

Assessing the impact of the BBC's public service activities

Assessing the impact of proposed changes to the BBC's public service activities

Distribution of BBC public services

Wireless Group response to Ofcom's consultations – February 2017

Executive summary

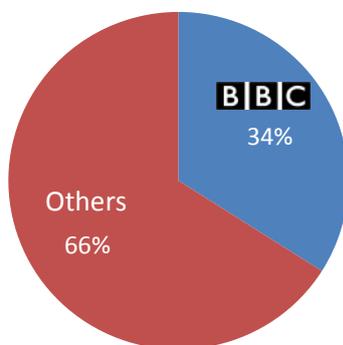
1. This submission constitutes Wireless Group's response to three of the consultations published by Ofcom as it prepares to assume its new duties in relation to regulation of the BBC. These are: Assessing the impact of the BBC's public service activities; Assessing the impact of proposed changes to the BBC's public service activities; and Distribution of BBC public services.
2. Our submission is framed in the context of the BBC's dominance of the speech radio sector – a sector in which it is estimated to enjoy in excess of 80% of funding, and in which it enjoys an 84% share of sectoral listening. Given the heightened risk of negative impacts associated with the BBC's dominant market position, it is important that speech radio activities are subject to proper external scrutiny and regulatory enforcement.
3. Wireless Group welcomes the appointment of Ofcom to regulate the BBC. In our view, Ofcom's analysis of the risks associated with the BBC's public services activities as set out in the above three consultations is well-informed. In each case the proposed procedures appear to be broadly fit for purpose.
4. One area of concern, however, relates to the circumstances in which BBC activity which be classified as "material", prompting the envisaged procedures to be deployed. This concern runs across all three consultations. Within higher risk sectors like speech radio there should be presumption towards making full use of Ofcom's new powers – coupled with a wariness of relying solely on the BBC's internal assessments and governance procedures.
5. In finalising its procedures, it would be helpful if Ofcom were able to clarify the qualifying criteria to be used in assessing whether specific services or proposals are sufficiently "material" as to merit formal investigation. In Wireless Group's view, the key considerations in assessing a new BBC initiative should be:
 - a. its relative scale;
 - b. its relative similarity; and
 - c. its likely impact – when compared with the activities of independent speech radio broadcasters.

Background – the UK speech radio sector

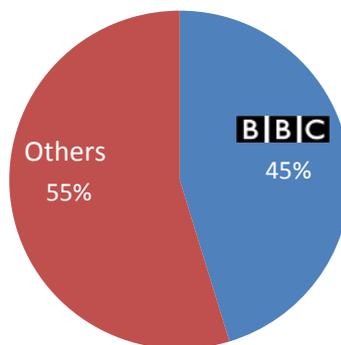
6. Of all the sectors in which the BBC operates public services, it is within speech radio that it enjoys its most pronounced impact on the wider market. With an estimated 80%+ share of sectoral funding, and 84% of overall listening, the BBC's speech radio services enjoy advantageous positions over equivalent commercial providers that are unmatched in other sectors such as music radio and free-to-air television¹.

Figure 1: The BBC's share of TV, music radio and speech radio listening

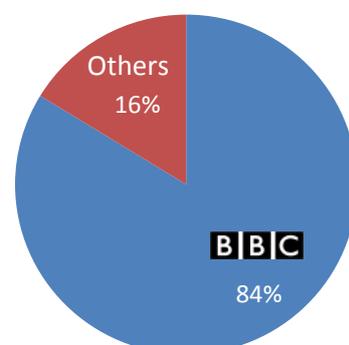
Television:



Music radio:



Speech radio:



Source: RAJAR Q4 2016 / Wireless Group analysis; BARB monthly audience viewing share, January 2017

BBC speech radio consists of Radio 4, Radio 4 Extra, 5 live, sports extra and BBC World Service; commercial speech radio consists of City Talk, LBC, LBC News, talkSPORT, talkSPORT 2 and talkRADIO

7. The BBC structural competitive advantages – strengths which are unavailable to independent speech radio providers – include:
- Almost £200m of guaranteed annual funding for its four national speech networks;
 - A preferential allocation of national FM and AM frequencies;
 - Access to world's best DAB transmission network, which reaches 97% of the UK population and exclusively carries BBC services;
 - Access to an unrivalled network of domestic and international news bureaux;
 - Cross-promotion from the UK's most popular TV and radio channels; and
 - A revenue model which does not require the inclusion of advertising.

¹ 80%+ share of sector funding is Wireless Group estimate based on LBC and BBC Accounts. Estimate excludes expenditure on BBC World Service, despite it being available nationwide on DAB in the UK and therefore representing a substantive intervention in the domestic speech radio market.

8. Figure 2 demonstrates that the BBC dominates top of mind unprompted associations for speech radio amongst the UK population. This is taken from research conducted by YouGov in 2015.

Figure 2. “Which brands/stations first come to mind when you think of speech radio (non-music content)?”



Source: YouGov, speech radio market research, January 2015
Base: All Nat Rep (1087)

The need for rigorous external oversight of BBC activity

9. The BBC’s structural dominance of sectors such as speech radio gives rise to heightened risks of anti-competitive and fair trading effects, such as negative impacts on the performance of independently operated services and the potential for speech radio listeners to become locked into a BBC walled garden.
10. By way of contrast to the BBC’s 84% listening share, Wireless Group, as the UK’s largest operator of independent speech radio services, has an equivalent listening share of just 9%, despite being the BBC’s largest commercial competitor in the sector.
11. As a result of this competitive disparity, BBC actions such as the following are likely to bring with them a comparatively higher risk of negative effects:
- Changes – even quite small changes – to BBC speech output or services that result in increased duplication with commercial competitors
 - Inappropriate procurement practices in relation to scarce production inputs (such as excessive bids for sports rights)

- Substantive cross-promotional campaigns on behalf of the BBC’s speech radio output which leverage the BBC’s advantageous multi-platform scale
- Broadcast and online platform investments and developments which may affect audience engagement with and consumption of speech radio content
- An absence of appropriate regard for the commercial viability challenges faced by nascent speech radio channels, such as Wireless Group’s talkRADIO and talkSPORT 2, as well as independent channels such as Share Radio, during their early years of operation

Heightened risks in sports radio broadcasting and rights

12. One of the areas where there is a particularly heightened risk of negative market impacts on account of the BBC’s activities is in the area of sports broadcasting. In particular, the BBC enjoys a strong degree of market power when it comes to the procurement of scarce production inputs such as premium sports rights.
13. Wireless Group frequently finds itself in an unequal contest with BBC Radio in seeking to acquire commentary rights for premium sporting events. Unlike equivalent music radio production inputs, sports rights are in finite supply and the level of competitive demand has a material impact on the cost of acquisition. The availability of similar coverage on another channel also affects achievable audience levels – with many listeners preferring ad-free coverage on the BBC where this is available.
14. Historically, the principal area of competition for radio sports rights between the BBC and smaller providers was related to football (for example men’s Premier League, Champions League and England International football), however with the launch of talkSPORT 2 in 2016, this has been extended to other sports such as cricket, rugby, tennis, motorsport, golf and horseracing.
15. 5 live’s radio sports rights budget is larger than talkSPORT’s entire programming budget. In 2011, a previous Controller of 5 live described its sports rights budget as “extremely large”. The BBC Trust reported 5 live’s sports rights budget in that year as totalling £13m, and it had subsequently grown to around £16m by 2015. This trend directly contradicted a 2012 recommendation by the BBC Trust that BBC Radio 5 live should rebalance expenditure away from sport and towards news.²
16. In areas such as sports rights, Ofcom should be prepared to require the development of specific protocols in order to mitigate the risk of negative market impacts. We consider this to represent a high risk area for the BBC, and one which merits careful monitoring and a bias towards early intervention. We also note that there may be confidentiality and indeed anti-trust barriers to seeking to address possible competition issues in the area of sports rights via direct dialogue with the BBC.

² Adrian Van Klaveren on Victoria Derbyshire, 15 September 2011; BBC Trust, ‘Service Review of 5 live and 5 live sports extra’, January 2012; BBC Trust, ‘Service Review of Radio 4, Radio 4 Extra, Radio 5 live and Radio 5 live sports extra’ August 2015, p. 36

Heightened risks in the area of cross-promotion

17. Another high risk area of market impact relating to the BBC's speech radio activities concerns their access to cross-promotion from other BBC services. Such cross-promotion is available on a scale which is unavailable to independent speech broadcasters, and sourcing equivalent marketing support on a paid-for basis from third party media is unlikely to be cost-effective.
18. For example, 5 live receives significant cross-promotional for its football commentary. Examples include promotions via BBC television (e.g. news bulletins, weather bulletins and sports programming such as Match of the Day), BBC radio (e.g. sports news and features on network and BBC local radio) and BBC online (e.g. the BBC Sport website). Often sporting fixtures will be promoted which are also available on talkSPORT under separate official rights arrangements with the likes of the FA or FIFA.
19. If not subject to appropriate controls and executed with due care, this activity risks extending the BBC's dominance by risking locking UK sports radio listeners into a BBC walled garden.
20. We have also identified contradictions between the preferential cross-promotion reserved for the BBC's own services in radio, and its willingness to provide relevant cross-promotion for third party television channels. For example, the BBC's website will often signpost the availability of live sporting coverage on competing free-to-air television channels (such as ITV, STV and UTV), but references to radio coverage exclusively mention 5 live.
21. Again, this is an area that will require specific focus in considering the impact of the BBC's public service activities (and potential changes to these services), and in preventing negative effects – as indeed it has done so under the BBC Trust.

Heightened risks in relation to distribution strategy

22. Given its significant share of the speech radio market, the BBC's distribution decisions can have significant implications for the wider market, in terms of extending the BBC's competitive advantage or conditioning listener behaviour. It is crucial that in making such decisions, the BBC takes account of the likely impact on smaller speech providers.
23. We take this opportunity to share two examples of potential decisions by the BBC public services which could have a negative wider impact on the market.
24. First, with independent providers such as talkSPORT deriving significant listening from AM, prematurely shutting down the BBC's AM transmissions could have significant negative economic consequences for the UK's speech radio sector.
25. For instance, such a plan could indicate to listeners that they should stop accessing the platform. AM also plays a particularly important role amongst audience groups where

digital radio penetration is lower than average, such as C2DEs and those living in regions such as Scotland, Wales and Northern Ireland.

26. Second, careful consideration also needs to be given as to the impact of the BBC and distributing speech audio content on a live or on-demand basis via connected platforms.
27. For example, there could be negative consequences if the BBC were to commission additional speech content for online platforms. Equally, flooding aggregation platforms with free content on a live or on-demand basis could inhibit the independent sector's ability to monetise these platforms via commercial agreements.
28. The BBC's development of its own platforms (such as BBC iPlayer Radio) also risks creating walled gardens which exclude competing providers, harming both competition and plurality levels to the detriment of competitors as well as audiences.

Conclusion – what constitutes a “material” change or action?

29. Given the risks in the above areas, our principal concern across the three consultations to which we are responding relates to the circumstances in which BBC activity which be classified as “material”, thereby triggering Ofcom's new procedures. Within higher risk sectors like speech radio there should be presumption towards making full use of Ofcom's new powers – coupled with a wariness of relying solely on the BBC's internal assessments and governance procedures.
30. The various procedures proposed by Ofcom in each consultation appear broadly fit for purpose, however in finalising them it would be helpful if Ofcom were able to clarify the qualifying criteria to be used in assessing whether specific services or proposals are sufficiently “material” as to merit formal investigation. In Wireless Group's view, the key considerations in assessing a new BBC initiative should be:
 - a. its relative scale;
 - b. its relative similarity (or potential future similarity); and
 - c. its likely impact – when compared with the activities of independent speech radio broadcasters.
31. It is also worth noting that YouGov's 2015 research revealed strong support amongst licence fee payers for the notions that plurality and competition are important objectives within the speech radio sector. This research provides strong justification for Ofcom to develop a responsive regulatory approach in support of these goals:
 - 55% of respondents told YouGov that it is not healthy for the UK speech radio market to be dominated by one company/provider.
 - 48% agreed that a diverse range of speech radio providers would be beneficial for UK society.

- 53% agreed that new speech radio providers should be given the opportunity to prove themselves and compete against more established providers³.

³ YouGov, speech radio market research, January 2015