the BBC Executive in order to deliver such a significant move which will benefit both audiences and suppliers. If the BBC was to commission more digital content under the Terms of Trade this would act as an important catalyst in the UK digital economy, enabling British businesses to build scale, both domestically and internationally.

1.3 However, Pact does not support the BBC Executive's proposal to close the linear BBC Three service. For a number of reasons, outlined below, we do not think that the closure of this television service will be in the best interest of licence fee payers, or of the BBC's suppliers, who contribute significantly to the British economy.

1.4 Pact welcomes the BBC Trust's decision to trigger a full public value test, including a market impact assessment by Ofcom, in order to assess these proposals before making a decision. Given that this is the first time in its history that the BBC has proposed the closure of a television service, it is extremely important that stakeholders who these changes would have a direct impact on, as well as licence fee payers (particularly those in the target audience of BBC Three), have a chance to feed in their thoughts to the process.

1.5 In light of the significance of these proposals, we are extremely concerned that the majority of the financial information supporting the BBC Executive's proposal has been redacted. This means that it is therefore not subject to scrutiny by the public, and stakeholders who would be directly impacted by these proposed changes to the BBC services.

1.6 Pact understands that PVTs must normally be completed within six months.

However in this case, when the BBC is considering closing a service for the first time and in the context of a forthcoming debate over Charter renewal and the BBC licence fee settlement, we welcome the Trust's proposal to re-evaluate the timetable after this period of short consultation.

1.7 Pact would support the extension of the timeline so as to enable this debate to be considered in the context of the wider discussions which are ongoing about the future of the BBC. In the extended timeframe, Pact would urge the BBC Executive to be more transparent about the full impact of their proposal so as to enable sufficient scrutiny before the measures were either accepted or rejected by the BBC Trust.

Pact comments on section 2: strategic context and the rationale for the proposals

1.8 In its proposal, the BBC Executive states that the proposed changes are designed to respond to challenges posed by the external environment, reduced income and a structural shift in media consumption.

Changes in the external environment

1.9 The BBC Executive claims that one of the reasons for these proposals is to better enable it to compete against global media brands which offer new services and invest in global genres. Pact considers that the availability of more BBC content on these platforms is likely to be beneficial to the online distribution platforms which the BBC Executive has identified as its competitors.

1.10 Pact strongly welcomes the BBC Executive's move towards developing and implementing a digital content strategy. This is important for the BBC to continue to extend its reach to include an online-audience.

1.11 Pact welcomes the investment in original content by online content distributors such as YouTube and Netflix. However, when put into the wider context of spend on original UK content, these new entrants are dwarfed by the continuing importance of the UK public service broadcasters (PSBs) in original content spend.

1.12 Figures published by Ofcom as part of its third review of public service broadcasting show that the PSB channels⁴ account for 85% of all origination spend.⁵

⁴ The PSB channels are: BBC One, BBC Two, BBC Three, BBC Four, BBC News, CBBC, CBeebies, BBC Parliament, BBC HD Services, BBC Alba, ITV, STV, UTV, Channel 4, Five and S4C.

- 1.13 It is therefore difficult to attribute the increasing investment in content by global players such as Netflix and Amazon to the need for the UK's largest public service broadcaster, the BBC, to close one of its linear TV channels.
- 1.14 Furthermore, we are concerned that the BBC Executive has joined its digital strategy with a decision to close a linear television service. Given the strength of the BBC as a global content brand, there is no reason to doubt that it will be able to compete on a digital platform. It is therefore disappointing that the BBC considers that a digital service would need to be supported by a late-night repeat of content on a linear television channel.
- 1.15 Pact therefore suggests that the package of proposals by the BBC Executive are separated out, so that the BBC can meet the challenges which it faces from changes in the external environment in a way which does not impact on its ambitions to increase reach and meet technological challenges by augmenting its digital content offerings.

Reduced income

- 1.16 The BBC identifies that its budget is 26% lower in real terms than what it would have been in 2016/17 had the licence fee not been frozen and had the BBC not had new obligations placed on it at the time of the last settlement in 2010.
- 1.17 Pact acknowledges the financial constraints which this settlement has placed on the BBC and that significant efficiencies have had to be made.
- 1.18 There are areas in which we believe that the BBC can continue to be more efficient. For example, by working with a greater number of external suppliers, thus reducing programme production costs as independent producers compete efficiently for commissions and often bring deficit funding to the table. However, we acknowledge that it would be very difficult for the BBC to continue to provide the high quality and broad range of services which it currently offers if the licence fee does not increase, at least in real terms, in the next settlement.
- 1.19 For this reason, Pact supports the continuation of the BBC licence fee and we believe that this should be increased in line with inflation during the course of the next settlement period.

A structural shift in media consumption

⁵ Ofcom's third review of public service broadcasting: public service content in a connected society, December 2014

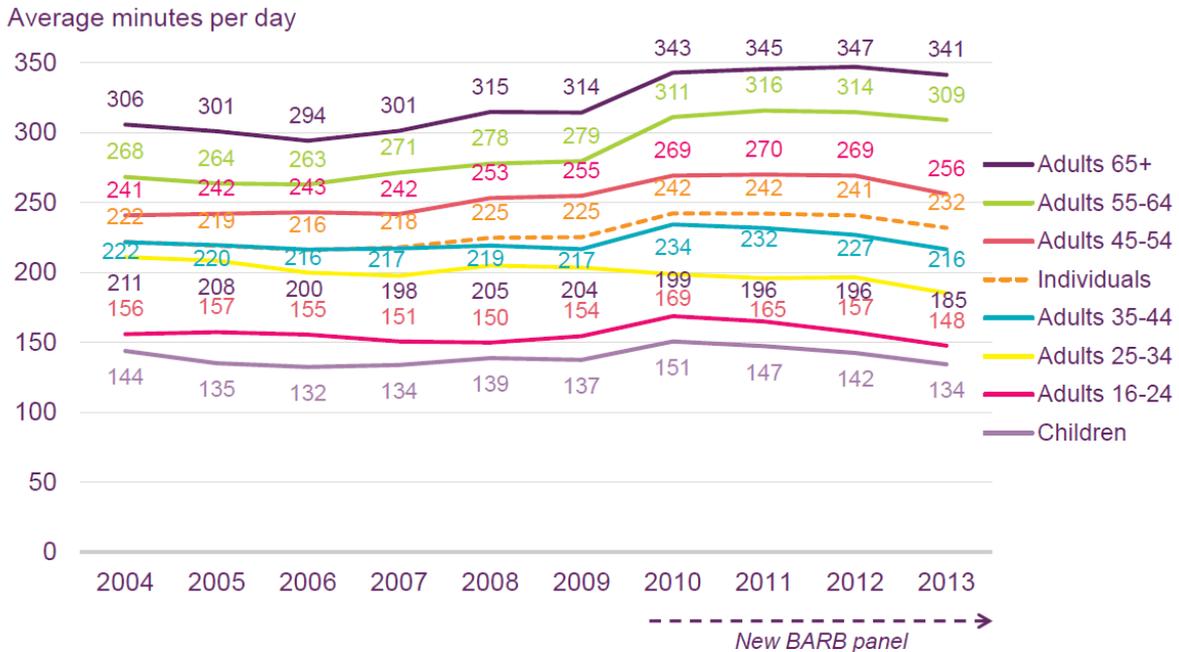
1.20 In the BBC’s submission to the Trust it states that a gradual transition to on-demand and a structural shift in media consumption has significantly affected the ability of the BBC to reach a younger audience. It notes that 16-24 year olds watch 14% less television than four years ago, and that non-linear viewing accounts for 28% of average daily viewing amongst this age group (and is predicted to account for 40% by 2020).

1.21 The change in media consumption habits amongst different age groups is something which Ofcom is considering as part of its review of public service broadcasting. Ofcom data (copied below) shows that 16-24 year olds watch less TV than older adults – 148 minutes per day as opposed to an average viewing of 241 minutes.

1.22 The Ofcom data broadly matches that of the BBC, finding that the decline in viewing by 16-24 year olds fell by 21 minutes per day – or 12.5% - between 2010 and 2013. However, this is calculated from a peak in 2010, at the height of the economic recession.

1.23 When viewing hours are compared over a longer time frame, the decline in time spent watching television by 16-24 year olds is not as marked. In fact, it is only 2 minutes less per day on average than in 2008, only a year after the launch of the BBC iPlayer and before anyone in the UK owned an ipad.

Figure 1: average minutes of daily TV viewing, all channels, by age, 2004-2013



Source: BARB, Network

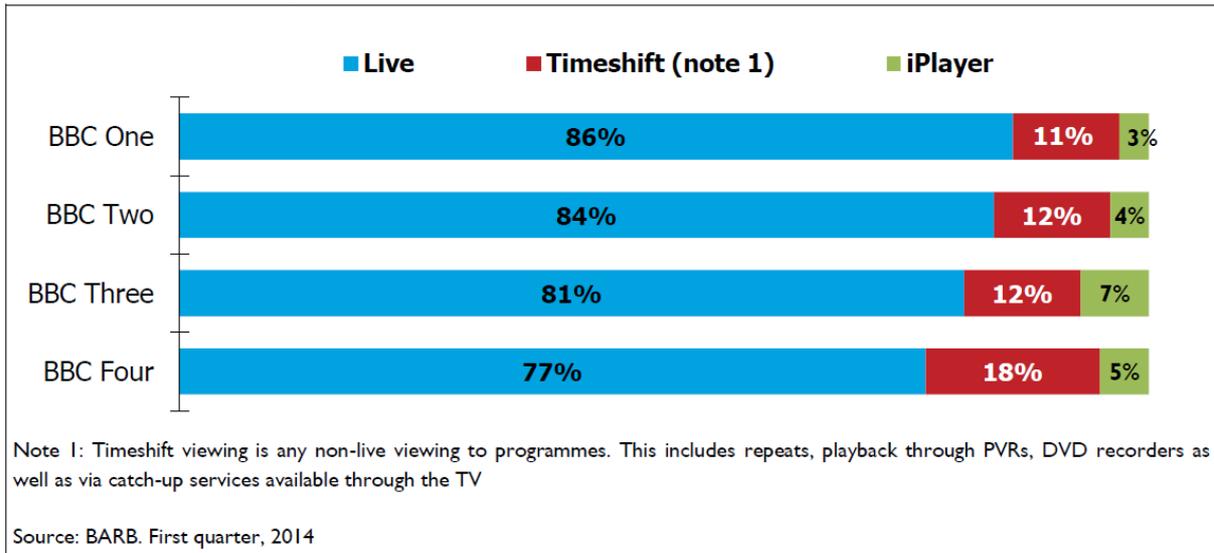
Note: new BARB panel introduced 1 Jan 2010; as a result pre- and post-panel change data must be treated with caution

Source: Ofcom PSB review

1.24 In the BBC Trust review of television services, published last year, it states that 89% of television programmes were watched live in 2013, a very slight decline from 90% in 2012.

1.25 Looking specifically at BBC Three, 81% of all viewing last year was from live transmission, with 12% coming from time-shifting and only 7% from iPlayer.

Figure 2: trend in volume of viewing to BBC television channels: live, time-shifted and on iPlayer

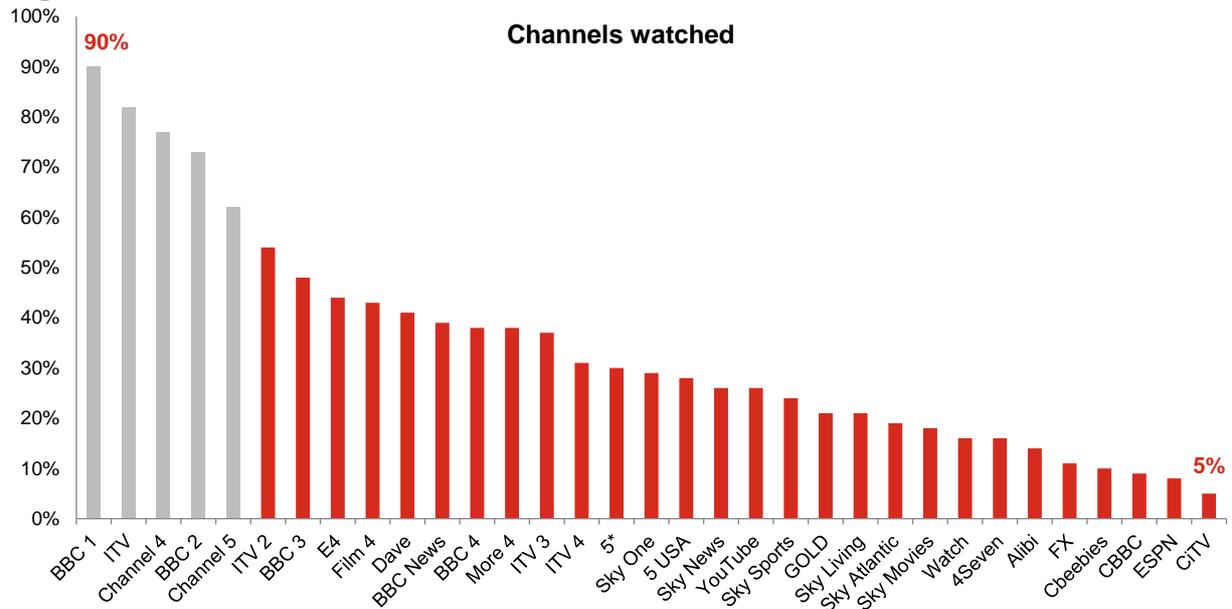


Source: BBC Trust review of Television Services 2014

1.26 Pact is concerned that the closure of the BBC Three linear channel will have significant implications for the breadth and size of the audience which the content currently reaches.

1.27 In research conducted by GFK on behalf of Pact in October 2014, a survey found that BBC Three was the seventh most frequently watched channel, out of a sample of 2002 respondents. This puts BBC Three slightly behind one of its rivals, ITV2, but ahead of E4 and BBC 4.

Figure 3: Channels watched, Pact consumer research



Q2. Which of the following TV Channels do you watch? At least monthly. Total Sample (2002)

Source: GfK consumer research for Pact

1.28 Pact considers that it will be extremely difficult for BBC Three to meet its public service objectives of universality by delivering content online-only. This is in part because access to these services will depend on the availability of broadband. Furthermore, audiences will be required to pay twice in order to access this BBC content – first through their licence fee, and again through the cost of a broadband subscription.

1.29 We note that the most common criticism the BBC Executive found in its consumer research was that parts of this proposal would make less BBC content available to those without broadband, particularly the elderly and those in rural areas.

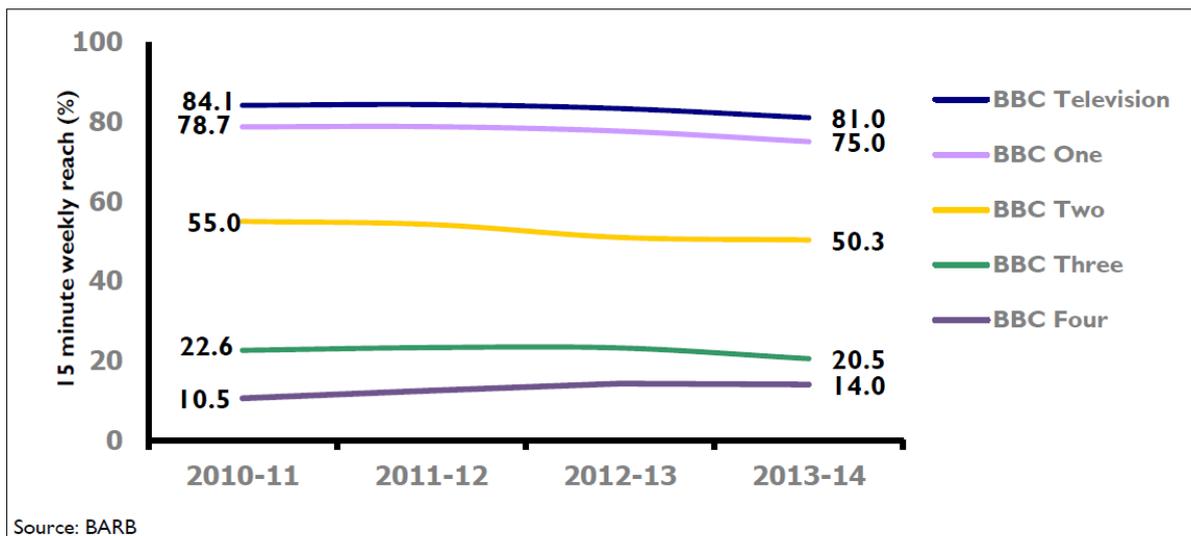
1.30 Pact understands these concerns. However, we do not consider that the solution should be the broadcast of a small selected amount of BBC Three content on a linear channel. In our opinion, BBC digital strategy should not require the support of a linear service. These should be developed as separate offerings, rather than as one interdependent package.

1.31 The linear repeats of BBC Three content on BBC One and BBC Two are very important to the BBC Executive’s proposals in that this is where the majority of BBC Three content will achieve its audience reach. Pact is concerned that this will lead to “back door commissioning” of content whose principle audience is not the online audience which it was commissioned for (where budgets are likely to be considerably lower), but the secondary use on a linear channel.

1.32 BBC Three plays a very important role in enabling the BBC to reach younger audiences. It has a target demographic of 16 to 24 year olds, who are the licence fee payers of today and tomorrow. In 2013, BBC Three (linear and time-shifted) had an average viewing share of 1.48%.⁶

1.33 As shown in the chart below, also from the BBC Trust review of television services, although the audience share of BBC Three has declined in recent years, the decrease has been less than the overall decrease in weekly reach of all BBC channels.

Figure 4: trend in weekly reach of each BBC television channel, 2010-2014



Source: BBC Trust television service review, 2014

1.34 Overall, the BBC is reaching fewer younger viewers than it did in the past. The BBC Trust found in its review of television services that the weekly reach of the BBC amongst 16-24 year olds fell from 69.9% in 2010/11 to 66.7% in 2013/14.

1.35 Between 2010/11 and 2013/14, BBC Three was the only linear BBC television service where the average viewer age fell, rather than increased. Last year, the average age of a BBC Three viewer was 33, as opposed to 34. Whilst this decline is welcome in so far as BBC Three was reaching a younger audience than other BBC channels (the median age for BBC One was 59; BBC Two was 60 and BBC Four was 61), thirty-three is still 10 years greater than the target demographic for this channel.

⁶ Communications Chambers Forecast consumption and preliminary market impact assessment of revised BBC services, January 2015

- 1.36 One of the BBC Trust's conclusions in its review of television services in 2013 was that the BBC should find ways in which to increase its reach amongst younger audiences.
- 1.37 Given that BBC Three remains the channel with the youngest demographic, and that 81% of content on this channel is from the live broadcast, we question the extent to which a move to an online-only BBC Three will better serve the needs of the BBC's 16-24 year old audiences.
- 1.38 Rather than migrating their existing audience online, Pact considers that the most likely outcome of the closure of the BBC Three linear channel and its reinvention online is that audiences who currently watch BBC Three will migrate to its competitors – particularly television channels with a similar target audience, such as E4, ITV 2 and Comedy Central.
- 1.39 This was the conclusion of Communications Chambers in the report which it produced for the BBC Executive in January 2015. In this report, they stated that “BBC Three has a viewing share (linear + PVR) of 1.5%. Clearly this would be lost if the channel was no longer broadcast. This viewing would (primarily) be redistributed amongst other linear channels, including other BBC portfolio channels. In aggregate, this results in a 2.7% loss of viewing hours for the BBC, and gains of 1.3-1.6% for each of the commercial broadcasters in 2017.”⁷
- 1.40 Pact is concerned about the BBC Executive's statement in its proposal to the Trust that: “it's vital the BBC develops the skills to produce [new forms of content on multiple digital platforms]”. It continues that “it is imperative that we [the BBC] are adequately skilled and resourced to deliver this content in critical mass on a daily basis.” It appears from this statement that the BBC intends to deliver a significant proportion of the digital content for BBC Three in-house.
- 1.41 We are also concerned that if the digital requirements (rather than the independent production quota which currently applies to BBC Three) are applied to content commissioned for BBC Three online, then the amount of content which the BBC Executive commissions from independent producers will decline from its current level. This is because in television, the BBC must commission at least 25% of its television content from independent producers. In digital, the 25% external spend quota refers to both spend on content and spend on services.
- 1.42 A decline in external commissioning in favour of in-house content in this way would not only be detrimental to the UK hugely successful British content

⁷ Communications Chambers Forecast consumption and preliminary market impact assessment of revised BBC services, January 2015

production sector (which is now worth over £3 billion), it would also reduce diversity of supply and therefore be of detriment to licence fee payers.

The rationale for the proposals

- 1.43 Having considered the rationales put forward by the BBC Executive for these proposed changes, we consider that the driving factor behind the change must be financial. We note the Executive's statement that the closure is being proposed earlier than would otherwise be the case in a better financial environment.
- 1.44 Pact notes the BBC Executive's statement that "the only alternative to the closure of BBC Three is the closure of another service (or services) or cuts across a range of services."
- 1.45 The BBC plays a vital role in the UK's broadcasting ecology. A properly funded BBC is important in terms of what it delivers to licence fee payers, and in the ripple effect which it has in the wider creative economy. Twenty seven percent of UK independent commissions came from the BBC in 2013 (the PSB network groups together accounted for 77% of all independent commissioning).⁸
- 1.46 BBC services are valued in different ways by different audiences. Should these proposals be accepted by the BBC Trust, it would be the first time in the history of the corporation that a BBC television service has been closed. It is therefore important that the manner in which this decision has been taken, and the cost savings associated with this, are fully transparent. At present, they are not. The BBC Executive's submission to the Trust is largely redacted and therefore opaque. It is difficult for licence fee payers and stakeholders to fully analyse and comment on the BBC Executive's intentions on what the Executive calls it's "least worst option".
- 1.47 Furthermore, at times the terminology used by the BBC Executive in order to summarise its proposal does not match with that used in the summary document produced by the BBC Trust. For example, the BBC Executive states in its proposal that "whilst BBC Three's content budget will be halved, BBC Management intends to continue to invest in comedy at near current levels... This service will therefore retain its industry position as a 'go-to' commissioner for emerging talent and will continue to act as a 'nursery slope' for talent for BBC One and BBC Two."
- 1.48 However when this is considered against the BBC Trust's service review, it appears that the BBC Executive is proposing to reduce the budget for scripted comedy to "one quarter less than current level".

⁸ Pact Census 2014

1.49 Given this example, Pact would welcome greater disclosure by the BBC Executive as to the full impact of its proposals with regards to proposed content budgets for the future BBC Three online-service.

Evolution of the BBC iPlayer

1.50 Pact welcomes the BBC Executive's proposals to premiere more content online via BBC iPlayer and to include selected third party non-commercial content online.

1.51 This represents an important move towards the development of a public BBC digital content strategy which Pact welcomes.

1.52 Pact will look to work with the BBC in developing this digital strategy further, including in discussions around the retention of digital rights for producers.

1.53 Pact does not have specific concerns about the BBC's proposals to premiere some programmes on the iPlayer before they are broadcast on a linear service, or to include selected non-commercial content commissioned by third parties on this service, provided that it has secured the necessary rights in order to do so.

1.54 Under the current Terms of Trade, the BBC has the right to a 30 day catch-up window to put content on iPlayer. The BBC also has the right, under the existing Terms of Trade, to premier a programme on BBC iPlayer up to seven days prior to its first linear broadcast.

1.55 The BBC Executive states that "the exact length of the premiere window will vary depending on what the BBC is hoping to achieve" but that "in most cases, programmes would not premiere more than seven days in advance of linear transmission."

1.56 If the BBC Executive limits the time between linear broadcast and online premier to a maximum of seven days prior to transmission, then it is possible for this to happen (subject to approval by the BBC Trust) without any revisions to the existing Terms of Trade. However, the BBC Executive has not included a summary in its proposal of how it would intend to address this issue should there be no linear broadcast of the content on which to tie the terms to.

1.57 Any instances in which the BBC wishes to premiere content on BBC iPlayer more than seven days before its linear broadcast would need to be directly negotiated between the BBC and the relevant content producer, who may well have obligations to third parties under Union and Guild collective agreements.

Launch of BBC One +1

- 1.58 Given that 14% of BBC One viewing is non-linear (either time-shifted or via BBC iPlayer) Pact agrees that there is public value in the introduction of a BBC One +1 service.
- 1.59 Under the existing Terms of Trade, the BBC has the right to a free narrative repeat provided that it is within 7 days of the primary transmission of the programme (which would be the case if the programme is broadcast on this service one hour after first transmission on BBC One). Additional narrative repeats can be purchased by the BBC for the cost of 2% of the primary rights licence fee.
- 1.60 The BBC One +1 channel would constitute the narrative repeat which is included as part of the primary rights licence fee. Therefore, should the BBC wish to retransmit a programme again— either at a later date on BBC One or on another linear channel – it would need to purchase the additional licence fee. The BBC Executive has redacted the breakdown of content related costs versus distribution related costs in its proposal, so it is not possible to assess the extent to which the £4.6 million attributed costs in the BBC Executive proposal accurately account for the additional costs which the BBC will incur in order to secure any additional narrative repeat rights which it requires in order to launch this service.

Extended hours of CBBC

- 1.61 In its review of children's services in 2013 the BBC Trust found that CBBC was the most watched children's channel in the UK for its respective target audience of 6-12 year olds.
- 1.62 However the Trust noted in its review that the reach of CBBC amongst its older target audience of 12 year olds (at 30%), was 14% lower than its audience reach amongst 9 year olds, who represent the peak viewing age for the channel.
- 1.63 In order to better serve all of its target audience, Pact welcomes the BBC Executive's proposal to extend the hours of CBBC from 7 – 9pm, with a particular focus on programmes targeted at 10-12 year olds at that time.
- 1.64 However, given the important role played by CBBC in delivering the BBC's public purposes, we are disappointed that the BBC Executive's proposal to extend CBBC broadcasting times by 2 hours per night has not been met by a commitment to at least protect the BBC children's budget, which has declined from £101.7m in 2011/12 to £91m for 2016/17.

- 1.65 Children's programming sits at the heart of the BBC's remit and it is therefore crucial that it remains properly financed in the future.
- 1.66 In the information which is publicly available in the BBC Executive's proposal, it has attributed little or no additional costs to the extension of CBBC by two hours a day. It is difficult for us to comment fully on this without seeing the full figures, but Pact considers that there must be an additional cost to the BBC of running this service, given that it is likely that the BBC would have to purchase additional transmission rights to content aimed at older children in order to be able to broadcast the content again during the proposed extended hours.

Increased investment in drama on BBC One

- 1.67 Pact welcomes the BBC Executive's proposal to invest to increase an additional £10 million on drama on BBC One.
- 1.68 However, we note that under the current arrangements, drama is the area in which the window of creative competition (WoCC) is most stretched. For the last two years, external producers have won 100% of drama commissioned under the 25% WoCC. Should the current arrangements remain in place, an additional £10 million investment in drama would put the WoCC under even greater strain.
- 1.69 Whilst welcoming any increase in the BBC's content budget, we are concerned that this investment will disproportionately benefit the BBC's in-house production department - and as a follow-on from this, BBC Worldwide through rights distribution - rather than the external supply sector.
- 1.70 If the BBC commissioning arrangements remain in their current form, then the additional investment in drama on BBC One could have two negative effects on the current commissioning regime.
- 1.71 Either the WoCC would be rebalanced by the BBC so as to account for a greater percentage of drama commissions under the WoCC, at the expense of other external commissions in different genres. Or the BBC would be required to spend all of the additional investment on in-house drama productions. This would not benefit licence fee payers as it would not guarantee that the best ideas made it on-screen.
- 1.72 It is therefore important that the future of BBC commissioning is considered as part of the wider content supply review in order to ensure that BBC licence fee payers benefit from the best ideas making it on screen, particularly if additional money is to be invested in drama on BBC One.

Pact comments on section 3: description of the proposals*Proposed content budget and content offer for BBC Three*

- 1.73 In its proposal the BBC Executive states that it wishes to introduce online availability as standard for up to 24 x 30 days over a period of 5 years, which it would use flexibly to allow it to maximise the reach and viewing of BBC Three programmes.
- 1.74 At present, the BBC's rights under the Terms of Trade for BBC are for up to nine transmissions and one narrative repeats within seven days of the original transmission of the programme. Beyond this, the BBC can buy an additional package of transmissions at a rate of 2% of the cost of the primary rights licence fee.
- 1.75 The BBC's proposal is to extend the use package by two and half times, for use during an extended period, presumably at a lower rate (given that the overall content budget for BBC in the proposal is half of its current value). This would create an unacceptable loss of income for independent producers commissioning content for BBC Three at a time when commissioning budgets would be under significant pressure.
- 1.76 The BBC Executive states in its submission that 80% of content on BBC Three online in 2016/17 would be "long-form", with the remaining 20% "short form" or "new form" content⁹. As noted above, Pact does not support this distinction between long and short form content. We consider that the Terms of Trade should apply regardless of the duration of the content. We are concerned that the BBC Executive might significantly reduce the budgets for short form as opposed to long form content. Yet if their intention is to attract audience share, then all BBC content – regardless of its duration or where it is distributed – must be properly funded.
- 1.77 As a public service broadcasting channel, it is important that all content published on BBC Three is subject to the Terms of Trade. 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.

⁹ The BBC Executive provides examples in its proposal of short form and new form content as including: text based content, images, video and audio and interactive content.

- 1.78 Therefore, without the Terms of Trade on all BBC Three commissions, there is a risk that content will be less diverse; less creative; and less innovative than it would be if independent producers were able to generate revenues from the secondary exploitation of their rights, to invest in research and development.
- 1.79 Pact is concerned about the BBC Executive's proposal that "BBC Three long form programmes would not be subject to the current television quota framework, but would be subject to [the BBC's] voluntary online external spend quota."
- 1.80 As noted above, we consider that all BBC content services should offer a diverse range of content from a diverse range of suppliers and that the 25% independent production quota should apply across all BBC content commissions.
- 1.81 In late 2011, the BBC announced that BBC Three would be moved to Salford by 2017 as part of the BBC's efficiency savings outlined in 'Delivering Quality First'.¹⁰ Pact welcomed this proposal to base a BBC television service outside of London and we considered that this, together with the Out of London quota, would provide a valuable boost of opportunities for the BBC's external suppliers who are based outside of the capital and by virtue of this, expand regional representation on-screen.
- 1.82 There is no mention of where the new BBC Three online service will be based in the BBC Executive's proposal to the Trust. As such, we would welcome clarification by the BBC Executive as to whether the decision to base BBC Three in Salford will remain if the proposal to reinstate BBC Three as an online-only service is approved?

Proposed release schedule

- 1.83 Pact does not have any comments on the BBC Executive's proposed release schedule for content on BBC Three, save for repeating our concern that content which primarily reaches audiences via its linear repeat on BBC One and BBC Two should not be commissioned via the back door on BBC Three. Putting BBC Three shows onto a late slot on BBC One or Two creates several issues, as outlined below.
- 1.84 Firstly, it devalues the BBC Three online service for the audience at a time where the BBC iPlayer is registering record viewing figures. A strong BBC Three digital service should not require BBC One or BBC Two as a crutch to succeed.
- 1.85 Next, the current proposals devalue the BBC Three online service for suppliers, as they are segregated into long-form and short-form content creators,

¹⁰ <http://www.bbc.co.uk/news/uk-england-manchester-15197071>

the latter being seen as less important and with the term “short-form” used as shorthand for reducing budgets.

1.86 As noted above, Pact considers that quality content, whether distributed through a linear channel or online, should be adequately funded and that the distribution platform should not be a trigger for degradation of terms. We therefore consider that the Terms of Trade should apply for independent producers, regardless of the type of content which they are creating for the BBC and for there not to be any distinctions between long-form and short-form content terms.

Content windows

1.87 The BBC Executive proposes to make long-form content on BBC Three available for 24 x 30 days over a five year period. This is a significant difference to the rights package for BBC Three which currently exists under the negotiated Terms of Trade.

1.88 Under the current Terms of Trade agreed between Pact (on behalf of independent producers) and the BBC, as required under Section 285 of the 2003 Communications Act, the following holdbacks apply for one offs and singles commissioned for BBC Three:

- In the UK: exclusive to the BBC from first public service use for 6 months from the acceptance of full delivery
- Outside of the UK: exclusive to the BBC from day 1 after first transmission of the programme, or 7 days from first BBC public service use, or 6 months from acceptance of full delivery.

1.89 For series commissions on BBC Three the terms are the same as for all series commissions, regardless of which BBC channel they are broadcast on. Under the current terms, the BBC has an 18 month hold-back on the series which it commissions from independent producers. After this period, independent producers can sell their rights in secondary markets.

1.90 The extension of holdbacks to a five year period, as currently proposed by the BBC Executive in its submission to the BBC Trust, would represent a significant shift away from the agreed terms. The BBC cannot guarantee that content would be available for a period of 5 years on BBC Three online without the agreement of the underlying rights holders.

1.91 Because of the way in which the legislation has been drafted, the Terms of Trade are sufficiently flexible so as to allow periodic reviews. Should the BBC Executive wish to move forward with this proposal, if Trust approval is granted, it

would need to work with Pact in order to secure the relevant rights to externally produced content in order to be able to move forward with this service.

Content availability

- 1.92 The BBC Executive proposal is that BBC Three content would be available on a range of services – on bbc.co.uk; on programme pages on BBC online, on iPlayer and potentially on connected red button. Pact does not have any issues to raise about this aspect of the proposal, provided that the rights of the underlying intellectual property holders are respected.
- 1.93 We understand the BBC's intention to extend the reach of BBC content in different ways to different audiences. However we have concerns about the BBC Executive's proposal that BBC Three content could be shared on social media and video-sharing platforms such as YouTube. For instance, some of these commercial services, such as Instagram, are not geo-blocked. This could create an imbalance whereby international audiences might have access to certain BBC content on digital platforms, but – due to limited broadband availability – some of the people who fund the BBC, British licence fee payers, might not.
- 1.94 Furthermore, online distribution other than on BBC iPlayer as a 30 day catch-up service is a producers' right. The BBC therefore cannot put externally-produced content onto services such as YouTube as part of a BBC branded channel without adequately clearing and compensating the underlying rights holders for the additional use of the content in this way.
- 1.95 Should the BBC Trust approve the BBC Executive's proposals, the BBC would have to enter into negotiations with producers in order to try to reach an agreement on the secondary use package for their rights should the BBC wish to distribute their content on video sharing and social media platforms. In turn, producers would have to agree terms for such use with third parties under the Union and Guild collective agreements.
- 1.96 Given the BBC Executive's ambitions in this area, it might wish to consider a model whereby BBC iPlayer content is embedded across social media sites within the agreed 30 day licence period, but with a clear line being drawn between content which is shared from a BBC-originated service, and content which is distributed as branded content onto other providers' services.
- 1.97 This would enable licence fee payers to access BBC content on digital platforms, whilst ensure that the underlying producer rights are respected.
- 1.98 Should the BBC Trust approve this proposal, Pact considers that the BBC Fair Trading Guidelines should be amended so as to enable external producers to use

their rights in a similar way. In doing so, this would ensure that licence fee payers are able to access and discover content on a range of platforms, regardless of whether it was made by BBC in-house or an external producer.

Overall costs

1.99 The BBC Executive states in its proposals that the closure of the BBC Three linear channel will result in a saving of approximately £50 million.

1.100 In 2014, the BBC spent £81 million on content on BBC Three. In addition, it spent £5.9 million on distribution and £22.4 million on infrastructure and support.¹¹

1.101 The BBC Executive proposes to cut the content spend for BBC Three as an online-only service to £31.3 million. By the BBC Executive's analysis, this would make BBC Three online the most expensive BBC service in terms of its cost per hour viewed in 2017/18, at a rate of 23 pence per hour.

1.102 In addition, the Executive propose to spend £4.6 million on running BBC One +1 and £0.83 million on the evolution of BBC iPlayer.

1.103 When a £10 million investment in additional drama on BBC One is taken into account, the overall savings to the BBC of this proposal are £34 million, roughly 2% of the BBC's television content budget in 2014.¹²

1.104 Given the BBC's obligations to provide content aimed all a range of different audiences, Pact considers it appropriate that the BBC should publicly provide information on what other options it has considered before reaching its decision. This should include its analysis on the positive and negative implications of each option. In particular, it would seem appropriate that the BBC clearly explains how it believes that younger audiences will benefit from an online-only service at the expense of, rather than one which complements, a popular linear channel.

On balance, Pact does not consider that these proposals are in the best interest of BBC licence fee payers

1.105 Considering that 81% of viewing of BBC Three content currently takes place live on television, Pact is concerned that the closure of the BBC Three linear service will significantly reduce the BBC's ability to reach 16 to 24 year olds. Rather than moving audiences online, we consider that a likely outcome of the BBC's closure of BBC Three and its reinvention online is that other television

¹¹ BBC Annual Report and Accounts 2014

¹² BBC Annual Report and Accounts, 2013/14

channels aimed at this demographic, such as E4, ITV 2 and Comedy Central, will benefit from an increase in their audience share (as evidenced by Communications Chambers in its report for the BBC).

- 1.106 Given the importance of these proposals to licence fee payers, and to the BBC's extensive external supplier base, Pact calls on the BBC Executive to publish a more transparent breakdown of the financial implications of each of the strands of its proposal, and to share the analysis which it has considered on alternative options which it has ruled out in favour of the package of measures which it presented to the Trust in December 2014.