

## News Broadcasting's response to Ofcom's consultation on how Ofcom regulates the BBC's impact on competition

### Section 1: Executive summary

- **Ofcom should reconsider its view that changes limited to BBC Sounds are likely to pose a low risk to competition.** This is in light of the BBC's strong position in the audio market relative to domestic competitors, and its strategy to transition to digital-first service provision. Over time, the risks to competition arising from changes to the BBC's services will stem primarily from changes to the BBC's online services, such as BBC Sounds, rather than broadcast radio services.
- **Given BBC Sounds' position in the audio market and the growing importance of online distribution to the BBC, there should be a clear scope description for BBC Sounds in the Operating Licence,** alongside qualitative conditions to ensure it produces distinctive and high quality public service content.
- **Measures to encourage the BBC to engage with industry on proposed changes need to be specific and enforceable.** They should require the BBC to:
  - Communicate changes to its Public Services to stakeholders during a materiality assessment, and do so in a detailed, consistent and timely manner. This should include mandating the BBC to publicise planned changes in a specific time frame (e.g. within two weeks of a change being signed off by Senior Management or the BBC Board), and in a consistent manner (e.g. updating a specific page on its website). It should also require that sufficient detail is shared with stakeholders about a proposal change (e.g. growth forecasts, a business plan) to help them understand how it might impact their business.
  - Consult with stakeholders, rather than merely notifying them of proposed changes. The BBC should have to demonstrate how it could not accommodate changes to its proposal requested by commercial players, where there may be a potential impact on competition.
  - Set out detailed information on its proposed change and the likely competition impact in materiality assessments and PIT consultations. This should include analysis of which UK services would be most impacted by the proposed change, and detailed analysis of the market impact.
- **There should be clear consequences for the BBC if it does not adhere to enforceable requirements to engage with industry,** including that any proposed changes would not be approved by Ofcom if changes were not publicised in sufficient detail or if stakeholders were not consulted.
- **To strengthen the BBC's role in supporting the UK's media ecosystem and contribute to its public value, there should be stronger requirements for the**

**BBC to work in partnership with commercial broadcasters in the UK.** This includes hosting and signposting relevant third party content, including on iPlayer and Sounds.

We discuss these points in more detail throughout this document, in response to Ofcom's view of the market (Section 3) and to specific consultation questions (Section 4).

## **Section 2: Introduction**

News Broadcasting welcomes the opportunity to respond to this consultation on how Ofcom regulates the BBC's impact on competition. News Broadcasting is home to the current affairs channel TalkTV, as well as speech and music radio services, including talkSPORT, Times Radio and Virgin Radio. Our radio stations reach 6.0 million listeners weekly.<sup>1</sup>

At its best, the BBC plays a valuable role in national life, and in supporting the UK media ecosystem. It produces content that other broadcasters would struggle to provide given commercial constraints - such as educational children's content - and it plays an important role in supporting the UK's production sector, particularly in the nations and regions.

The BBC continues to enjoy considerable reach across its platforms, underpinned by its DTT, FM and DAB transmission networks, which provide superior coverage than those available to commercial players. It has a particularly strong market share in radio, with 47% of UK radio listening hours, rising to 74% of speech radio hours.<sup>2</sup> Its online platforms continue to grow; in 2021/22, the number of 'plays' of radio, music and podcasts on BBC Sounds increased by 23% to 1.54 billion.<sup>3</sup> It also remains the UK news organisation with the highest cross-platform reach (TV, radio, online).<sup>4</sup>

As the biggest player in the UK media market, in receipt of public funding and unconstrained by the commercial imperatives of competitors, the BBC needs to be properly held to account by an independent regulator so that its Public Services compete fairly and effectively with commercial players. This is for the benefit of audiences and the wider UK media landscape.

In our view, the proposed approach to competition regulation outlined in Ofcom's consultation marks a step in the wrong direction. It does not go far enough to ensure that the BBC competes effectively and fairly in the audio market. It risks leading to a situation whereby the BBC would not be effectively held to account, with negative implications for choice, quality and innovation in the UK's media sector and outcomes for UK audiences.

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<sup>1</sup> RAJAR, Q4 2022

<sup>2</sup> RAJAR, 3 month weighting, Q4 2022. The speech radio market consists of BBC Radio 4, BBC Radio 4 Extra, BBC 5 Live, 5 Live Sports Extra, BBC World Service, talkSPORT, talkSPORT 2, TalkRadio, Times Radio, LBC, LBC News, GB News.

<sup>3</sup> BBC, 28 June 2022, [BBC Group Annual Report and Accounts](#), p. 8.

<sup>4</sup> Ofcom, July 2022, [News Consumption Survey 2022](#).

### **Section 3: Our response to Ofcom's view of the audio market**

Ofcom recognises that a change to the BBC's radio services which results in a significant increase in listening has the potential to have an impact on domestic commercial radio providers, and considers that there is a risk of crowding out from such changes.

But it does not take the same view of changes limited to online-only audio content on BBC Sounds. We specifically disagree with Ofcom's view that "changes that only affect BBC Sounds are unlikely to have a significant impact on the listening share - and therefore the revenues - of domestic competitors, and so do not expect a significant risk of crowding out".<sup>5</sup>

#### ***The UK audio market has changed, but the BBC remains the most significant player***

The growth of global technology platforms, the proliferation of new content formats (e.g. podcasts, live streaming), and changes in consumers' media habits have changed the dynamics in the media market over the last decade. These changes pose strategic questions for all media companies. There is more competition than ever for consumers' attention, given the abundance of content available to consumers on linear and online services. Prominence is increasingly important, with more and more players vying for a share of consumer attention. Competition for that prominence heightens the market position of established platforms with gatekeeping roles.

In the UK's audio market, the BBC is the established gatekeeping 'giant', with a 47% share of radio listening hours, a £504 million budget for radio content and distribution alone, and an ability to promote content across its services.<sup>6</sup>

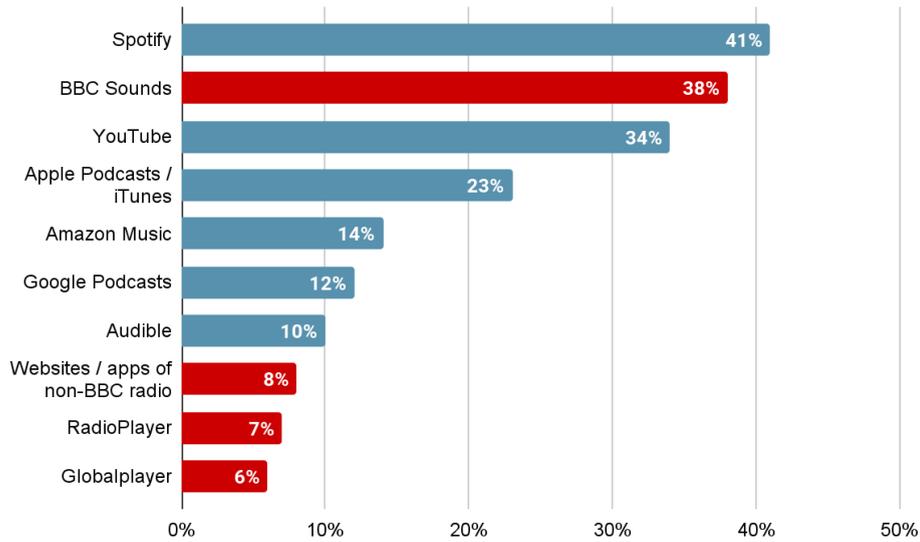
BBC Sounds draws on the BBC's well-established position in the audio market, the BBC's ability to promote Sounds across its platforms (which is not subject to a regulatory cap), and its broad content portfolio (e.g. archive content reproduced as podcasts). This has helped to establish BBC Sounds as the leading domestic audio streaming platform in the UK market, as illustrated by Figure 1 in the context of podcast listening.

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<sup>5</sup> Ofcom, November 2022, [Consultation: How Ofcom regulates the BBC's impact on competition](#), p. 18

<sup>6</sup> BBC, March 2022, [BBC Annual Plan 2022/23](#), p. 42. Radio includes Network, Nations and Local. The BBC does not disclose a disaggregated spend for BBC Sounds.

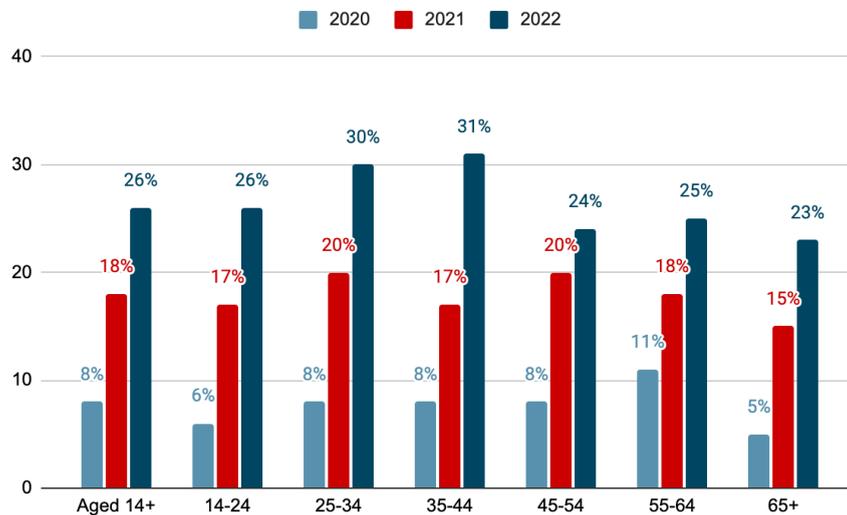
**Figure 1: Apps/websites used to access podcasts by users of any podcast platform (for podcasts), with UK platforms highlighted in red**



Source: Ofcom Podcast Survey, 2022. Q19. How do you tend to access the podcasts you listen to? By this we mean the app or website you use to listen to the podcast, not necessarily who created it. Base: All who listen to podcasts on any podcast platform (1003).

BBC Sounds reach continues to grow across all demographics, with weekly use among all adults aged 14+ increasing from 8% in 2020 to 26% in 2022.

**Figure 2: Weekly reach of BBC Sounds, by age, 2020-2022**



Source: Ofcom Audio Survey. Q4b/d/f/h/j And how often would you say you use these platforms to listen to <Type of audio>? BBC Sounds (website or app). Answer = Several times a day/About once a day/Several times a week/About once a week. Base: All respondents.

There are parallels between BBC Sounds and global streaming platforms. It has access to first party data from millions of users, which it can deploy to create specific content recommendations, retaining users in the BBC Sounds ecosystem. In 2021/22, BBC Sounds

had 3.8 million signed-in users weekly.<sup>7</sup> Like global technology companies, the BBC publishes very limited data about BBC Sounds usage. It also benefits from significant investment in its functionality; the BBC said that it will invest an extra £50 million per year in developing its digital products from 2025, including BBC Sounds.<sup>8</sup>

However, unlike global companies who tend to aggregate content on their platforms (e.g. Spotify), the BBC largely preserves BBC Sounds as a 'walled garden', for the distribution of BBC audio content only.<sup>9</sup> As we set out in our response to Ofcom's consultation on modernising the Operating Licence, there is scope for Ofcom to encourage the BBC to collaborate more effectively with commercial broadcasters in the UK, including by developing its role as a distribution partner to commercial broadcasters.<sup>10</sup>

***The closest substitutes to BBC audio content, particularly in speech audio, are domestic, not global***

Given the BBC's significant role in the UK radio and audio market, we are concerned by the extent to which Ofcom focuses on global media companies as the closest competitors to the BBC, rather than smaller, domestic players. For example, the consultation states that the competition impact from a change to online-only service on BBC Sounds would be low because it would be spread over a wide competitor set: "Services delivered by global providers like Spotify, Amazon or Apple Music are likely to be close substitutes for BBC online-only audio services such as podcasts or streamed music, in addition to competing services from UK providers".<sup>11</sup>

It is true that there are a range of international players with significant budgets in the audio market, such as Spotify, Amazon and Apple, and consumers listen to audio content from a wide variety of producers and on a range of platforms, including on global streaming platforms. Competing in this environment is a challenge for all media companies - particularly for those smaller in scale than the BBC and with less secure funding.

Ofcom's market analysis underplays the fact that domestic competitors remain the closest substitute for the BBC's audio services. Radio and audio content tends to be tailored to UK audiences, in terms of the content, talent, tone and style. This is particularly true for speech audio; it is difficult to imagine BBC Radio 4's content (e.g. *The Archers*, *In Our Time*) having the broad appeal that a Radio 1 'music mix' or playlist might have.

It is therefore disappointing that Ofcom has not separated out the music and speech audio market in its analysis, given the very different dynamics at play. Instead, Ofcom's analysis focuses on the split between BBC radio and commercial radio, overlooking the nuanced dynamics within the commercial sector. Figures 3 and 4 illustrate the relative importance of

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<sup>7</sup> NAO, 14 December 2022, [A digital BBC](#), p. 21

<sup>8</sup> BBC Media Centre, 26 May 2022, [A digital-first BBC](#)

<sup>9</sup> We note that the BBC has recently conducted a small trial, testing the distribution of a limited number of third-party podcasts on BBC Sounds. We hope this encourages the BBC to engage more collaboratively with industry on opportunities for content distribution.

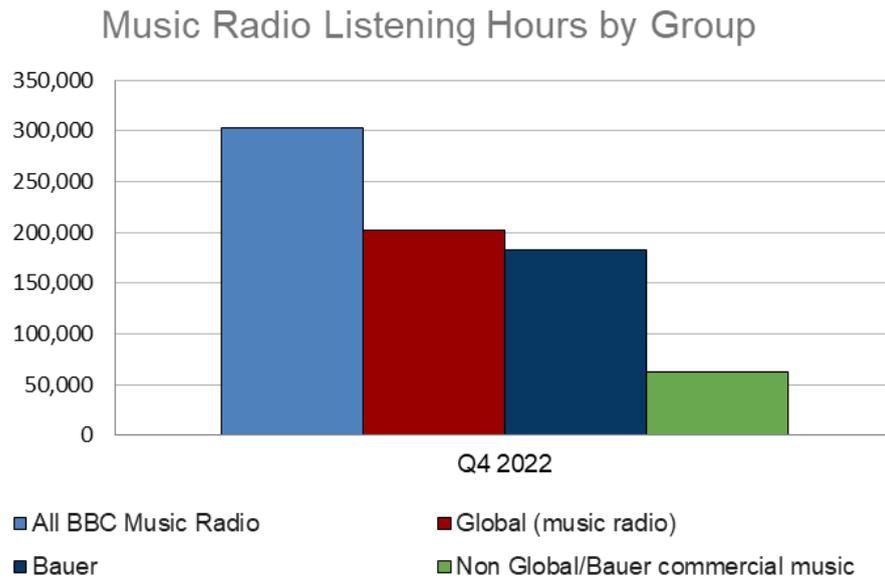
<sup>10</sup> News Broadcasting, September 2022, [Response to Ofcom consultation: Modernising the BBC's Operating Licence](#)

<sup>11</sup> Ofcom, 30 November 2022, [Consultation: How Ofcom regulates the BBC's impact on competition](#)

the BBC in the music and speech radio markets. The BBC - through BBC Radio 4 and Radio 5 Live - plays a particularly significant role in UK speech radio.

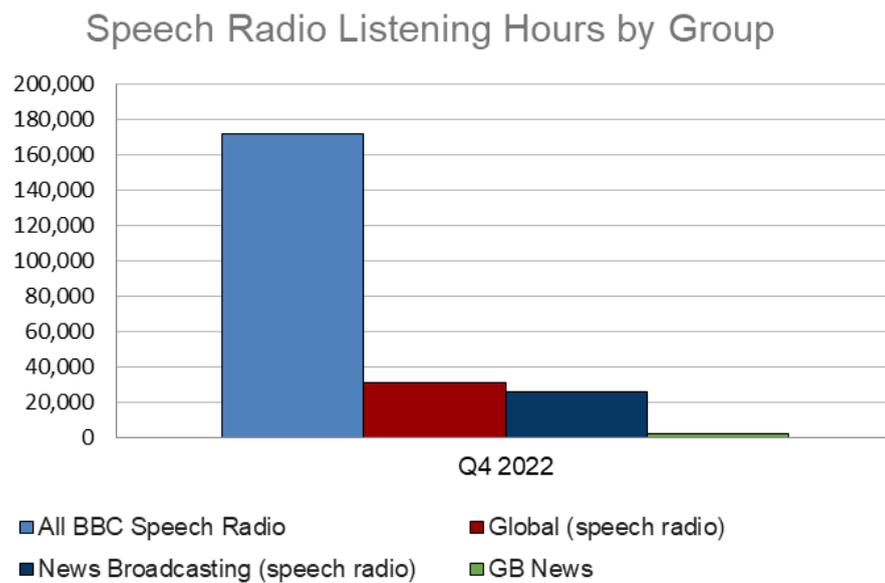
Speech audio is also particularly important in driving listening to BBC Sounds. The majority of 'plays' on BBC Sounds are to speech content; 37% of plays on BBC Sounds in 2021/22 were to on-demand speech content and 32% to live speech content. Just 7% of 'plays' were to on-demand music.<sup>12</sup>

**Figure 3: BBC and commercial radio share of the music radio market, Q4 2022**



Source: RAJAR, Q4 2022, all adults 15+

**Figure 4: BBC and commercial radio share of the speech radio market, Q4 2022**



Source: RAJAR, Q4 2022, all adults 15+

<sup>12</sup> BBC, 28 June 2022, [BBC Group Annual Report and Accounts](#), p. 33

***Over time, Sounds will become the BBC's key distribution channel for audio content, and all new services will be online-only***

In May 2022, the BBC Director General Tim Davie set out a digital-first strategy in a speech to staff, specifying that in audio; "...we will accelerate digital growth, moving more of the 34 million people who listen weekly to linear radio stations to become habitual users of BBC Sounds. We want Sounds to remain one of the top two digital audio services in the UK. To make this happen, we are reorganising all our network radio commissioning to work better as speech and music portfolios, bringing broadcast and on-demand content together".<sup>13</sup> As a result, over time, the BBC will switch off its linear distribution. The Director General spoke about this shift to predominantly digital provision in a speech in December 2022, in which he said the BBC would eventually offer "fewer linear broadcast services and a more tailored joined up online offer".<sup>14</sup>

The BBC has been pursuing this strategy of prioritising digital distribution in audio for several years, best exemplified by its decision to launch new online-only streams on BBC Sounds (e.g. Radio 1 Dance in 2020, Radio 1 Relax in 2021), rather than launching new radio stations for linear distribution.

In this context, it is difficult to understand why Ofcom takes such a different view of the competition impact of changes to online-only provision on BBC Sounds, compared to changes to the BBC's radio services. Changes limited to BBC Sounds present just as much of a risk to competition in the audio market as changes to the BBC's radio services. This risk will only increase as radio and audio listening increasingly shifts online (see Figure 5), with BBC Sounds ultimately becoming the primary audio distribution channel for the BBC. This requires that Ofcom takes changes to BBC Sounds as seriously as it does changes to the BBC's other audio services.

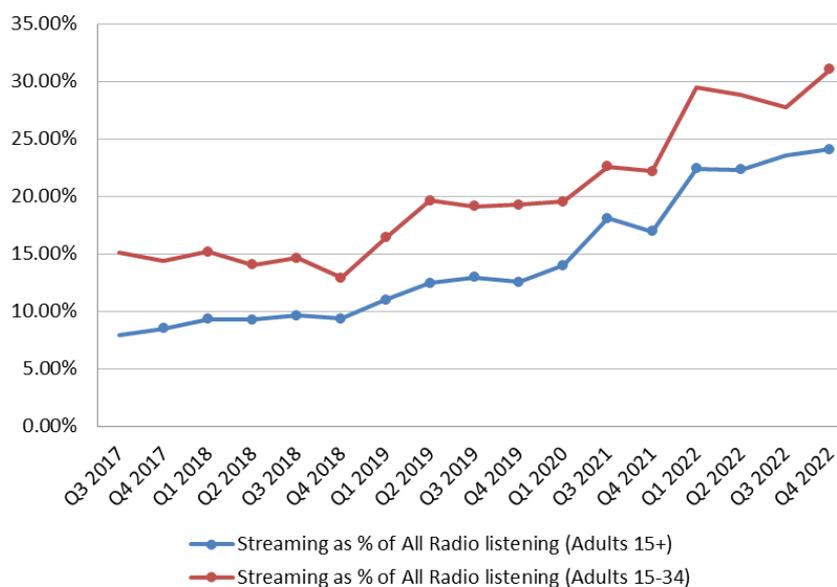
In addition, as we set out in our response to Ofcom's consultation on the Operating Licence, the growing importance of BBC Sounds indicates that Ofcom should introduce a clear scope description for BBC Sounds in the Operating Licence, as well as adding qualitative conditions to secure distinctive output and high quality content on BBC Sounds, to protect competition in the UK audio market.<sup>15</sup>

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<sup>13</sup> BBC Media Centre, 26 May 2022, [A digital-first BBC](#)

<sup>14</sup> RTS, 7 December 2023, [Leading the UK into digital. speech by BBC Director-General Tim Davie](#)

<sup>15</sup> News Broadcasting, September 2022, [Response to Ofcom consultation: Modernising the BBC's Operating Licence](#)

**Figure 5: Percentage of radio listening from streaming, 2017-2022**

Source: RAJAR

### ***We are concerned about the impact of Ofcom's view of the audio market on future competition assessments***

Although Ofcom states that it will review each change to the BBC's Public Services on a case-by-case basis, we are concerned that this view of the audio market would be the starting point for any future competition assessment relevant to BBC Sounds. If Ofcom is less willing to intervene on changes to BBC Sounds because it generally sees changes to BBC Sounds to present a lower competition risk, it shifts the emphasis in Ofcom's regulatory approach to audio from an ex ante model to an ex post model.

As a result of Ofcom's market view, the BBC may be able to make changes more easily to its online services (e.g. create new streams on Sounds) because they seem immaterial and are unlikely to have an impact on the market, but cumulatively are material and crowd out competition over time. This leaves Ofcom more reliant on the BCR tool to examine and correct competition issues in the market. We have serious concerns about a regulatory approach that increasingly relies on ex post tools, such as the BCR.

Firstly, conducting an ex post review means intervening after the horse has bolted. It is much harder to row back on changes and undo market harm (e.g. the crowding out of competitors), than stop the introduction of those changes in the first place. This could result in significant harm to competition in the UK audio market.

Secondly, it shifts the burden of providing evidence and proving that there is harm in the market from Ofcom to industry stakeholders. [3<]. Raising a complaint with Ofcom in order for it to conduct a BCR would be prohibitively expensive for many stakeholders. It could have a chilling effect on issues raised with Ofcom; larger stakeholders may raise fewer complaints than they might otherwise, while smaller stakeholders might never be able to raise a complaint with Ofcom.

Part of the problem is that it is very difficult to prove a counterfactual. It would be near impossible for an industry stakeholder to demonstrate what would have happened if a proposed change had not gone ahead; for example, whether innovation had been stifled or new market entry prevented by a change to the BBC's Public Services. This issue is exacerbated by an information gap; industry stakeholders do not have access to the same level of data as Ofcom does in order to gather evidence to make a complaint (e.g. ability to request access to BBC Sounds listening data).

[3]

The BBC Director General has stated that the BBC would like to see a regulatory regime "that is ex post, not ex ante, responding to obvious harm when it occurs, not defining every possible negative outcome in advance and restricting UK innovation as a result".<sup>16</sup> It would be a mistake to shift towards an ex post model in regulating the BBC's impact on competition. The Director General's proposal fails to account for the significant potential for changes to the BBC's services to restrict innovation among the UK's commercial providers. As we set out in our response to the Operating Licence consultation and below in this response, we do not consider that the transparency guidance Ofcom has set out will do enough to guard against potential competition harms from changes to the BBC's Public Services.

#### **Section 4: Our responses to specific consultation questions**

##### **The BBC and industry engagement [Q1-3 grouped]**

**Question 1:** *Do you agree with our proposals to: a) place a requirement on the BBC to publicise its planned changes to public services? b) provide further guidance on how the BBC should set out information about its planned changes? If not, please explain which changes, if any, should be made to the guidance and where appropriate, provide relevant evidence supporting your view.*

**Question 2:** *Do you agree with our proposals to put in place more guidance about how stakeholders and the BBC should engage during the assessment of materiality by the BBC?*

**Question 3:** *Do you agree with our proposals to include further guidance on what the BBC should include in its public interest test consultation?*

We strongly support steps to ensure the BBC communicates and consults meaningfully with industry ahead of proposing changes to its Public Services. A BBC that genuinely engages with industry on potential changes and exhibits a willingness to modify its approach based on commercial sector input would be positive for the UK's media sector.

We have had positive experiences of the BBC engaging with commercial stakeholders, such as during the pandemic, when talkSPORT and BBC Radio 5 Live worked together on a joint publicity initiative to highlight the availability of free-to-air live football commentary on radio, at a time when fans were restricted from attending matches.

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<sup>16</sup> RTS, 7 December 2023, [Leading the UK into digital, speech by BBC Director-General Tim Davie](#)

However, significantly more often than not, we have experienced the BBC failing to consult industry on changes to its Public Services, which negatively impacts our business operations. A recent example includes the BBC's announcement that it plans to switch-off Radio 5 Live's medium wave transmitter network by December 2027 via Tim Davie's speech to staff in May 2022.<sup>17</sup> Industry stakeholders were not consulted or notified beforehand - even though changes to transmitter networks will have an impact on the sector and it ran contrary to the BBC's commitment to develop a joint plan with industry for the phased retirement of AM services.<sup>18</sup>

When the BBC does engage with industry, it has a tendency to notify stakeholders very shortly before an announcement is made, rather than consulting in earnest. [3<].

Ofcom's amended guidance cites the BBC's Annual Plan as one way the BBC should publicly communicate changes to its services. In the past, the BBC's Annual Plan has provided only the highest level of detail about planned changes to BBC services, and in some cases, did not mention significant planned changes. It has made it very challenging to understand the potential impact on competition arising from potential changes.

For example, the most recent BBC Annual Plan said the BBC "will begin developing plans for the closure of Medium Wave over the coming years in line with the [Digital and Audio] Review recommendations" (with no reference to the December 2027 deadline the Director General referenced in a speech the same month), and it did not mention its plans to request a change to the BBC 5 Live quota.<sup>19</sup> In addition, discussion of proposed changes tend to focus on the impact on audiences, rather than the potential impact on competition. Unless there are major changes to the approach to reporting proposed changes in the Annual Plan to make it significantly more detailed, we do not see this as an appropriate tool to rely on to communicate changes to industry.

We do not consider that the measures set out in Ofcom's consultation go far enough to ensure the BBC properly consults industry ahead of making changes to its Public Services. Ofcom has repeatedly encouraged the BBC to engage more seriously with industry stakeholders ahead of making changes to its Public Services. This has been made clear in every Annual Report Ofcom has published on the BBC:

2017/18 <sup>20</sup>	<i>"...the BBC needs to go further to embed transparency into its working practices, most notably in the area of competition. While there are cases where the BBC has acted transparently, it does not routinely explain planned changes in its public service activities in sufficient detail to potentially affected parties."</i>
2018/19 <sup>21</sup>	<i>"The BBC needs to be more open to engagement with third parties to deliver its duty to have regard to the impact of its impact on competition. This will help the BBC</i>

<sup>17</sup> BBC Media Centre, May 2022, [Plan to deliver a digital-first BBC](#)

<sup>18</sup> DCMS, [Digital Radio and Audio Review](#)

<sup>19</sup> BBC, March 2022, [BBC Annual Plan 2022/23](#)

<sup>20</sup> Ofcom, 25 October 2018, [Annual Report on the BBC 2017-18](#)

<sup>21</sup> Ofcom, 24 October 2019, [Annual Report on the BBC 2018-19](#)

	<i>to take account of the impact of its proposed changes to services on the UK broadcasting sector and could reduce regulatory intervention”.</i>
2019/20 <sup>22</sup>	<i>“The BBC also <b>needs to be more proactive in engaging with others in the industry</b> on its plans...It is the responsibility of the BBC to understand the potential impact of its plans and to open and transparent about these in advance, and in sufficient detail, for commercial providers to assess and explain the likely consequences on their businesses and on audiences. This year we have again heard from a number of stakeholders that they have not been aware of changes that the BBC has planned”.</i>
2020/21 <sup>23</sup>	<i>“Transparency is critical to maintaining public trust and support in the BBC. Since 2017 we have raised this as a key area in which the BBC could improve.”</i>  <i>“The BBC’s engagement with industry on planned changes to its services remains mixed. Although we continue from stakeholders that the BBC’s plans do not include enough detail (for instance, those in relation to the development of BBC Sounds), there have been some positive examples of the BBC proactivity communicating with industry...<b>The BBC should do more of this</b> and ensure that it provides sufficient information to allow stakeholders to understand the potential impact on competition at any early stage.”</i>
2021/22 <sup>24</sup>	<i>In the context of discussing the competition consultation, Ofcom said that “...we continue to consider that the <b>BBC’s engagement with stakeholders about changes to its services could be improved</b>”, and it “is important that the BBC listens to stakeholders concerns, and where appropriate, adjusts its plans accordingly.”</i>

Ofcom’s consistent nudging of the BBC over the past five years clearly has not worked. The BBC still does not consistently engage with stakeholders to understand the impact a change to its Public Services may have on competition, it does not always provide enough detail or advance notice for stakeholders to be able to engage with those proposals, and it does not seem willing to alter its plans in response to competition concerns raised by stakeholders.

Amended guidance - which is not enforceable - is unlikely to go far enough in encouraging the BBC to change its behaviour and processes in relation to engaging with industry. In addition, the new requirement and amended guidance (paragraphs 4.13, 4.14 and 4.21), is overly vague. We can understand that Ofcom may want its guidance to be flexible, so that it can be adapted to each proposed change to the BBC’s services. However, it is unclear, for example, what “sufficient detail” and “sufficient time” means in practice. The guidance does little to set clear expectations as to how the BBC should publicise changes and engage with stakeholders. It is also not clear whether and how the BBC would be held to account if it did not comply with the amended transparency and industry engagement guidance.

Instead, there should be specific and enforceable requirements on the BBC to:

- communicate changes to stakeholders during a materiality assessment and to do so within a specific time frame (e.g. two weeks after a change has been signed off by

<sup>22</sup> Ofcom, 25 November 2020, [Annual Report on the BBC 2019-20](#)

<sup>23</sup> Ofcom, 25 November 2021, [Annual Report on the BBC 2020-21](#)

<sup>24</sup> Ofcom, 30 November 2022, [Annual Report on the BBC 2021-22](#)

Senior Management or Board), in a consistent manner (e.g. on a specific website page) and provide enough detail to help stakeholders understand the impact on their business (e.g. growth forecasts, a business plan).

- consult with stakeholders, rather than merely notifying them of proposed changes. The BBC should have to demonstrate how it could not accommodate changes to its proposal requested by commercial players, where there may be a potential impact on competition.
- set out detailed information on its proposed change and the likely competition impact in materiality assessments and PIT consultations. In addition to the information set out by Ofcom in paragraph 4.25, this should include analysis of which UK services would be most impacted by its proposed change, and detailed analysis of the market impact (e.g. modelling).

In addition to the enforceable requirements above, there should be clear consequences for the BBC if it does not adhere to such requirements, including that any proposed changes would not be approved by Ofcom if changes were not publicised in sufficient detail or if stakeholders were not consulted.

### **Ofcom guidance and processes**

**Question 4:** *Do you agree with our proposals to provide more detail in our guidance about the materiality assessment process?*

At present, the materiality assessment process is opaque. We have previously raised our concerns with the conflicts of interest inherent in the self-regulatory model of the materiality assessment process.<sup>25</sup> Not only is the BBC allowed to make its own determination on whether a change is “material” (and qualifies for further review), it also does not have to publish its materiality assessments.

To provide more transparency and clarity about how Ofcom’s processes work, Ofcom’s proposals should go further than introducing an expectation for the BBC to send its materiality assessments to Ofcom as good practice. Although Ofcom is not required under the Charter and Agreement to review the BBC’s materiality assessments, there should be an enforceable requirement on the BBC to send its materiality assessment to Ofcom for review.

In cases where the BBC finds a proposed change not to be material, that materiality assessment should be published. Industry stakeholders should be consulted at this point, so that they have the opportunity to meaningfully engage with the BBC and Ofcom on any concerns.

In addition, as standard practice, Ofcom should publish its own view on the materiality assessment and its reasoning as to why it does not consider a change to be material, as it did in assessing the materiality of the Radio 1 Relax stream.<sup>26</sup> This would be an important step forward in terms of transparency and provide clarity for competitors.

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<sup>25</sup> News Broadcasting, September 2022, [Response to Ofcom’s consultation on modernising the BBC’s Operating Licence](#)

<sup>26</sup> Ofcom, 26 July 2021, [Letter from Ofcom to the BBC and Radiocentre](#)

**Question 5:** *Do you agree with our proposal for additional flexibility for Ofcom to determine whether it is necessary to consult on materiality following a PIT in which the BBC has determined the change is material?*

We disagree with this proposal. It is important that stakeholders have an opportunity to input at this stage of the process to inform Ofcom's view on the materiality of the proposed change. This is particularly important given the BBC's poor track record in engaging with industry on proposed changes, as part of both its materiality assessments and PITs.

**Question 6:** *Do you agree with our proposals to add further guidance on our expectations for the BBC's public value assessment?*

We appreciate that public value is a difficult concept to define, and broadly welcome the move towards more guidance as this helps to make the process more transparent. However, there is an opportunity for Ofcom's guidance to go further and act as an additional tool to encourage the BBC to engage with industry.

Ofcom has identified three aspects of public value that the BBC could consider in an assessment: personal value to individuals; societal value arising from positive changes in attitudes and behaviour; and, economic value accruing to the creative economy from the commissioning and production of content.

This third aspect, economic value, should be broadened to include the public value accruing from the BBC's collaboration with industry, including from partnerships with commercial broadcasters. The BBC's use of its platforms, as well as its commissioning and production of content, could create public value by supporting the broader media ecosystem. There is clear scope for the BBC to do much more to collaborate with industry, for example by distributing high quality third party content on Sounds and iPlayer. This would help to support the UK's creative economy and media sector by giving independent broadcasters access to the BBC's market-leading platforms, while making it easier for licence fee payers to access a wider range of content.

[§<]

Ofcom's guidance also proposes that assessments of public value should identify which audience groups are likely to benefit from the change, such as audiences traditionally underserved by the BBC. Where public value assessments focus on attracting new, additional audience reach to the BBC, they should only be considered to contribute to public value where they build genuinely new audiences to a type of content across the market, rather than attracting audiences from a competitor to the BBC.

### **Trading and separation arrangements**

**Question 7:** *Do you agree with our proposal to make it clear that the transfer pricing rules apply when the public service is supplying content or IP for secondary exploitation?*

**Question 8:** *Do you agree with our proposal to add a requirement that allows Ofcom to direct the BBC to undertake a review of its internal controls and accounting processes to ensure they are adequate and enable the BBC to comply with the transfer pricing requirements?*

We agree with both of these proposals. In the interest of fair and effective competition and transparency, it is important that the BBC's Public Services and Commercial Subsidiaries interact in a way that is equivalent to the way an independent third party might interact with the Public Services.

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February 2023

If you have any queries in relation to this response, please contact Aoife Hyde, Public Policy Manager ([aoife.hyde@news.co.uk](mailto:aoife.hyde@news.co.uk))