

Window of Creative Competition

BBC Trust review

November 2010

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About this review

The BBC's role in the wider creative economy

The BBC received £3,447 million in licence fee funding in 2009/10. In return, the BBC delivered a range of television, radio and online services widely appreciated by licence fee payers. Beyond this public value, the BBC also benefits the wider UK creative economy. The BBC Executive commissioned Deloitte to estimate the level of this positive economic impact. Called the "gross value added" of the BBC, they estimated that for the financial year 2008/09, the Gross Value Added of the BBC was £7.739m.

One way in which the BBC creates this added value is through supporting the independent television production industry. The BBC must commission 25% of its network output from the independent sector each year. A further 25% is set aside for competition between the BBC and independent producers. This is called the Window of Creative Competition and is the subject of this review.

About the Window of Creative Competition

The Communications Act 2003, Schedule 12, sets out that not less than 25 per cent of the total amount of time allocated to the broadcasting of qualifying programmes included in the television broadcasting services provided by the BBC should be allocated to the broadcasting of a range and diversity of independent productions.

Beyond the 25% of programming reserved for independent producers, the Charter and Agreement also sets a BBC in-house guarantee of 50%.

The WoCC, defined in clauses 54-56 of the Agreement, is that part of BBC network television commissioning that falls outside the 25% statutory independent quota and the 50% in-house guarantee that is set in the BBC's Charter and Agreement. The remaining 25% of commissions should be open to both independent and in-house producers to compete for on equal terms, with commissioners free to commission the best programme ideas, delivering benefits for licence fee payers in terms of quality and value for money.

The BBC Trust is required to review the operation of clauses 54, 55 and 56 of the BBC Agreement at least every two years. The WoCC came fully into effect on 1 April 2007, with the Trust's first review published in July 2008. The main findings to emerge from the first review were as follows:

- Commissioners had clear incentives to pick the best ideas with no obvious bias towards in-house ideas over independent ones.
- The BBC had in general met the requirements of the WoCC and the in-house guarantee set out in the Agreement.
- No evidence was found that either commissioners or producers were pre-occupied with which processing route their ideas were following.

- Opportunities were found to be well publicised through the commissioning web site and briefings.
- Independent producers won three quarters of the opportunities under the WoCC, performing particularly strongly in children's, knowledge, entertainment and comedy.
- The introduction of the WoCC had been a spur to in-house producers, who were adjusting to new structures and significant staff cuts.
- Independents welcomed the expansion of opportunity provided by the WoCC.

The recommendations, following the first review, included:

- Providing clearer information about the operation of the WoCC.
- Making available more information about the scope and scale of opportunities.
- Considering how the principles of the WoCC might be best applied to sport.
- Considering whether emerging good practices of commissioning in certain genres could be more widely applied in other genres.
- The BBC Executive to consider monitoring which programmes are commissioned through each of the commissioning routes.
- Making the e-commissioning system clearer.
- Considering steps to ensure that independent producers have a better understanding of audience response to programming.
- The BBC Executive to review its complaint handling arrangements for commissioning with a view to streamlining the process and making it as accessible as possible.

Scope of the second WOCC review

The Agreement requires that the Trust must every two years investigate thoroughly the BBC's compliance with clauses 54 – 56 and consider whether any aspect of the BBC's arrangements for complying with them ought to be modified. Amongst other things, the Trust is required to look at:

- a) whether an appropriately wide range and diversity of programmes has been made through the WoCC; and
- b) whether the geographical location and size of external producers who made bids to make programmes through the WoCC suggests that the process of competition has been fair and transparent.

This is the second review of the WoCC. The first was a necessarily detailed investigation into the newly embedded systems and processes behind the WoCC. This second review has focused on the progress made on the Trust's recommendations from the first review, and so is lighter-touch in its approach.

The review has broadly assessed; (i) how the outcomes of the WoCC compare to the findings in the last review, (ii) whether the recommendations from 2008 have been implemented and, (iii) whether there are any new areas to consider.

More specifically, it has focused on the following areas.

- 1) How do the current arrangements fit with broader BBC Strategy
- 2) How are the arrangements working in practice?
- 3) What outcomes have the arrangements led to in terms of content commissioned in-house versus externally?
- 4) What effect do the arrangements have on value for money for licence fee payers?
- 5) What effect do the arrangements have on quality of programmes and content for licence fee payers?

The Trust's approach to the review

The review has sought to gather data and evidence from a range of stakeholders both within and outside the BBC. We directly approached a wide range of people in the industry to ensure they were aware of our public consultation and offered the chance to contribute their views. The Trust has also drawn on independent expertise, appointing Deloitte LLP to produce an independent report.

The main data sources for the review were:

- Operational data supplied by BBC management
- Publicly available data concerning the BBC's TV commissioning processes including complaint handling arrangements.
- A period of public consultation
- Stakeholder research conducted by Deloitte on behalf of the Trust, covering:
 - Commissioning staff and line managers
 - In-house production units
 - Qualifying' independent producers
 - Non-'qualifying' independent producers
 - Representative trade and professional bodies

Following completion of our work, the Trust is today publishing its findings alongside supporting evidence.

Key findings and recommendations

The BBC is complying fully with its requirements under the Charter and Agreement

In particular, the BBC is currently delivering both the independent production quota and the in-house guarantee, while also operating the Window of Creative Competition in line with the requirements of the BBC Agreement.

The BBC commissioned 40% of its network commissioned hours from the qualifying independent sector in both 2008-09 and 2009-10, a further 3% from non-qualifying independents in each year, and producing 57% of network production in-house in 2009-10 and 2008-09. Independent producers are winning a fair share of peak programming hours, delivering comparable viewership hours, and making programming across a wide range of genres.

The BBC is continuing to use a large number of independent producers for network commissions, 194 in 2009-10 compared to 199 the previous year. Commissioning from qualifying independent producers is also from throughout the UK, with 5% of network commissioned hours coming from Scotland, 2% from Wales, 0.5% from Northern Ireland, 21% from the English regions and the remainder from London.

The BBC is committed to ensuring that 17% of its network television production spend is from the Nations by 2016. In 2009/10 the BBC this figure stood at 11.7%. This decision was part of a renewed commitment by the BBC to move more network television production out of London to draw on the talent and skills of the whole UK. Independent commissioning from the Nations stood at 7% of hours in 2009/10. Although this figure is not comparable to spend figures, and a Nations target has not been specifically set for independent commissioning hours, the Trust expects each of the Nations to play a role in ensuring a range of voices and perspectives come through in independent commissions.

While the independent supply quota and WoCC apply only to network commissions, the BBC is also required to ensure there are appropriate opportunities for competition between in-house and external producers for the provision non-network programmes. The BBC commissioned 35% of its non-network programming from independent producers in the Nations and Regions in both 2008-09 and 2009-10 demonstrating that the independent sector continues to play an important role in the Nations and Regions.

In general, the Window of Creative Competition is delivering benefits to licence fee payers, the BBC and the Independent Production sector

The independent sector is winning work consistently in the WoCC, having secured around 72% of total WoCC hours in each of the last three years.

The WoCC now appears to be in operation less as a discrete process and more as a broad principle. The Trust views this as a very positive shift in behaviour. It provides evidence that the meritocratic approach stimulated by the WoCC is becoming well embedded in commissioning behaviours, with commissioners focused on ensuring the best ideas are

delivered regardless of source. We note that the benefits of this cultural shift towards a truly meritocratic system are recognised by the BBC and independent producers as also being delivered in both the in-house and independent guarantees, where competition also takes place. The WoCC has played a part in ensuring that a competitive independent sector is helping the BBC to deliver a range and diversity of high quality programming to audiences.

Despite these positives, some independent producers, generally those who are smaller and those who do not frequently work with the BBC, find it difficult to access the BBC's commissioning process. We also note that there are some specific differences from these broad outcomes in Children's, Knowledge and Sport programming, where the WoCC is implemented in a slightly different manner, which have the potential to somewhat limit the degree of creative competition which takes place. These are addressed by our recommendations below.

Finally, we acknowledge that there can be tensions between the various regulatory requirements placed on the BBC, such as between the WoCC and Network Supply targets for instance. The Trust is of the view that this is, to a degree, inevitable and is likely to occur only at the margins of implementation. In return for the privilege of licence fee funding, the BBC has many obligations to licence fee payers throughout the UK. We note that there will be benefits to audiences from the BBC's commitments to commissioning programming in the Nations and Regions, developing centres of excellence throughout the UK, and ensuring that the BBC's Network programming accurately reflects the realities of a devolved UK.

The BBC has made good progress in implementing the recommendations of the Trust's first review

In those areas where progress has not been as comprehensive as we had hoped, the Executive should complete the implementation of the recommendations made in 2008 as a matter of urgency, in particular focussing on:

- Clarifying remaining areas of uncertainty as to how the WoCC operates in practice
- Providing information around the scope and scale of opportunity in individual genres (i.e. 'size of prize'), particularly for those producers who do not have regular access to the BBC
- Improving the quality of audience information shared with the independent sector, particularly the frequency and format with which this information is communicated

The Trust is asking the BBC Executive to make a number of changes as a result this review

The Trust is encouraged by the wide-ranging evidence that the Window of Creative Competition is benefiting audiences and industry. To ensure that audiences continue to benefit from the arrangements in place and that the BBC continues to treat the independent sector fairly, we are asking the BBC Executive to:

- Consider how tendering can best be used to increase levels of competition
- Continue to make BBC commissioning easier to access for all independent producers, particularly smaller companies and those further away from commissioning hubs. In particular we are looking to the Executive to ensure that information is available consistently to all independent companies in the Nations and Regions
- Assess the frequency with which existing sports rights contracts are re-tendered for production, in order to evaluate whether there is an opportunity to support greater levels of creative competition over the long-term
- Clarify the exact nature and permeability of quota boundaries, particularly in Children's programming
- Review the Knowledge quota to see whether the number of commitments can be reduced to mitigate the risk of 'pre-determined' output.

We note PACT's position on the level of the in-house guarantee

As part of PACT's submission to our public consultation they questioned whether the level of the in-house guarantee is appropriate. The level of this guarantee, currently 50 per cent, is set specifically in the Agreement and so outside the scope of this review.

Trust considerations

The BBC is complying fully with its requirements under the Charter and Agreement

The BBC is currently delivering both the independent production quota and the in-house guarantee

Deloitte's work, summarised later in this report, clearly demonstrates that the BBC continues to meet its obligation to commission not less than 25 per cent of its programming from the independent sector, commissioning 40% of its network commissioned hours from the qualifying independent sector in both 2008-09 and 2009-10.

The BBC has also operated under the terms of its in-house guarantee, which ring-fences 50% of programming to the BBC, producing 57% of network production in 2009-10 and 2008-09.

The remaining 3% was commissioned from non-qualifying independents each year.

The BBC has operated the Window of Creative Competition in line with the requirements of the BBC Agreement

The Trust welcomes the Deloitte finding that the BBC is complying with the requirements set out in the BBC Agreement pertaining to the WoCC. We are also of the view that the overall level of commissioning from independent producers, and the processes put in place to support this, are strong evidence that the BBC's approach to the WoCC is in line with its requirements under the Charter and Agreement.

The Charter and Agreement states that when evaluating the BBC's performance in this area the Trust should assess:

- a) whether an appropriately wide range and diversity of programmes has been made through the WoCC; and
- b) whether the geographical location and size of external producers who made bids to make programmes through the WoCC suggests that the process of competition has been fair and transparent.

The work carried out by Deloitte shows that the BBC is meeting these requirements. Independent producers are winning a fair share of peak programming hours, delivering comparable viewership hours, and making programming across a wide range of genres.

The BBC is continuing to use a large number of independent producers for network commissions, 194 in 2009-10 compared to 199 the previous year. Commissioning from qualifying independent producers is also from throughout the UK, with 5% of network commissioned hours coming from Scotland, 2% from Wales, 0.5% from Northern Ireland, 21% from the English regions and the remainder from London.

The BBC is committed to ensuring that 17% of its network television production spend is from the Nations by 2016. In 2009/10 the BBC this figure stood at 11.7%. This decision

was part of a renewed commitment by the BBC to move more network television production out of London to draw on the talent and skills of the whole UK. Independent commissioning from the Nations stood at 7% of hours in 2009/10. Although this figure is not comparable to spend figures, and a Nations target has not been specifically set for independent commissioning hours, the Trust expects each of the Nations to play a role in ensuring a range of voices and perspectives come through in independent commissions.

Suitable arrangements are in place to provide appropriate opportunities for competition between in-house and external producers for the provision non-network programmes

There is no formal requirement for the BBC to operate a WOCC for programming commissioned for broadcast locally in the Nations and Regions. Instead, the Agreement sets out that:

“The Trust shall ensure that suitable arrangements are in place to provide appropriate opportunities for competition between in-house and external producers for the provision of programmes which are not intended to be “network programmes” within the meaning of clause 54”

The Trust examined this area of commissioning as part of its first review of the WoCC, concluding that the BBC was meeting its obligations under the Charter and agreement. It was also apparent that in general, independent producers felt they had good relationships with those making the local commissioning decisions and their concerns were more focused on developing or sustaining relationships with network commissioners.

This review shows that the BBC commissioned 35% of its non-network programming from independent producers in the Nations and Regions in both 2008-09 and 2009-10.

BBC management have observed that “This expenditure with the Independent sector remains important in terms of sustaining an economic and creative Independent base and plurality of supply within the Nations and English Regions, especially given the limited opportunities within the commercial sector in some parts of the UK.”

In terms of changes to process since the last review, BBC management have informed the Trust that “Performance against these targets is monitored on a monthly basis with any corrective action taken as necessary although fewer interventions have been needed over time as the independent supply base has matured.”

On the basis of the BBC’s continuing compliance in this area, and the improvements to commissioning arrangements in general, the Trust is content that suitable arrangements for non-network commissioning are in place as required by the Agreement.

The Window of Creative Competition is delivering benefits to licence fee payers, the BBC and the Independent Production sector

The WoCC has played a part in ensuring that a competitive independent sector is helping the BBC to deliver a range and diversity of high quality programming to audiences.

Deloitte note that “the WoCC appears to be working well. It is recognised by both the BBC and the independent sector as encouraging creative competition and broadly meeting its strategic objectives – supporting a meritocratic commissioning process, openness and fairness, quality programming, value for money and competition in Nations and Regions.”

Figures collected as a part of this review show that the independent sector is winning work consistently in the WoCC, having secured around 72% of total WoCC hours in each of the last three years. In 09/10, the independent sector produced 40% of total network commissioned hours (or 43% with the inclusion of non-qualifying independent producers). The WoCC has clearly opened up greater opportunities for the sector.

A key change observed since the Trust’s last review in 2008 is that the WoCC now appears to be in operation less as a discrete process and more as a broad principle. The Trust views this as a very positive shift in behaviour. It provides evidence that the meritocratic approach stimulated by the WoCC is becoming well embedded in commissioning behaviours, with commissioners focused on ensuring the best ideas are delivered regardless of source. We note that the benefits of this cultural shift towards a truly meritocratic system are recognised by the BBC and independent producers as also being delivered in both the in-house and independent guarantees, where competition also takes place.

We are pleased that the introduction of the WoCC does not appear to have had a negative impact on the quality of programming produced, as supported by Audience Appreciation figures; indeed there has been a marginal uplift in this measure since the inception of the WoCC, although we note that precise causality is hard to establish.

Some independent producers, generally those who are smaller and those who do not frequently work with the BBC, find it difficult to access the BBC’s commissioning process

Deloitte have noted concerns from industry that some smaller producers might find it difficult to access the BBC’s commissioning process. This is despite the positive steps taken to improve it over the past few years, such as increases to out-of-London commissioning and the increased role of commissioning executive producers in this area.

Were this to result in a restricted number of independent producers being used by the BBC this might in turn reduce the quality of the ideas commissioned, which would clearly not be in the interests of licence fee payers.

However, a number of other outcomes suggest this is not yet the case:

- Nearly 200 independent producers were used by the BBC last year, a consistent level compared to previous years, and that 'churn' has remained at a healthy 16%.
- It is generally acknowledged that commissioners do not deliberately advantage in-house production over the independent sector or some independent producers over others, and that the same information is available to both large and small independent producers,
- Deloitte observe that people generally regard any real differences to be caused by the nature of business and frequency of contact with the BBC rather than any deliberate activity to advantage particular parties.

While we acknowledge that Deloitte are concerned that over the long-term there may be a risk that this perpetuates a 'hollowing' out of the independent sector and may limit the number of newer ideas coming into the BBC, we do not believe the risk of this outcome occurring to be high in the short to medium term.

In line with the Deloitte recommendation, we ask the Executive to continue to proactively make BBC commissioning easier to access for all independent producers, to ensure that there is no significant advantage to particular groups of independent producers. We agree that this should build on the initiatives such as the regional out-of-London initiative and the use of commissioning executive producers in Knowledge.

There are some differences from these broad outcomes in Children's, Knowledge and Sport programming

In Children's programming, Deloitte have noted that the in-house guarantee is currently being reserved for the in-house Children's production teams only or for programmes which are 'co-produced' with other in-house teams. Ideas submitted by other in-house teams (e.g. Comedy, Knowledge) are commissioned as part of the WoCC only, even if there is capacity within the in-house guarantee.

We agree that this raises the possibility that levels of competition in the WoCC in this area may be increased, with a corresponding decrease in competition in the in-house guarantee, and that the WoCC may be pre-filled by in-house productions before the independent quota has been filled and independent submissions begin to be allocated to the WoCC. This situation appears unlikely to benefit licence fee payers and somewhat out of keeping with the broader implementation of the WoCC in other genres.

We agree with Deloitte's recommendation that the Executive should consider whether better clarity between where an in-house idea is conceived and where it could be produced will address this issue.

Deloitte have found that Knowledge is a more structured genre with commitments over and above those of other genres, some of which are obligatory, others the result of management decisions.

As with Children's, we share Deloitte's concerns that the differences apparent may not be delivering optimum outcomes for licence fee payers due to their potential to limit the degree of competition. The Executive should review the Knowledge quota to see whether the number of commitments can be reduced to mitigate the risk of 'pre-determined' output and a limited the range of opportunities in some sub-genres.

Sport is the other area where differences in approach remain. A subject raised during the first review; these differences are picked up below where progress since 2008 is evaluated.

There can be tensions between the various regulatory requirements placed on the BBC, such as the WoCC and the Network Supply targets, but these are a consequence of the responsibilities placed on a public service broadcaster

Deloitte have noted that the "...principles of the WoCC are in tension with, and are constrained by, other frameworks in place at the BBC, most notably Nations and Regions." The Trust is of the view that this finding is, to a degree, inevitable and is likely to occur only at the margins of implementation.

In return for the privilege of licence fee funding, the BBC has many obligations to licence fee payers throughout the UK. We note that there will be benefits to audiences from the BBC's commitments to commissioning programming in the Nations and Regions, developing centres of excellence throughout the UK, and ensuring that the BBC's Network programming accurately reflects the realities of a devolved UK.

At the margins, we recognise that multiple regulatory frameworks could, at the margins, result in the BBC being somewhat constrained in its freedom to commission through the WoCC but have seen no evidence to suggest this problem is widespread or resulting in a reduction in the quality of programming provided to audiences.

We note Deloitte's call for the BBC and BBC Trust to take steps to reduce the impact of other frameworks on the WoCC. Although we do not propose any specific recommendations in this area we will continue to ensure that the regulatory demands placed on the BBC are kept to the minimum necessary to deliver the desired benefits to licence fee payers. We also note that internal structures put in place by the BBC Executive can have a similar impact, and expect that they will also continue to monitor this situation.

The BBC has made good progress in implementing the recommendations of the Trust's first review

The BBC has made strong progress in implementing the recommendations arising from the first review in 2008, although there remains a need for further progress in some areas. Looking at each recommendation in turn:

Recommendation: Provide clearer information about the operation of the WoCC

The information provided by the BBC about how the WoCC operates has been improved, with both the commissioning website and genre briefings cited by Deloitte in their report. Independent producers, in-house producers and commissioners engaged in this review now seem to understand the principle behind the WoCC and are putting it into practice.

We are pleased by the progress made here, and in the cultural shift that has taken place within the BBC. As such, while we ask the Executive to continue to ensure that they provide clear information about the WoCC we are not proposing further specific recommendations in this area.

Recommendation: Make available more information about the scope and scale of opportunities

Deloitte have noted the increase in both volume and quality of the information the BBC provides about the scope and scale of opportunities in the WoCC. It is also acknowledged on all sides that the same information is generally available to everyone, regardless of whether they work for the BBC or an independent producer.

A question remains around whether it would be beneficial to provide more detailed information at a genre level. While this might help producers more accurately determine the precise level of opportunity, essentially steering them away from developing ideas in genre that are already fully commissioned, the BBC observes that there is always a degree of flexibility in the commissioning process for the best ideas. More detailed information could lead to a great idea not being delivered due to a quota, which is clearly not in the interest of licence fee payers.

Recommendation: Consider how the principles of the WoCC might be best applied to sport

The approach the BBC has taken with regards to sport is broadly in line with that expected by the Trust, particularly given the potentially limited scope for introducing competition in the genre. We note that this remains one area where the information made available about future opportunities might be improved.

In line with Deloitte's recommendation, we are also looking to the BBC to increasingly use open tender processes for sport. We note the desire to ensure independent producers do not invest significant resource in areas where they have little chance of winning. Whilst noting this concern, the Trust is of the view that independent production businesses are sufficiently mature to make this decision for themselves as long as relevant information is provided. We look to the BBC to ensure this is the case. We are also asking the Executive to examine the frequency with which existing contracts are re-tendered for production.

The Trust notes the specific concerns surrounding the coverage of the Olympics. This is an area we will discuss with the Executive in due course.

Recommendation: Consider whether emerging good practices of commissioning in certain genres could be more widely applied in other genres

Considerable progress has been made in understanding best practice and applying the lessons learnt more widely. The improved results of the commissioning survey back up this view. We are also pleased to see that the process of applying good practice is now regarded as business as usual, rather than a discrete project. As such, we are content that this recommendation has been followed and are not proposing further action.

Recommendation: consider monitoring which programmes are commissioned through each of the commissioning routes

The BBC Executive has completed this monitoring exercise, as recommended, since the completion of the Trust's first review. The Exercise has clearly demonstrated that commissioners select ideas in a meritocratic manner. As such, the exercise has had some value.

However, we note BBC management's concerns about the resource-heavy nature of the requirement, and the limited value it holds for the BBC itself as the information gathered does not form part of internal management information. We are therefore content to reduce the regulatory requirements in this area and for the Executive to gather alternative information. However, any changes must ensure that the Executive remain able to demonstrate that a suitable range and diversity of programming is commissioned through the WoCC across the BBC's range of output.

Recommendation: Make the e-commissioning system clearer

Both in-house and independent producers seem broadly happy with the e-commissioning system. This in part appears due to the fact that there is clarity that the system exists to support the commissioning process as a logging tool rather than seeking to replace the direct contacts which are key in developing ideas.

There remains a tension between maintaining this face-to-face contact, which delivers benefits to audiences but may favour those independent producers with existing relationships with commissioners, and ensuring that everyone is given the opportunity to submit ideas regardless of their scale or location. While there is no evidence that the current system is having a detrimental effect on output, we ask the BBC to continue to monitor the situation to ensure that the best ideas are commissioned regardless of source.

Recommendation: Consider steps to ensure that independent producers have a better understanding of audience response to programming

Due to the contractual situation with BARB, there remain disparities between the audience data available internally and externally to the BBC. We also note that there is no strong view either within the BBC or amongst independent producers that the current situation is compromising programme quality. While we encourage the Executive to continue to find a solution, perhaps in collaboration with PACT, we do not believe that this should be pursued at any cost; any solution must represent value for money for licence fee payers.

Recommendation: review complaint handling arrangements for commissioning with a view to streamlining the process and making it as accessible as possible

The complaints process for independent producers has been amended following the Trust's first review, and appears to be functioning well. We note that the process for in-house is shortly to be implemented and will examine the outcome of this in our next review.

Next Steps

As explored by Deloitte and acknowledged by the Trust, the BBC has made strong progress in implementing the BBC Trust's recommendations from the 2008 review.

In those areas where progress has not been as comprehensive as we had hoped, the Executive should complete the implementation of the recommendations made in 2008 as a matter of urgency, in particular focussing on:

- Clarifying those remaining areas of uncertainty as to how the WoCC operates in practice
- Providing information around the scope and scale of opportunity in individual genres (i.e. 'size of prize'), particularly for those producers who do not have regular access to the BBC
- Improving the quality of audience information being shared with the independent sector, particularly the frequency and format with which this information is communicated

We are requesting an update from the Executive be brought to the Trust on the progress of these final actions no later than 6 months from the publication of this review.

Further actions arising from this review

As a result of the work carried out by Deloitte they have suggested a number of recommendations, many of which have been explored above. For clarity, the Trust is asking the BBC Executive to take the following actions as a result of this review:

1. Consider how tendering can best be used to increase levels of competition

We are asking the BBC Executive to consider the use of more 'open' tenders in Sport and other genres as appropriate to encourage greater levels of competition in the production sector. Each tender should be published alongside a set of pre-qualification criteria which thereby puts emphasis on individual producers to determine applicability to compete.

2. Continue to make BBC commissioning easier to access for all independent producers, particularly smaller companies and those further away from commissioning hubs

We are asking the BBC Executive to consider what further steps it will take to ensure that there is no significant advantage to particular groups of independent producers within the commissioning process, and that the commissioning process is easily accessed by all types of independent producers. In particular we are looking to the Executive to ensure that information is available consistently to all independent companies in the Nations and Regions

3. Assess the frequency with which existing sports rights contracts are re-tendered for production, in order to evaluate whether there is an opportunity to support greater levels of creative competition over the long-term

We require the BBC to publish more detail on the expected pipeline of tender and re-tender opportunities. This will provide the independent sector with an opportunity to prioritise development and proposal activity.

4. Clarify the exact nature and permeability of quota boundaries , particularly in Children's programming

We expect the BBC Executive to clarify the permeability of quota boundaries and set out precisely which production units qualify for each guarantee or quota, detailing which of the in-house production teams the in-house guarantee applies to. This is particularly relevant in Children's programming where the implementation of the WoCC is not wholly in step with the broader approach.

5. The Executive should review the Knowledge quota to see whether the number of commitments can be reduced to mitigate the risk of 'pre-determined' output

We are looking to the BBC Executive to consider the multitude of obligatory and management-driven commitments in Knowledge and whether there is an opportunity to reduce the number of these commitments to open up greater levels of competition.

Evaluating the impact of these actions

We expect the Executive to submit a detailed response and action plan to the recommendations identified in this report and the outstanding 2008 recommendations no later than 6 months from the publication of this review. We will then assess their impact in our next review of the WoCC.

We note PACT's position on the level of the in-house guarantee

As part of PACT's submission to our public consultation they questioned whether the level of the in-house guarantee is appropriate. The level of this guarantee, currently 50 per cent, is set specifically in the Agreement and so outside the scope of this review.

Stakeholder views

The Trust received only two substantive responses directly to its public consultation; one from PACT, the industry body representing independent production companies, and one from Tern TV, an independent producer. The majority of public engagement occurred through Deloitte's work, summarised in the following chapter, via a series of stakeholder interviews. This chapter focuses on PACT's response as broadly representative of industry.

A summary of PACT's response

The following is an extract from PACT's response to the Trust's consultation. Their full response has been published alongside this report as supporting evidence.

The Window of Creative Competition (WOCC) has in our view been a significant success in helping open up BBC commissioning to competition from external suppliers as well as in-house producers. Historically, there was widespread concern that the BBC was failing to commission on a meritocratic basis, and in some years it fell short of the minimum 25% independent quota. As BBC director general Mark Thompson told the House of Lords Select Committee during the last Charter review, the 25% independent quota was regarded as ceiling, not a floor.

The WOCC has been a significant step towards addressing this. The Trust's report for its first review of the WOCC stated that the new system had started to affect a real change in BBC commissioning:

"The introduction of the WOCC and the associated structural and staffing changes has been a significant step for the BBC and the evidence from this first biennial review suggests that a real shift in culture is being achieved."

In our view, opening up commissioning to greater competition in this way delivers two benefits for the licence fee payer, driving creative excellence and value for money. As Mark Thompson also noted to the Lords Select Committee: "It is in the interests of the licence payer that investment should go to the best ideas and the best talent."

In this submission we raise several concerns, including some operational matters as well as broader questions as to whether it is now appropriate to open up more BBC commissioning to competition between external suppliers and in-house. However, this should not be seen as a criticism of the WOCC, either in principle or in its overall implementation by BBC management. On the contrary, we strongly welcome the WOCC, appreciate that it has ushered in an ambitious and at times difficult cultural change, and regard it as having successfully increased creative competition and value for money on behalf of the licence fee payer. Our view is that there may now be an opportunity for the BBC to build on the success of the WOCC - given the clear and strong growth in capacity of the external supply sector over recent years, which we will detail - by introducing competition between external and in-house producers across more commissioning.

The areas we address in this submission fall into three broad areas:

- Whether it is appropriate to build on the success of the WOCC and introduce an element of competition between external and internal producers across a greater amount of BBC commissioning;
- Whether commissioning is fair and transparent on an operational level; and
- Whether the data on outcomes that we have available to us indicates that the BBC is commissioning a range of external programming, including by size of supplier and geographic location, amongst other factors.

Competition in commissioning

While we appreciate that the remit of this review is to focus on the operation of the WOCC and the in-house guarantee, we ask the Trust to now consider whether it is timely for the BBC to build on the success of the WOCC so far and open up more commissioning to competition between in-house and external producers. In the five years since the WOCC was designed (it was launched in the last Charter but conceived prior to that), the external supply sector has grown in scale significantly, with annual turnover increasing by, based on conservative estimates, 40%. Over the same period, commissioning of first-run original content by the five main PSB channels has declined – Ofcom’s latest annual market report states that their spending on first-run originations fell by more than 20% between 2004 and 2009.

Our assertion is that the growth of the external supply sector, coupled with shrinking demand from buyers, means that there is increased competition for BBC commissions and an increased risk that the in-house guarantee is acting as a cap on external commissions, or may do so in the short term, so preventing commissioners from commissioning the best ideas on merit. At the same time, the increased capacity in the external supply sector raises questions over whether BBC in-house must have a protected 50% share of qualifying commissions in order to guarantee the BBC the content that it needs.

Concerns that the in-house guarantee could eventually distort commissioning decisions were raised in the Trust’s first biennial review of the WOCC by PricewaterhouseCoopers (PWC), in its report for the BBC Trust, which stated:

“At some point in the future the continued growth in independent production may be capped by the in-house guarantee set at the individual genre and sub-genre level. There is a risk that changes to the in-house guarantee at these levels may not be consistent with the principle of ideas being commissioned on merit, whatever the source.”

Given the renewed focus on commissioning original UK content that is at the heart of the BBC’s current strategy review, we see it as all the more important that the BBC can demonstrably commission the best ideas, whether in-house or external, on behalf of the licence fee payer.

Whether commissioning is fair and transparent

In addition, we outline in this submission any concerns relayed by members about the operation of the WOCC. On the whole feedback was positive, with producers generally reporting information about commissioning opportunities and strategies to be good (though online and emails are not considered replacements for face-to-face access), and that many commissioners are readily engaging with external suppliers.

However, concerns remained around access to audience data and a lack of consistency in access to senior commissioners, notably multi-platform commissioners, and the level of detail in commissioning briefings. In addition, our understanding is that producers are not made aware of whether their proposal is being considered under the WOCC. This means that they do not know if they are competing with in-house producers to win the commission. This may not be an issue, providing that in-house producers are treated in the same way, but could represent a competitive disadvantage if in-house is aware of whether it is competing with external suppliers. We would welcome clarification on this.

Whether the BBC is commissioning from a range of suppliers

We note that many of the outcomes from the Trust's first biennial report on the WOCC – such as cost per hour being broadly comparable across in-house and external commissions - were positive and suggested that in many aspects independents were able to compete for a broad range of commissions.

In terms of the size of external producers being commissioned, we note the Trust's conclusion from the BBC's 2007/08 data that there has been "no noticeable change in the nature of the supply base since the introduction of the WOCC."

Our census data for 2009 broadly indicates that the external supply sector maintained this status quo last year, though there was considerable movement within the middle band of companies. Across the sector, i.e. including other broadcasters, small, medium and large independent companies maintained their year-on-year share of commissioning across the sector, albeit with larger medium companies taking share from smaller medium companies. In terms of the BBC specifically, the biggest external companies (£70m+ annual turnover) increased their market share by 6% in 2009, although this was at the expense of companies in the middle range (annual turnover £10m-£70m), not small companies. Smaller companies either increased their share of external BBC commissions, or remained flat. It is also important to bear in mind that the 6% increase by the largest companies was generally not repeated across other broadcasters.

Based on BBC data, the BBC also appears to be commissioning a healthy number of companies, as well as an increasing amount of new companies. The Trust reported in the first biennial review of the WOCC that the number of new companies winning BBC commissions rose from 48 in 2005 to 59 in 2007. Deloitte's report for BBC management this year on the BBC's economic impact

showed that the overall number of independents winning BBC commissions had grown substantially, from around 210 in 2002/03 to 290 in 2008/09.

We therefore view the external supply market as healthy in terms of the range of companies by size, and consider that the BBC is broadly commissioning from an appropriate number and range of companies by size, with the one caveat that it should monitor commissioning of medium-sized companies particularly closely to see if they lose further market share.

However, the fact that there is what we consider to be healthy range of external suppliers by size should not mask the fact that companies of all sizes have found the market challenging. The total level of commissions for the external supply sector dropped by over £100m, or 7.5%, according to our census. This is in line with Ofcom's figures for spending on first-run originations (external and in-house) in its latest Communications Market report, which reported a 7.4% drop in 2009. Our census shows that profit margins at small companies dropped last year, while larger companies were able to slightly increase margins after a drop the year before. We view this as a result of larger companies making significant, well-publicized cuts backs, as well as being able to diversify. This is not, however, a sustained trend: it should be noted that the year before these trends were reversed, with margins at larger companies falling and those at smaller companies rising.

In the case of pressures on smaller companies, Pact's census for 2007/08 (the last census to record this data) indicated that companies in the £1-5m turnover band specialised in factual, while companies with a turnover of under £1m specialised primarily in factual, or children's. If the BBC wishes to specifically nurture smaller independents, we suggest that the best way – in addition to ensuring an open and fair commissioning system across the independent quota and WOCC - would be to enable them to compete for a greater amount of commissioning spending knowledge and children's. We have asked the Trust to consider reducing the in-house guarantee across the board, but in our view reducing in-house commissioning in knowledge and children's, on top of the gains already made by external suppliers in these genres, would be likely to be of particular benefit to smaller companies.

In terms of geographic spread of independent commissions, the Trust's report for the first biennial review indicated that external suppliers in Wales and the Midlands were extremely underrepresented. In Wales, external producers won just 22% of network commissions, far below the average for all external commissions of 43%. We are therefore concerned that the BBC's recent steps to increase commissioning in some Out of London areas – while hugely welcome in principle - may be focused too heavily on in-house.

In addition, we ask the BBC to provide more detail on outcomes in two areas: a breakdown of sub-genres within children's, and the number of black and ethnic minority-led companies winning commissions.

BBC Management response on progress made against 2008 recommendations

As part of the Trust's review, BBC management outlined the progress they believed they had made against the Trust's recommendations from the first review. The information they provided is summarised below.

Providing clearer information about the operation of the WOCC

BBC management argue that they have improved the information on the commissioning website in the following ways:

- Amending wording and adding more detail to explain how the WOCC works in practice
- Ensuring that each genre's development priorities spell out whether specific opportunities are available for a specific category of output in the WOCC and/or within the guarantees. They note that, for development purposes, the vast majority of output categories (e.g. BBC1 drama 9pm series) are available within both the guarantees and the WOCC. They explain that this is partly because at any one time the BBC's development focus will be across a number of years, with the outer years that are being actively developed likely to be relatively un-commissioned
- Giving more detail about scope and scale of opportunities where possible. For example, if a year is fully commissioned, or the volume of demand in a particular area is changing significantly.
- Ensuring briefings to producers follow the same principles

BBC management believe that the impact of these changes, and other dialogue with producers both in-house and indie, can be seen in the results which relate to the WOCC in the 2009 commissioning survey, noting that "Most producers (both Indies and In-house) are now either favourable or neutral about the WOCC, with perceptions improving notably since 2007."

Making available more information about the scope and scale of opportunities

In addition to BBC management's response above regarding the information provided about the operation of the WoCC, which they note is also relevant here, they have set out a number of other steps they have taken around the availability of information on the scope and scale of opportunities:

- In terms of the quantification of opportunities, BBC management reiterate that their development priorities span a number of years at any one time. They observe that in terms of the outer years, the planning process may still be flexible. Indeed, the amount of resource allocated to a particular category of programming may be informed by the strength of development in that area
- They state that the commissioning websites are clear on the tariffs available per hour for particular programme categories and that the sites have also given more detail about scope and scale of opportunities where possible, for instance if a year is fully commissioned, or the volume of demand in a particular area is changing significantly
- They also publish the outcomes of the WOCC each year by issuing a press release to Broadcast as well as through the BBC's Annual Reports and Accounts

Considering how the principles of the WoCC might be best applied to sport

In response to this recommendation, BBC Sport:

- Has formalised the criteria for allowing incumbent independent producers a period of exclusivity to tender when they extend rights contracts
- Has applied the above in awarding the latest contract for Horse Racing (awarded to the incumbent Sunset & Vine.)
- Maintains a tiered grouping of independent producers reflecting expertise and capability to inform invitation to tender decisions
- Has implemented a WOCC process in Sport
- Has run two WOCC tenders so far, for the Boat Race from 2010 and Formula 1 from 2011. Both were awarded to BBC Sport in-house teams.
- Is reviewing its level of in-house guarantee, ahead of relocation to Salford. This reflects the loss of staff who have chosen not to relocate; the likely reduction of

existing indie portfolio; and the strategic objective of developing a broader indie base, particularly in the North. As part of this process, Sport has identified in-house Sports to transfer to the indie sector. This has yet to be signed off by the North Board.

- Is preparing to commence competitive tenders for the following: Bowls, Darts, Snooker, MotoGP and Cricket World Cup.
- Is finalising its operating model for Salford, which is likely to include a reduced TV production staff base, with a greater role for indies in supplementing in-house production teams.

Considering whether emerging good practices of commissioning in certain genre could be more widely applied in other genre

One of the best practice areas the Trust identified in 2008 was the Out of London Commissioning Executive role in Comedy. BBC management informs us that as part of their Network Supply Review work they have now expanded the number of Out of London Commissioning Roles (3 in Factual, 1 in Daytime, 1 in Entertainment, as well as 3 Drama roles in each of the Nations)

They have undertaken a review of Commissioning Consistency, which focussed on core processes within the commissioning genres. The report concluded that core processes were in place across genres and that the variations in operation were largely driven by the inherent needs of the specific genre or channel.

In 2008 BBC management undertook a major review of its Independent Programme Supply Strategy. Through that, they believe they have developed a clear roadmap of how best to engage with the sector in order to maximise quality on screen through maximising competition. We are informed that key recommendations have been actioned, including the introduction of business review meetings with regular suppliers, and a diversification strategy designed to engage with and support smaller companies, particularly in the regions.

The Commissioning Survey 2009 is the Executive's core indicator of the producer experience in navigating the commissioning processes in each genre. Following the 2009 survey, the Executive met with each genre to discuss the feedback specifically, and then discussed the survey together at the Commissioning and Services Group in order to generate an action plan. BBC management observe that the plan is now in place and actions are being moved forward to establish best practice across all aspects of the business of commissioning.

Consider monitoring which programmes are commissioned through each of the commissioning routes

BBC management inform us that individual programmes are now labelled within on-air to reflect whether they are in the guarantees or in the WOCC, which is primarily a retrospective activity for a number of reasons:

- The guarantees are commitments to percentages of a particular slate. The forecast number of hours that are delivered by that slate will vary through the year – channels will shift funding, genres may commission more or fewer hours for that money than originally envisaged, there will be delivery delays – so consequently the exact amount of hours in the guarantees and the WOCC will also shift.
- A number of individual programmes, once commissioned, will move between financial years as the pre-production and planning process kicks in – primarily due to talent or resource availability.

Due to these factors, a programme's status at the point of commission (guarantee or WOCC) is rarely fixed.

BBC management observe that, while they have completed the labelling exercise retrospectively for each year since the 2008 review, they challenge the value of the exercise this as this programme level analysis plays no part in their own management information.

Making the e-commissioning system clearer

To achieve this recommendation BBC management have:

- Amended the wording on the website as recommended in the 2008 report
- Implemented improvements to the system based on feedback from users
- Communicated the updates to the system via the Indie Newsletter, genre briefings and the website

Considering steps to ensure that independent producers have a better understanding of audience response to programming

BBC management inform us they have undertaken the following actions:

- Updated and enriched the audience information section on the commissioning website for all to access, making available all data that is contractually possible to

release. Increased the linkage to this site and highlighted its existence in communication with indies.

- Introduced a policy for allowing producers to request one complete set of iPlayer data for their programmes. Currently, producing statistics regarding iPlayer usage is a manual exercise and so BBC management prioritise the data they provide. Commissioners and Controllers are also similarly constrained by the policy in relation to individual requests. Plans are in place to evolve the measurement technology over the next few years.
- Qualitative research information produced by the BBC itself has been increasingly shared with producers through the briefing process.
- In the absence of agreement with BARB it has not been possible to provide a direct access service for Indies to provide them with the equivalent service to the audiences portal.
- Conversations have taken place with PACT as to whether it is worthwhile providing a service, for BARB subscribers only, to mirror the audience portal – but PACT felt not enough members would take this up.

Review complaint handling arrangements for commissioning with a view to streamlining the process and making it as accessible as possible

BBC management observe that:

- The Independent Producers complaint process has been reviewed and updated
- A process has been developed to manage In-house complaints (still awaiting approval) However, we anticipate very low take up of the process as most issues between in-house producers and commissioners would be resolved through the internal hierarchy within Vision.

Independent report

To support the Trust's review, we commissioned Deloitte to undertake independent analysis and to conduct a range of stakeholder interviews. Their report is published alongside the Trust's conclusions as supporting evidence. The key findings and recommendations from their work are as follows:

Key findings

The BBC is complying with the requirements set out in the BBC Agreement pertaining to the WoCC

The key finding from this second review is that - on the basis of the evidence gathered and the information and data made available to us - the BBC is complying with the requirements set out in the BBC Agreement pertaining to the WoCC

The WoCC appears to be working well. It is recognised by both the BBC and the independent sector as encouraging creative competition and broadly meeting its strategic objectives – supporting a meritocratic commissioning process, openness and fairness, quality programming, value for money and competition in Nations and Regions

Most significantly, interviews demonstrate a strong belief that commissioners select the best idea on the basis of meritocracy, irrespective of producer type, and that the ideas of independent and in-house producers are considered on a fair and transparent basis.

The WoCC is a principle and not a commissioning process

The principles of the WoCC are firmly embedded in the broader commissioning process rather than operating as part of a separate process

The allocation of hours to the WoCC is a largely retrospective activity determined on the basis of the status of the in-house guarantee and independent quota

Commissioners select ideas on the basis of meritocracy and the strength of the idea. We have seen no evidence that commissioners select ideas on the basis of producer type nor do commissioners appear to consider the commissioning route that ideas are following

In addition, neither independent producers nor in-house production teams tend to know or concern themselves with which commissioning route their ideas are following. In reality, they are not concerned with knowing as long as the principles of the WoCC are being applied

BBC has made considerable progress on recommendations made by the BBC Trust in 2008

The BBC has made a series of changes to its commissioning processes in light of the BBC Trust's recommendations in 2008. Many of these changes have driven positive outcomes

Actions have resulted in:

- Greater levels of understanding as to how the WoCC operates in practice
- Greater levels of understanding as to the scale and scope of opportunities in the WoCC
- Formal competitive tender processes in Sport
- Sharing of good practice across genres
- Improvements in e-commissioning and complaints handling

Further impetus is needed to fully meet recommendations around:

- Clarifying those remaining areas of uncertainty as to how the WoCC operates in practice
- Information around the scope and scale of opportunity in individual genres (i.e. 'size of prize'), particularly for those producers who do not have regular access to the BBC
- Further 'opening up' of competition in Sport to a broader set of independent producers
- Consistency of 'process' between genres (e.g. Children's, Knowledge)
- Improving the quality of audience information being shared with the independent sector, particularly the frequency and format with which this information is communicated

The WoCC delivers positive outcomes for the BBC, the independent sector and audiences

The independent sector has performed consistently well in the WoCC, having won c.72% of total hours in each of the last three years. In 09/10, the independent sector produced 40% of total network commissioned hours (or 43% with the inclusion of non-qualifying independent producers). This includes a range and diversity of programming and producer types

However, the success of the WoCC is more likely to be reflected by volatility in outcomes rather than consistent increases in either the performance of in-house production or the independent sector. Crucially, the last two years have been characterised by such volatility which supports the conclusion that the WoCC is working well. For instance, performance of the independent sector has improved in Drama where the percentage of hours won has increased from 44% in 07/08 to 79% in 09/10. Furthermore, in-house production did not win any Children's hours in the WoCC in 07/08 but won 50% in 09/10.

More broadly, the WoCC appears to be successful in promoting a meritocratic commissioning process, while also supporting openness, creative competition, quality and value for money

Both independent and in-house producers feel the WoCC continues to deliver positive outcomes, albeit intangible and sometimes unclear. Specifically, in-house production points to a more entrepreneurial approach to winning commissions

In addition, an emerging view amongst interviewees is that the principles of the WoCC are increasingly permeating 100% of the slate rather than the 25% that is the WoCC

There are some key differences in how the WoCC operates between genres, particularly in the interpretation of the in-house guarantee in Children's

The in-house guarantee is currently being reserved for the in-house Children's production teams only or for programmes which are 'co-produced' with other in-house teams

Ideas submitted by other in-house teams (e.g. Comedy, Knowledge) are commissioned as part of the WoCC only, even if there is capacity within the in-house guarantee, which may result in:

- Elevated levels of competition in the WoCC
- Reduced levels of competition in the in-house guarantee
- The WoCC being pre-filled by in-house productions before the independent quota has been filled and independent submissions begin to be allocated to the WoCC

The multitude of both obligatory and management-driven commitments in Knowledge may be impacting the level of truly open competition in the genre

Knowledge is a more structured genre with commitments over and above those of other genres. Some of these are obligatory, others are the result of management decisions

The number of commitments in place – and the subsequent management of the WoCC at sub-genre level – may be limiting the level of truly open competition

- A proportion of output in the 'slate' is pre-determined to some extent (e.g. a specific programme type expected to come from a specific producer type in a specific location)
- Opportunities for the independent sector in some sub-genres/programme types may be limited where the sub-genre in-house guarantee is higher than the genre average and where both in-house production and the independent sector are strong

Sport has made positive steps to encourage more competition, but there may be an opportunity to do more to ensure there is open competition in both the short and long-term

Tendering of newly acquired rights is a positive step towards opening up competition

Opportunities for new competition appear limited at present due to the lack of new rights expected to be acquired, the lack of a definitive timeframe for re-tenders and the fact that incumbent producers stand a high chance of winning re-tender processes in the pipeline

The frequency with which re-tendering occurs and rights are acquired by BBC Sport fully determines the degree to which there is open competition in the genre at a particular time. BBC Sport also determines which independent producers are invited to compete for tenders

BBC Sport does not expect to commission independent producers to take specific responsibility for output within BBC Sport's coverage of the London 2012 Olympic Games. The nature of Olympic Games broadcasting coverage means it is very difficult to do so. We acknowledge the number of external factors impacting the feasibility of such commissioning, the unpredictability of what is deemed qualifying original output and the fact that international broadcasters typically self-produce output in their domestic markets

The principles of the WoCC are in tension with, and are constrained by, other frameworks in place at the BBC, most notably Nations and Regions

The high number of frameworks, commitments and targets faced by commissioners mean that they are sometimes constrained in the degree to which they can fully apply the principles of the WoCC and focus solely on commissioning the best idea

Specifically, the principles of the WoCC and NSR are sometimes found to be in direct conflict with one another. Overlaying NSR on the WoCC means that compromises sometimes have to be made. There is evidence that production teams are being encouraged to move – both temporarily and permanently – into a Nation / Region to produce output and that ideas are sometimes altered so that they can effectively contribute towards NSR commitments

Furthermore, in genres where there are commitments over and above those of other genres (e.g. Knowledge), there is reduced space for truly open creative competition, as discussed above

Some independent producers – generally smaller and those who do not frequently work with the BBC – find it difficult to access the BBC’s commissioning process

It is generally acknowledged that commissioners do not deliberately advantage in-house production over the independent sector or some independent producers over others, and that the same information is available to both large and small independent producers

Any real differences are understood to be caused by the nature of business and frequency of contact with the BBC rather than any deliberate activity to advantage particular parties. However, some independent producers do feel that it is difficult to access and navigate the BBC’s commissioning process

Over the long-term, there may be a risk that this perpetuates a ‘hollowing’ out of the independent sector and may limit the number of newer ideas coming into the BBC. However, we recognise that the BBC has introduced such initiatives as XM25 and such roles as commissioning executive producers in Knowledge to ensure that newer/smaller/N&R independent producers can access the BBC in an appropriate manner

Key recommendations

Consider how best tendering can be used to increase levels of competition

We recommend that the BBC Executive consider the use of more ‘open’ tenders in Sport and other genres as appropriate to encourage greater levels of competition in the production sector. Tendering of existing programmes is an established activity within the BBC. In order to avoid a high number of proposals from producers who do not stand a reasonable chance of winning, ‘closed’ tenders are often used. However, this activity reinforces the strength of incumbent and existing suppliers, makes it increasingly difficult for new independents to win business and may limit the extent to which there is fully open competition within the sector over the longer-term. It is the view of many independent producers interviewed that the BBC should operate a fully open tendering process (or at least broaden the number of independent producers invited to tender) and that it is the responsibility of the producer to judge which tenders to bid for. We support this view and recommend that each tender is published alongside a set of pre-qualification criteria which thereby puts emphasis on individual producers to determine applicability to compete.

In addition to the above, we recommend that the BBC assess the frequency with which existing rights contracts are re-tendered for production, in order to evaluate whether there is an opportunity to support greater levels of creative competition over the long-term. The BBC Trust might wish to consider encouraging the BBC to publish more detail on the expected pipeline of tender and re-tender opportunities. This will provide the independent sector with an opportunity to prioritise development and proposal activity.

Clarify the exact nature and permeability of quota boundaries

We recommend that the BBC Executive clarifies the permeability of quota boundaries and sets out precisely which production units qualify for each guarantee or quota. We specifically refer to how the in-house guarantee is managed within Children's and the potential impact of this on competition in the WoCC. It is beyond the scope of this report to consider whether the in-house guarantee should apply to all in-house production units or only those of the genre in question – we feel this is a strategic consideration for BBC Management – but we are not aware of any specific definition/policy that sets out precisely which of the in-house production teams the in-house guarantee applies to.

Consider steps to reduce impact of frameworks in the WoCC to unlock greater levels of truly open competition

The BBC Trust and Executive might wish to consider steps to unlock further competition in the commissioning process, on the basis that the multitude of frameworks in place at the BBC sometimes constrains competition. The high number of frameworks, commitments and targets faced by commissioners means that they are sometimes constrained in the degree to which they can fully apply the principles of the WoCC and focus solely on commissioning the best idea. Specifically, the principles of the WoCC and NSR are sometimes found to be in direct conflict with one another. Overlaying NSR on the WoCC means that compromises sometimes have to be made. Furthermore, in genres where there are commitments over and above those of other genres (e.g. Knowledge), there is reduced space for truly open creative competition, as discussed above. As part of this, we recognise that all frameworks are implanted with specific benefits in mind, and that an appropriate balance has to be struck

Review the quota landscape of the Knowledge genre

We recommend that the BBC Executive considers the multitude of obligatory and management-driven commitments in Knowledge and whether there is an opportunity to reduce the number of these commitments to open up greater levels of competition. Specifically, we feel there is a risk that a proportion of output in the 'slate' is pre-determined to some extent (e.g. a specific programme type expected to come from a specific producer type in a specific location) and that opportunities for the independent sector in some sub-genres/programme types may be limited where the sub-genre in-house guarantee is higher than the genre average. As part of this, we note that there are perceptions of the independent sector being 'locked out' of genres where both the independent sector and in-house production is strong, although we note that a strong in-house production base is supported by management as having a broad benefit to the licence fee payer. We would recommend that the BBC implements a periodic refresh of the strategic work that considers the broad balance of the in-house guarantee, independent quota and WoCC in each sub-genre. This would ensure that the BBC is not inadvertently distorting the market within any sub-genre and that opportunities for the independent sector continue to evolve in these distinct areas.

Make BBC commissioning easier to access for all independent producers

We recommend that the BBC Executive consider steps to ensure that there is no significant advantage to particular groups of independent producers within the commissioning process, and that the commissioning process is easily accessed by all types of independent producers. We recognise that the BBC has an obligation to the independent sector and not particular types of independent producers, and also the importance of relationships and proven delivery record as integral to the commissioning business. However, some independent producers, who do not frequently work with the BBC, currently struggle to initiate the frequency of contact with commissioning experienced by others.

There is an opportunity to adopt best practice currently being demonstrated within the Knowledge genre to support this, which has commissioning executive producers in place to provide additional entry points into the genre for producers, *"Multiple entry points and multiple decision makers within the genre makes everything feel very much more democratic and easily accessed."* We also note that the regional XM25 initiative appears to be delivering positive outcomes in the Nations and Regions.

Ensuring that the BBC is open to the broadest range of ideas will support creative competition over the long-term and the diversity, range and quality of programming for the licence fee payer.

Push ahead with closing out the recommendations made in 2008

The BBC has made a series of changes to its commissioning processes in light of the BBC Trust's recommendations in 2008. The BBC should continue to push ahead with those changes which would deliver further improvements, including:

- Clarifying those remaining areas of uncertainty as to how the WoCC operates in practice
- Providing information around the scope and scale of opportunity in individual genres (i.e. 'size of prize'), particularly for those producers who do not have regular access to the BBC
- Improving the quality of audience information being shared with the independent sector, particularly the frequency and format with which this information is communicated