Radiocentre submission to Ofcom

Call for evidence: Market position of BBC Sounds

November 2020

Key findings

15	Substantial changes BBC Sounds has undergone since its launch in 2018, seven of which go beyond the remit of its original scope. Even when Ofcom formally permits changes to the service, the BBC goes beyond what was agreed as has been the case with Radio 1 Dance.
£394 million	The ongoing annual value of BBC Sounds' marketing campaign, including external media and cross-promotion. The equivalent of 66 per cent of total UK radio industry advertising revenues. This estimate is based on our own research since the BBC does not disclose the relevant information, despite the terms of the Framework Agreement.
76%	The percentage of respondents to our nationally representative survey who did not think BBC Sounds offers a service unavailable elsewhere. This is amongst audio-listeners who are aware of the existence of BBC Sounds, and thus the percentage for the population at large will likely be higher.
£59 million	Potential lost value to the UK podcast market as a result of the BBC's dominance. The oversupply of free BBC podcast content within the UK market severely limits monetisation of UK podcast listeners compared to other developed audio markets, stifling growth of the UK podcast sector.
[redacted]	[redacted]
48%	Percentage by which the online radio sector is set grow between 2020 and 2025. The negative impacts already being felt by UK commercial players as a result of BBC Sounds are set to increase in severity as the online radio and podcast sectors continue to rapidly grow. IP connected listening is a key component of the future, on smart devices, on smart speakers and on the web. BBC Sounds is the BBC's IP listening platform and it is crucial it is regulated in line with more traditional broadcast platforms.

Summary

Radiocentre and its members have significant concerns about the current and potential future competitive impact of BBC Sounds. This concern is a consequence of a historical lack of appropriate regulatory oversight of the BBC's online audio services, which has not been sufficiently addressed since Ofcom took over responsibility for the regulation of the BBC in 2017. This combined with the continuing lack of clarity about the purpose of BBC Sounds (its scope has never been properly defined), has seen the service steadily expand, in many cases duplicating the provision of the commercial sector.

In addition, the BBC has used its substantial reach to promote BBC Sounds to an extent unavailable to commercial competitors. While it is perfectly legitimate for the BBC to develop an IP listening platform, it is clear that the BBC sees BBC Sounds competing with global streaming platforms. Doing so clearly goes beyond the Mission and Public Purposes of the BBC while paying little regard to the BBC's obligation to avoid adverse impacts on competition as set out in the Royal Charter. In order to prevent long term damage to the commercial sector, resulting in loss of choice for consumers, the scope of BBC Sounds must be properly defined and regulated. Regulatory Conditions should be put in place to clearly tie the development of BBC Sounds to the BBC's Mission and Public Purposes.

This lack of proper regulatory oversight of BBC Sounds combined with the associated lack of transparency is very concerning. While the BBC's online services may have started as a small component of the BBC's overall service provision, this is no longer the case. A legacy of light touch regulation regarding online services under the BBC Trust, which failed to take account of their growing importance, has sadly continued under Ofcom. There are several areas in which the current system lends itself to supporting the expansion of BBC Sounds, creating potential competitive harm to the commercial radio sector.

- **Inconsistent regulation:** under Ofcom's operating licence for the BBC, each BBC service is mapped to the BBC's Public Purposes, providing clarity on what each service offers and details of how it does so, including information on the quantity and types of content offered. This is not the case for BBC Sounds, which is not mentioned in the operating licence, despite clearly being a separate service in its own right.
- **Lack of transparency:** the failure to acknowledge BBC Sounds as a standalone service results in a lack of disclosure, both in terms of the BBC's ambition and strategy for BBC Sounds, as well as the associated financial and audience related information required to inform licence fee payers about how the BBC is using public money. Several rejected FOI requests demonstrate that this is an area of significant public interest and concern.
- **Scope creep:** Ofcom's process for assessing the impact of changes to BBC services does not ensure adequate scrutiny of changes. The BBC is thereby perversely incentivised to make small incremental changes which, it claims, are not material. Having made 15 changes since launching in November 2018, including seven which expand the scope of the original service, it is only reasonable to conclude that these changes represent a material shift in scope which is likely to harm competition. Even where changes have been agreed with Ofcom, the BBC has pushed the scope beyond what was approved. For example, contrary to its agreed scope, Radio 1 Dance carries exclusive content as well as new material which has happened as a result of making changes to other services. This demonstrates that Ofcom is failing in its duty to regulate.
- **Extensive marketing and cross promotion:** the BBC has a duty to direct licence fee payers to public service material as set out in the Charter and Agreement. Because of a lack of transparency, it is hard to know the exact sums being devoted to promotion of BBC Sounds. As a direct consequence of Sounds not being formally defined as a service, it is not in the published list of cross promotion included in the BBC's Annual Report and Accounts. This leaves promotion of Sounds unchecked and unregulated.

Reportedly, the BBC spent a £10 million on external media in the first 18 months after launch. We estimate its on-going external campaign, combined with heavy cross promotion on the BBC's television and radio services, gives the BBC the equivalent of a marketing campaign worth almost £400 million per year. That is 66 per cent of the commercial radio sector's total advertising revenue. Clearly the commercial sector is unable to compete on this basis.

Despite there being no clear articulation of the purpose and strategy for BBC Sounds or how the service delivers against the Public Purposes, the BBC sees it as "right at the heart"[1] of the BBC's offer and given the BBC is such a significant player in the UK audio market, it is impossible to consider that a new and expanding audio product from the BBC could exist without having a significant impact on competition.

This impact on the competition is already being felt in several areas, through the BBC's dominance of the market in online radio, as well as within specific growth areas such as podcasts and music mixes. Given the limitations of published data on BBC Sounds, we had to commission our own consumer research[2] to examine how people use BBC Sounds, which services it is competing with, and how it is performing.

There are several ways in which the market can be defined which is important when considering the impact on competition. A focus on the UK commercial radio providers and, to a lesser extent, the free tiers of global audio streaming services, is most appropriate since these products are most similar to BBC Sounds. The purpose of the provisions in the Charter and Agreement relating to market impact was to ensure that the BBC does not crowd out other UK operators, which would reduce choice for UK licence fee payers. The relevant frame of reference for assessing the market impact of BBC Sounds must therefore be the definition laid out above. There are three key areas to consider:

- **BBC Sounds is leading to market dominance for the BBC:** the BBC is by far the largest player in the online radio market, accounting for 43 per cent of total listening time, with the next largest player at just 22 per cent. Our research found that a significant proportion of BBC Sounds users use the service for more than 90 per cent of their total listening; this varied by type: music radio (57 per cent), podcasts (44 per cent), speech radio (53 per cent) – illustrating the impact of BBC Sounds in closing off access to listeners for the commercial sector. This is despite the fact that more than three quarters of respondents to our nationally representative sample do not believe that BBC Sounds offers something which they cannot get elsewhere.

  [redacted] Furthermore, BBC Sounds is particularly strong with young audiences for podcasts and music mixes – two areas in which the commercial sector would be able to compete, were it not for the BBC's extensive promotion. This is particularly problematic for the commercial sector, since younger audiences are valuable to advertisers.

- **BBC Sounds is stifling growth of the UK's podcast sector:** BBC Sounds is the UK's most popular platform for podcasts, and the BBC is the most successful producer, with 73 per cent of adults having listened to podcasts relating to BBC radio programmes. This dominance has resulted in a tiny UK commercial podcast market at a time when listeners are growing rapidly. Of the 12 developed podcast markets tracked by PwC, the UK ranks tenth for revenue per monthly listener, at just £0.92 compared to £3.95 in the US – the leading international podcast market. iHeart, one of the US's largest podcast platforms, reported a 74% year-on-year increase in revenue from podcasts in Q3 2020 in its investor presentation of 9th November. By not achieving the same levels of user monetisation as in the US, the UK podcast

[1] BBC Annual Report 2019/20
[2] Survey conducted by FlyResearch 02/11/2020 to 06/11/2020 (n=1,291 BBC Sounds users)

sector loses out on £59 million per year. The BBC's dominance severely reduces the incentive for commercial investment in podcasts and risks damaging the UK's traditional strength in the global creative content market.

- **There is a long-term risk for the UK audio market:** online listening is an area of strong growth for the sector and BBC Sounds has supercharged the BBC's expansion in this space. Indeed, the BBC's growth in online listening shifted from a steady 4 per cent per year between 2016 and 2018 to 27 per cent per year since then. With 35 per cent of BBC Sounds users reporting an intention to listen more in future, and 22 per cent unsure about how their listening might change, further developing BBC Sounds as a destination will squeeze out the commercial sector, limiting access to consumers for commercial operators and reducing choice for consumers.

Ultimately, the inadequate regulation of BBC Sounds is facilitating its unbridled expansion which will inevitably cause harm to consumers. The expansion of BBC Sounds as a platform and as a launch pad for new BBC radio services – which it calls 'streams' – leaves the commercial sector less able to attract audiences despite offering highly comparable content. Once the BBC's ability to promote BBC Sounds is also considered, it is unsurprising that the commercial sector cannot compete. In the long term, this will mean reduced investment in content and reduced choice for consumers.

We have set out below a series of recommendations to improve the accountability of BBC Sounds and to ensure better transparency.

- **BBC Sounds should be treated by Ofcom's operating licence in the same way as other standalone BBC services.** This means a clear articulation in an updated operating licence of the scope of BBC Sounds and the role it plays in delivering against the BBC's public purposes. This must include details of the content and features it may carry with a clear set of Regulatory Conditions. This approach should acknowledge BBC Sounds' multifaceted role as: a platform carrying BBC radio services, a source of catch-up content, and a provider of content such as podcasts and music streams not available on other BBC services – which should be treated accordingly.
- **As for its other services, the BBC should disclose information on the cost and performance of the BBC Sounds service.** The disclosure level provided in the 2018/19 accounts is the most appropriate, with a detailed breakdown of costs by category, and information on audience reach and consumption by age group.
- **Greater scrutiny should be given to any changes the BBC proposes to BBC Sounds.** To prevent the use of multiple incremental changes resulting in a more substantial shift and scope creep, Ofcom should limit the frequency with which the BBC can propose changes. A proper formal consultation is required for all proposed changes, providing stakeholders with an opportunity to input into the process.
- **Ofcom should ensure the BBC adheres to the disclosure requirements of the Agreement.** All BBC promotional activity should be properly and fully disclosed, including the promotion of BBC Sounds. It should be easy for third parties to see the context in which BBC Sounds, as well as other BBC services receive promotion and the amount of promotion each service or programme receives. This should be reported quarterly. It should be scrutinised – including the extent to which it delivers against the BBC's public purposes so that promotional effort is focused on services and content which deliver public value – and at a level which does not dwarf what is possible for the commercial sector.
- **Regulation should carefully consider the impact on the UK commercial radio market, which is the core competitor for BBC Sounds.** Licence fee payer money should not be used to fund services which directly duplicate services provided by UK commercial operators under the guise of enabling the BBC to better compete with worldwide subscription audio streaming services.

- **Ofcom should take into account the existing impact on competition and the potential long term implications given the existing dominance of the BBC in the online audio sector**, and its apparent ambition to develop BBC Sounds as a destination for listeners – which would restrict commercial radio's access to listeners. Ofcom should give the same weight and regulation to the BBC's online offering as it does to its UK Public Services and regulate them accordingly.

- **Ofcom should prevent the BBC from engaging in anti-competitive practices which dilute the public value of its services and crowd out the commercial provision of podcasts.** Consideration should be given to further restrictions on the BBC's output of podcasts (which by virtue of being BBC produced are ad free and have a competitive advantage in attracting listeners against commercial podcasts) and incentives to help the commercial sector overcome the existing barriers to entry caused by the BBC's dominance.

- **Ofcom must be forward looking in its regulation of BBC Sounds.** It must act now to prevent the continued expansion of BBC Sounds leading to a significant problem for the overall health of the UK audio market, characterised by the crowding out of commercial players and reduced choice for listeners.

- **Ofcom should immediately launch a BCR of BBC Sounds, as a result of this review.** While Ofcom has chosen not to, the Agreement is clear that Ofcom can instigate a BCR if there are reasonable grounds to believe that a BBC service is having a significant impact on fair and effective competition. Given the existing evidence of harm caused by BBC Sounds, and the strong likelihood that the future impact will be greater still, a BCR of BBC Sounds is both appropriate and necessary at this habit-forming moment in the public's growth into IP delivered listening. Doing so will ensure that BBC Sounds is formerly scoped, and its competitive impact fully understood.

Introduction

Ofcom has requested evidence and information in relation to the market position and impact of BBC Sounds. This document is the submission from Radiocentre.

About Radiocentre

Radiocentre is the industry body for commercial radio. We work on behalf of over 50 stakeholders who operate over 300 licensed radio stations across the UK and represent more than 90 per cent of commercial radio in terms of listening and revenue. We perform three main functions on behalf of our members, including: promoting the benefits of radio advertising, ensuring advertising on commercial radio complies with content rules, and providing a collective voice on policy issues which affect the way that the sector operates.

We are therefore responsible for producing and submitting this response to Ofcom's call for evidence on the impact of BBC Sounds, on behalf of the UK commercial radio sector.

Scope of this submission

As per the Ofcom call for evidence, this submission provides evidence and information relating to the impact of BBC Sounds on the UK market, as well as views and supporting analysis relating to the future development of BBC Sounds and the impact that this may have on the wider market. We have set out this information to cover two key areas:

- The existing approach to regulatory oversight and transparency around BBC Sounds and how this might appropriately evolve in future
- The impact of BBC Sounds on competition, and the market more generally – both now and in the future as IP delivered audio services account for an ever-increasing share of listening

These issues, and the associated contributing factors, are addressed in turn throughout the remainder of this document. To support this submission, we have conducted several pieces of bespoke research, including:

- An assessment of the equivalent media value of the BBC's cross-promotional activity for BBC Sounds
- A review of the content featured on the Radio 1 Dance 'stream', to test the BBC's compliance with its agreement to not produce exclusive content for this new service
- Consumer research to test consumer attitudes to BBC Sounds
- Modelling of audio consumption habits, to illustrate how the market could develop in the absence of proper scrutiny around BBC Sounds

The competitive impact of BBC Sounds is, in part, a symptom of the regulatory environment in which it exists. Our response therefore identifies some limitations of the current regulatory regime as it applies to BBC Sounds, before presenting evidence of its competitive impact. The negative competitive impact of BBC Sounds is likely to worsen if the BBC is allowed to continue expanding BBC Sounds without proper scrutiny.

Regulatory oversight and transparency

The current regulatory regime for BBC Sounds is unusual in that BBC Sounds developed with limited oversight and a general lack of transparency around its purpose, strategy, and role in delivering value to licence fee payers. There are five key areas in which the regulation and transparency of the BBC Sounds service ought to be clarified and/or reconsidered; these are:

- Its position as a regulatory anomaly compared to other BBC content services
- The associated general lack of transparency around the service
- The steady expansion of its scope – based on 'small' incremental changes
- Resulting in its current ambition on a scale which cannot be consistent with the idea of BBC Sounds having no material impact on competition
- The extensive promotion to match that ambition – which is not properly reported on

Each of these elements contribute to an inadequate regulatory environment which has enabled the BBC to steadily expand the scope of BBC Sounds, leading to an ever-growing impact on competition. There is an urgent need for greater transparency around the purpose of BBC Sounds, including where, to what extent, and on what terms it can be expected to compete with commercial services.

A regulatory anomaly

The BBC's services are defined under a single operating licence which sets out how the BBC's individual services contribute to its Public Purposes. Despite the breadth of online services offered by the BBC, they are considered as a single service. BBC Sounds is not even mentioned, despite being a standalone content service.

The Royal Charter forms the constitutional basis of the BBC; it is underpinned by a Framework Agreement which confirms the independence of the BBC and sets out the BBC's operating framework, including the regulatory regimes for the activities of the BBC and the roles and responsibilities of the BBC and Ofcom in operating these regimes. Prior to the closure of the BBC Trust, and Ofcom becoming the BBC's first independent external regulator in 2017, individual BBC services were regulated by service licences. Service licences were issued by the BBC Trust for every UK public service, to define the scope, aims, objectives, headline budget and other important features of each service. Service licences also set out how performance was assessed, and the BBC Trust reviewed each BBC service against its licence at least once every five years.

Services licences existed under the BBC Trust for each service, including:

- **Television:** BBC One, BBC Two, BBC Four, CBBC, CBeebies, BBC News Channel, BBC Parliament, BBC Alba
- **Radio:** BBC Radio 1, BBC Radio 1 Xtra, BBC Radio 2, BBC Radio 3, BBC Radio 4, BBC Radio 4 Extra, BBC Radio 5 Live, BBC Radio 5 live sports extra, BBC 6 Music, BBC Asian Network, BBC Local Radio, BBC Radio Scotland, BBC Radio nan Gàidheal, BBC Radio Wales, BBC Radio Cymru, BBC Radio Ulster/BBC Radio Foyle
- **Online:** BBC Online and red button service

The service licence framework was designed to cover each BBC service and provide a clear link between the aims of the service, and how it would deliver against the BBC's overarching public purposes, as defined in the Royal Charter. This scrutiny of individual services therefore ensured they were well defined, their remit well understood and thus they were designed to deliver public value and held accountable for doing so. Even relatively low reach services were subject to individual services licences; CBBC, BBC Radio 1 Xtra, and BBC Radio 3, amongst others, all have weekly reaches of less than 2.5 million users[3] – fewer than the weekly 3.4 million BBC Sounds users in Q2 2020[4] (and far fewer than the total weekly reach of BBC Online at 37 million users) – yet they were subjected to proper scrutiny under the service licence regime.

By the time the BBC Trust re-issued it service licences for the last time, in April 2016, the nature of the BBC's approach to delivering its services had changed significantly. The BBC's iPlayer service had been available for almost nine years, offering on demand access to television and radio content from the BBC, and BBC Three had moved to be an online only service, commissioning content available exclusively via the BBC's iPlayer. The service licence regime was not updated to reflect this. Rather than having an individual service licence for discrete online services, 'BBC Online and Red Button' remained a catch all licence covering the online elements of some services as well as entirely online services as a whole, including:

- Radio and music
- Knowledge and learning
- iPlayer and TV
- BBC Three
- Children's
- News, travel and weather
- Sport

So while the 'BBC Online and Red Button' licence document was a similar length to those for individual services, the coverage of each individual online service was much lighter touch. For example, BBC Two's service licence ran to 15 pages, whereas BBC Three's coverage within the 'BBC Online and Red Button' service licence accounted for just two pages. Similarly, details relating to the BBC's online radio and music services ran to less than a page and the BBC's iPlayer Radio service (the pre-cursor to BBC Sounds) received no mention at all, despite it having launched more than two years earlier in October 2012. The Trust's inconsistent approach to defining service licences – in particular its light touch approach to online services and the absence of BBC iPlayer Radio – has left a legacy of lopsided regulation as consumption shifts online and a well-defined understanding of the objectives of the BBC's online services becomes more important.

The service licence-based approach, of course, changed in 2017 after Ofcom took on responsibility for the regulation of the BBC. Rather than maintaining services licences for individual services, Ofcom initiated a new regulatory framework based around a single licence for all the BBC's UK public services (TV, radio and online). This is set out in Ofcom's *Operating licence for the BBC's UK Public Services*[5] document; the approach is built on the BBC's public purposes and relates each service back to each public purpose, creating a clear thread (including specific deliverables) between a service and the purpose(s) it is supporting.

But 'BBC Online' continues to be considered as one service, despite the extraordinary range of activities it encompasses. This is despite the growing scale of the BBC's online services, including the fact that many of the BBC's online activities, including BBC Sounds, control their own exclusive (originated) content and are unambiguously services in their own right. In fact, the definition of 'BBC Online' in Ofcom's operating licence is so vague that it does not even mention online audio services:

[3] BBC Annual Report 2019/20. The scale of these services today is comparable to that seen under the BBC Trust's service licence regime
[4] https://www.bbc.co.uk/mediacentre/latestnews/2020/sounds-q2
[5] https://www.ofcom.org.uk/__data/assets/pdf_file/0023/199040/bbc-operating-licence-july-20.pdf

Online services designed for users across the United Kingdom, BBC Online: a comprehensive online content service, with content serving the whole range of the BBC's Public Purposes and including the BBC's news and sports websites, BBC iPlayer and BBC Three for younger adult audiences.

The limitations of the BBC Trust's individual service licence regime has been allowed to continue, with increasingly significant online services receiving little or no oversight, and no scrutiny in terms of how they ought to support the BBC in delivering against its public purposes. This lack of a clear remit or strategy for BBC Sounds, agreed with Ofcom, is compounded by the BBC's vague approach to defining the role of BBC Sounds in its annual plan[6]. The plan contains no clear targets, conditions, or objectives for BBC Sounds, and therefore no means of judging success.

It is hard to see how Ofcom can effectively perform its duties, which include regulating the competitive effects of BBC services when there is no clear means of understanding what all of the BBC's services are – BBC Sounds, in particular – and what they are designed to achieve. Discussions with Ofcom have revealed Ofcom's continued uncertainty around whether BBC Sounds is a platform, a service, or both – this is clear evidence that BBC Sounds scope and objectives have never been adequately defined and that the existing regulatory framework is inadequate. While an argument may exist to group some of the BBC's online services together, clearly more scrutiny is necessary for services such as BBC Sounds, BBC Three, and iPlayer, which are a growing part of the BBC's service proposition given the scope for new services such as BBC Sounds to have an impact on competition.

Recommendation: BBC Sounds should be treated by Ofcom's operating licence in the same way as other standalone BBC services. This means a clear articulation in an updated operating licence of the scope BBC Sounds and the role it plays in delivering against the BBC's public purposes. This must include details of the content and features it may carry with a clear set of Regulatory Conditions. This approach should acknowledge BBC Sounds' multifaceted role as: a platform carrying BBC radio services, a source of catch-up content, and a provider of content such as podcasts and music streams not available on other BBC services – which should be treated accordingly.

Lack of transparency

Failure to acknowledge BBC Sounds as a standalone BBC service places limited expectations on the BBC around disclosure, both in terms of the BBC's ambition and strategy for BBC Sounds and the associated financial information required to inform licence fee payers about its use of public money.

The fact that BBC Sounds is not considered a separate BBC service under Ofcom's operating licence creates an unusual and unjustified lack of transparency around the service. If BBC Sounds were treated as a separate service, there would be greater clarity around the purpose of the service, the value it offers to licence fee payers and, the potential impact on competition. Indeed, the transparency around the BBC's online audio services has actually reduced since the previous service licence regime overseen by the BBC Trust; under that system, the annual budget for 'BBC Online and Red Button – Radio and music' was reported (£14.2 million in 2016/17), but even this level of information is no longer available.

Indeed, Ofcom's new approach to regulating the BBC's services, does not provide details of the budget associated with each service, as was the case under the BBC Trust's individual service licence regime. Instead, the budgetary information is limited to financial quotas on where UK content spend should occur, with no visibility of the budgets of individual services, including BBC Online and therefore BBC Sounds.

[6] http://downloads.bbc.co.uk/aboutthebbc/reports/annualplan/annual-plan-2020-21.pdf

Even more problematic is the lack of publicly available information on how much licence fee funding is spent on BBC Sounds. The BBC's Annual Report and accounts has historically provided a great deal of granularity on how the licence fee is spent and the audiences served – in recognition of the BBC's privileged funding position. For example, for each of the BBC's broadcast radio and television services, it has historically been possible to see the following in the BBC's Annual Reports[7]:

Financial information	Audience information
Content spending	Audience delivery (reach, volume)
Distribution costs	Demographics
Content and distribution support costs	Appreciation indices
General support costs	

But the financial disclosure changed from the 2019/20 annual report, when the disclosure was reduced to just content spending and the cost per user hour. This seems to be a significant step backwards and is not in the spirit of the transparency Ofcom might expect under the operating licence, which requires the BBC's annual report to include details of how the BBC delivered its remit. Even so, the limited disclosure which remains for each of the BBC's defined services is well ahead of what is available for BBC Sounds.

It is again the inclusion of BBC Sounds within BBC Online which creates the lack of transparency. The BBC's annual report provides total content spend for BBC Online, but no breakdown of spending on each of the services within it. The same is true for audience related information, with the BBC reporting the overall reach of BBC Online, but limited breakdown of the services with it. Reporting of the audience performance of BBC Online's constituent parts tends to be on an ad hoc basis, differing from year to year to support the narrative section of the BBC's annual report. For example, the limited references from the 2019/20 annual report include:

- BBC Sounds: number of user accounts
- BBC Three: average weekly minutes viewed by 16-34 year olds

The main exception to this is iPlayer, which is part of BBC Online, but for which detailed reach and demographic information are included in the annual report. There seems be no compelling reason why the same level of disclosure could not be provided for BBC Sounds, particularly given that the need to sign up to access the service means all of this audience information is available. Measurement of BBC Sounds is further supplemented by its inclusion in RAJAR's MIDAS survey, which asks respondents how frequently they use BBC Sounds – but the BBC does not make this information publicly available. Following increased pressure from the radio industry BBC Sounds has started to publish quarterly listening reports via the Mediacentre, but such reports typically provide only very broad top-line listening numbers and very little insight.

Supplementing the BBC's limited disclosure, of both financial information and audience information, there are a small number of data points available from third party public sources. In particular, in 2018, documents obtained by The Times revealed that the BBC intended to spend around £10 million promoting BBC Sounds to young listeners (covered in more detail in the section below on promotion)[8]. This was newsworthy given it was such a significant sum, at a time when the BBC was already facing financial pressure; in fact, the National Audit

[7] Note that the BBC also discloses detail on public service promotions (covered in more detail on p20) and access services

[8] https://www.thetimes.co.uk/article/bbc-splashes-10-million-on-selling-radio-app-to-young-listeners-s69b2g9p5

Office reported that the launch of BBC Sounds was a contributing factor for the BBC's budget deficit in 2018/19[9]. In terms of user numbers, Ofcom's annual report on the BBC (in October 2019) and Media Nations reports were perhaps the first to offer any visibility into how the use of BBC Sounds compares to other audio streaming services. But even then, the available insight was not based on BBC disclosure.

The BBC clearly has metrics by which they are measuring the success of BBC Sounds, indeed in the October 2019 minutes of the BBC Board meeting it is stated that attendees learned "BBC Sounds had also met its signed-in user target for the year and was on track for its young audiences target too"[10]. These metrics, however, are not made available to the public.

Furthermore, there have been several FOI requests to provide greater transparency around the cost and use of the BBC Sounds service. These have come from journalists and MPs[11], demonstrating a clear public interest in greater transparency. But all have failed to offer any more insight, with the BBC able to reject them on the basis of being for the purposes of 'journalism, art or literature'. For such a major service, the BBC clearly does not provide a reasonable level of openness around how licence fee money is being used on BBC Sounds – particularly given the precedent set by the disclosure relating to its other services.

Recommendation: As for its other services, the BBC should disclose information on the cost and performance of the BBC Sounds service. The disclosure level provided in the 2018/19 accounts is the most appropriate, with a detailed breakdown of costs by category, and information on audience reach and consumption by age group.

Scope creep

What started as a specifically defined extension to the BBC's established radio services – originally BBC iPlayer Radio – has expanded steadily through a series of small incremental changes. Each of which are likely to have had limited impact on competitors, but which add up to a significant and unscrutinised expansion of the service.

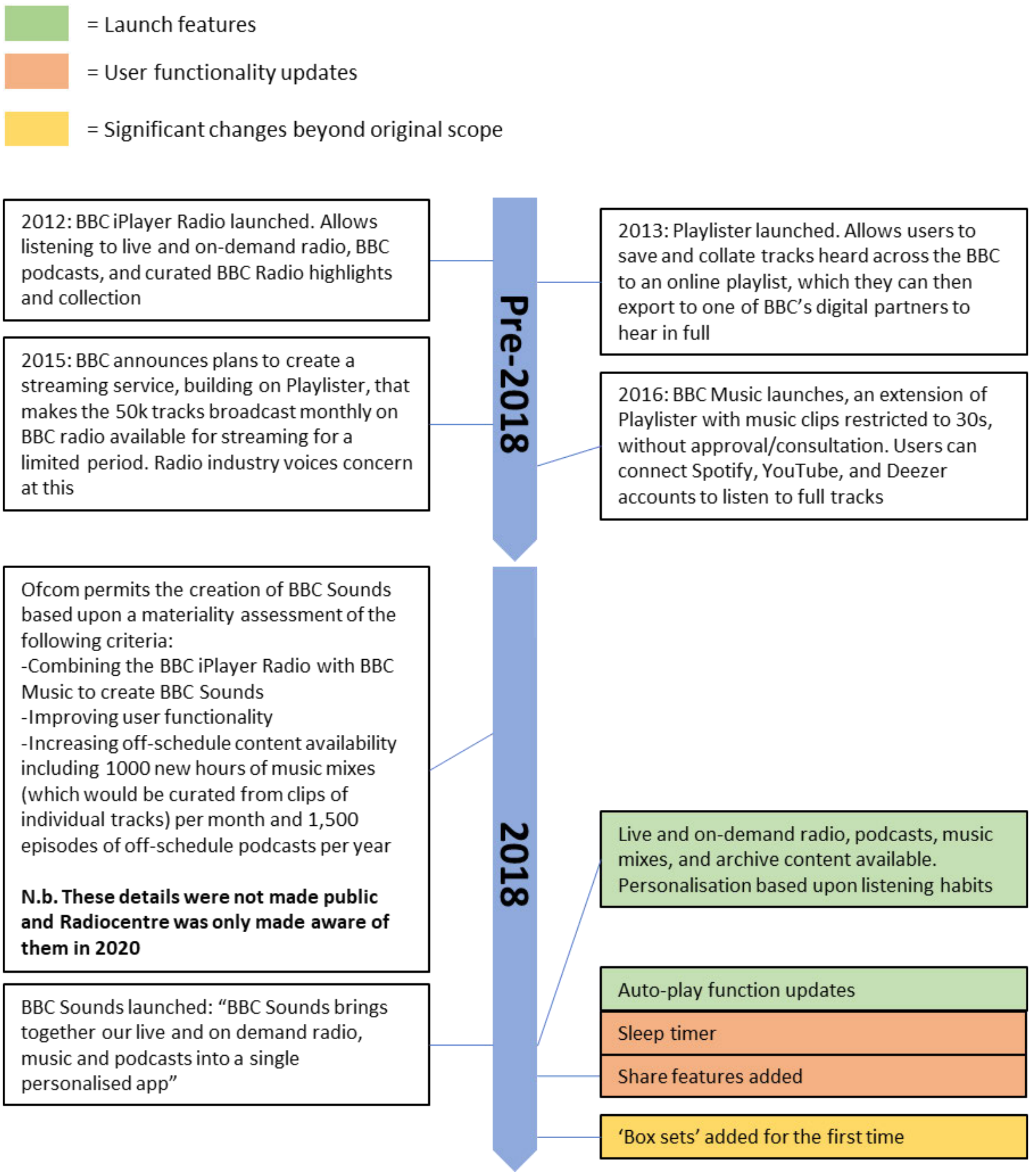
The current status of BBC Sounds, as a sub-set of the BBC Online service, and the limited transparency around its purpose, cost, and audience delivery is, in part, a symptom of the manner in which it has been developed by the BBC. It began as BBC iPlayer Radio, with a limited scope involving no specially produced content and relatively low off-schedule content limits, but since launch its scope has expanded considerably. Its amalgamation with BBC Music and change of name to BBC Sounds, in October 2018, marked the start of its next phase of development, which has continued via small incremental changes, each of which individually was deemed to have limited impact.

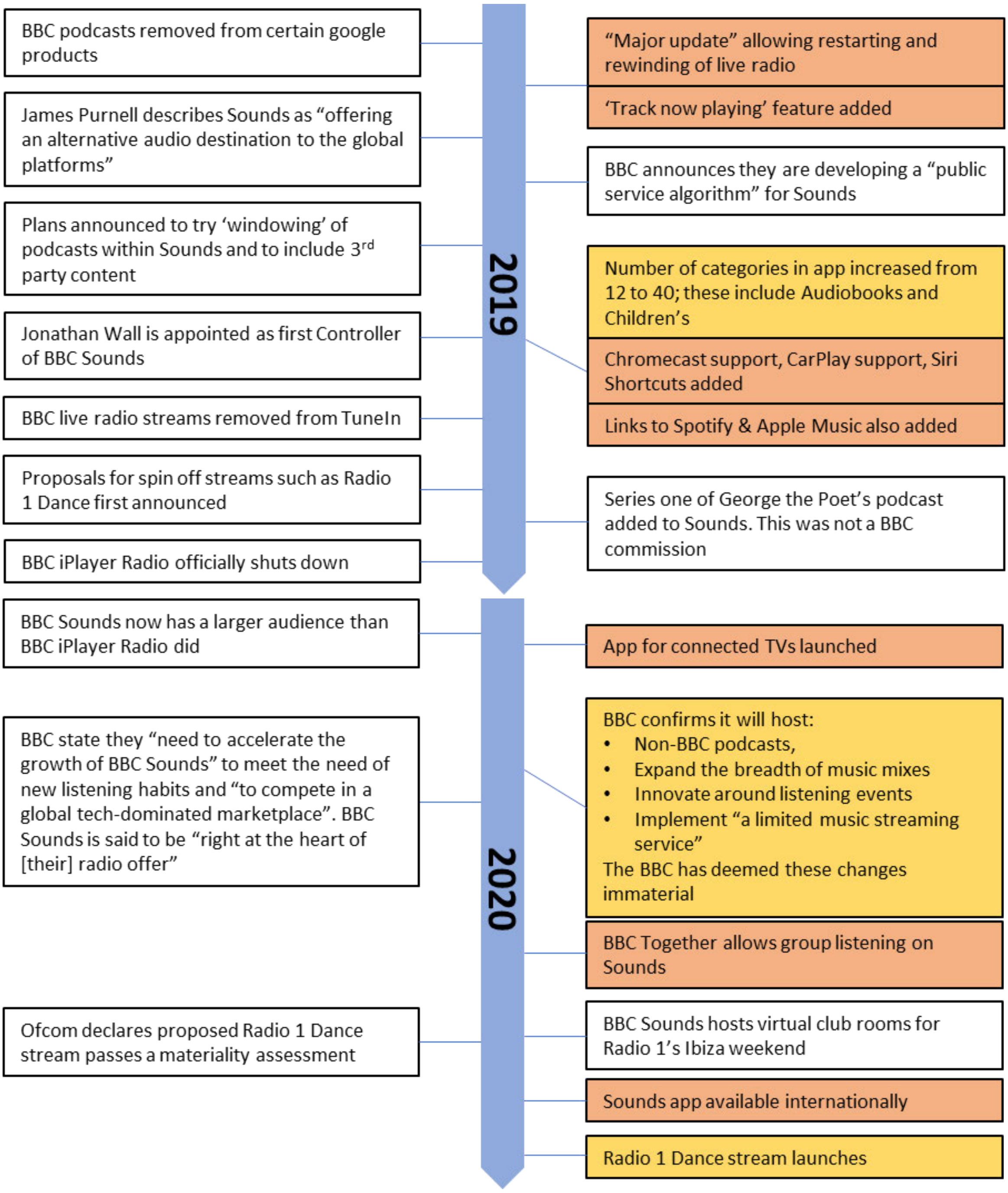
The current scope creep of BBC Sounds is the latest development in a pattern of such events, stretching back to the launch of BBC iPlayer Radio and Playlister in 2012 and 2013 respectively. Radiocentre, and our members, first drew attention this in 2015 – at the time, with the BBC Trust. Then, as now, the BBC was allowed to expand its ambitions unchecked to the detriment of the radio industry. A lack of proper regulatory oversight has allowed the scope to continue to expand, despite the continued lack of clarity around the purpose of BBC Sounds. We conducted some desk research to establish a clear view of how the BBC Sounds service has developed, both in

[9] https://www.nao.org.uk/wp-content/uploads/2019/09/Departmental-Overview-British-Broadcasting-Corporation.pdf
[10] http://downloads.bbc.co.uk/aboutthebbc/whoweare/bbcboard/board-minutes-october-2019.pdf
[11] https://www.thetimes.co.uk/article/bbc-uses-loophole-to-hide-spending-on-new-audio-app-sounds-g0s69587t#:~:text=The%20BBC%20has%20been%20accused,in%20Freedom%20of%20Information%20legislation.

terms of its stated ambition, and the scope and features of the service. **Figure 1**, below sets out a timeline of these developments.

<u>Figure 1: Timeline of developments in BBC Sounds</u>





Ofcom's assessment procedure for considering the impact of proposed changes to the BBC's public service activities[12] consists of an initial BBC-led phase, followed by an Ofcom-led phase. The BBC starts by developing its proposed changes, and conducting a materiality assessment on them, where changes are deemed to be material it must then conduct a public interest test (PIT). Ofcom's initial involvement is to review the BBC's materiality assessment, and thus determine whether the changes are material and whether the BBC must conduct a PIT (Ofcom can require a PIT even if the BBC judges the changes to be immaterial)[13].

[12] https://www.ofcom.org.uk/__data/assets/pdf_file/0028/99415/bbc-public-service-activities-proposed.pdf
[13] Where a PIT is required, Ofcom goes on to assess the outcome of this work and determines what further steps are required. There are two possible routes, either a BCA or a shorter assessment

This process enables the BBC to design small changes to its services which do not meet the materiality threshold and can therefore expect to be agreed with little scrutiny. Even the outcomes of these assessments are not routinely published or made available for external consideration.

Although the details were not publicly reported, BBC Sounds was launched on the basis of a materiality assessment which gave the BBC permission to combine BBC iPlayer Radio and BBC Music, to improve user functionality, and to increase off-schedule content availability to include 1,000 new hours of music mixes (which would be curated from clips of individual tracks) per month and 1,500 episodes of off-schedule podcasts per year. This came as a surprise to the industry, given there was no consultation on the launch of BBC Sounds, or changes in 2018, despite the BBC's published policy[14] on material changes starting that:

> *"The BBC will take account, where appropriate, of the views of third parties in reaching a decision on materiality. The BBC's Annual Plan will reference potentially material changes to the UK public services that the BBC intends to make over the coming year."*

Figure 1 shows that since launch 15 changes have been made to BBC Sounds, and whilst a number of these fall under the scope of improving user functionality, at least seven go beyond what was originally agreed for BBC Sounds. These seven changes should all have been subject to an initial materiality assessment by the BBC, though there is limited public reporting of this. In all cases the BBC appears to have concluded that the changes were not material and they were therefore not subject to a PIT, nor to any further scrutiny by Ofcom.

The most recent materiality assessment relating to BBC Sounds was in September 2020 for the launch of the 'Radio 1 Dance stream', as with the BBC's previous changes, this was approved by Ofcom with no need for the BBC to conduct a PIT. This was just five months after previous expansions in the scope of BBC Sounds, which enables the BBC to:

- Introduce non-BBC podcasts
- Expand the breadth of available music mixes
- Introduce listening events via virtual rooms
- Launch a limited music streaming service

These changes were subject to a 'detailed materiality assessment' by the BBC, the details of which are not publicly available. With seven changes to the scope of the service since its rebranding as BBC Sounds, it is clear that the BBC's development of its online audio service either severely lacks strategic direction or is being made on a piecemeal basis to avoid greater scrutiny by Ofcom. Even since the rebrand in 2018, the steady expansion of the service, via small changes to its scope, have seen the breadth of features and depth of available content transformed, as illustrated by **Figure 2**, below.

Figure 2: Comparison of BBC Sounds features, 2018 vs 2020

= Launch features

= User functionality updates

= Significant changes beyond original scope

14 http://downloads.bbc.co.uk/aboutthebbc/insidethebbc/howwework/policiesandguidelines/pdf/policy_material_changes.pdf

Features	2018	2020
Radio		
Live	✔	✔
Catch up and on-demand	✔	✔
Rewinding live radio		✔
Track information		✔
Exclusive Radio 1 Dance stream		✔
Podcasts		
BBC Podcasts	✔	✔
Podcast/archive box sets		✔
Third party podcasts		(✔)
Audiobook podcasts		✔
Music mixes		
Basic selection of genres and content	✔	
Comprehensive selection of genres and content		✔
Limited music streaming		(✔)
Other		
Personalisation	✔	✔
Auto-play	✔	✔
Digital TV support		✔
International app support		✔
Chromecast/CarPlay/Siri support		✔
Share features		✔
Links to Spotify & Apple Music		✔
Sleep timer		✔
Group listening		✔
Event-specific features		✔

Note: Bracketed ticks indicate features that have been announced but not yet implemented

Perhaps some of the biggest developments have been the expansion of music mixes, off-schedule podcasts, and the launch of curated streams such as Radio 1 Dance. Each of these features could now be seen as destinations for listeners and are therefore comparable to standalone services in their own right. These elements, of course, broaden the scope of the BBC's audio services and bring the BBC more directly into competition with the commercial sector and, in doing so, risk spending licence fee payer money on content equivalent to that already available for free and thus of limited public value. We consider the impact on competition – exacerbated by the lack of a robust regulatory framework – in more detail in the next section.

The BBC's approach to rolling out approved changes to the BBC Sounds service is not always in line with expectations. The recent launch of Radio 1 Dance is a clear example of this, with the new feature initially described to Ofcom as a 'stream' containing 'no new or exclusive content', yet 'R1 Dance presents' openly states that it carries exclusive content[15]. We therefore commissioned a review of the content of Radio 1 Dance to test compliance with the BBC's stated content scope[16]. Our case study, below, clearly shows that the BBC continues to push the boundaries of BBC Sounds' scope, and it seems that Ofcom's current approach to regulating BBC Sounds does not provide a clear means of holding BBC Sounds to its agreed scope.

Radiocentre is especially concerned that the BBC have described Radio 1 Dance as "the BBC's first new 24-hour stream on BBC Sounds"[17], implying more such 'streams' are to follow.

CASE STUDY: BBC SOUNDS OPERATING BEYOND ITS AGREED SCOPE

Radio 1 Dance is a recent spin-off from Radio 1 which the BBC describes as bringing "together Radio 1's rich slate of existing dance programmes into a dedicated stream on BBC Sounds, making it even easier for current and new listeners to find them"*. It provides "a second chance to hear the station's world-famous DJs and mixes from all corners of the globe, offering something distinctly different for music fans to get stuck into".

Background:

- In July Ofcom received a materiality assessment from the BBC outlining its proposal to launch the 'Radio 1 Dance Stream'
- In September 2020, Ofcom published its response to this proposal, stating that the BBC would not be required to conduct a Public Interest Test. They concluded that "the impact of the Radio 1 Dance stream on the market is likely to be small, particularly given it will be online only and will contain no new or exclusive content"
- In October 2020 Radio 1 Dance went live on BBC Sounds

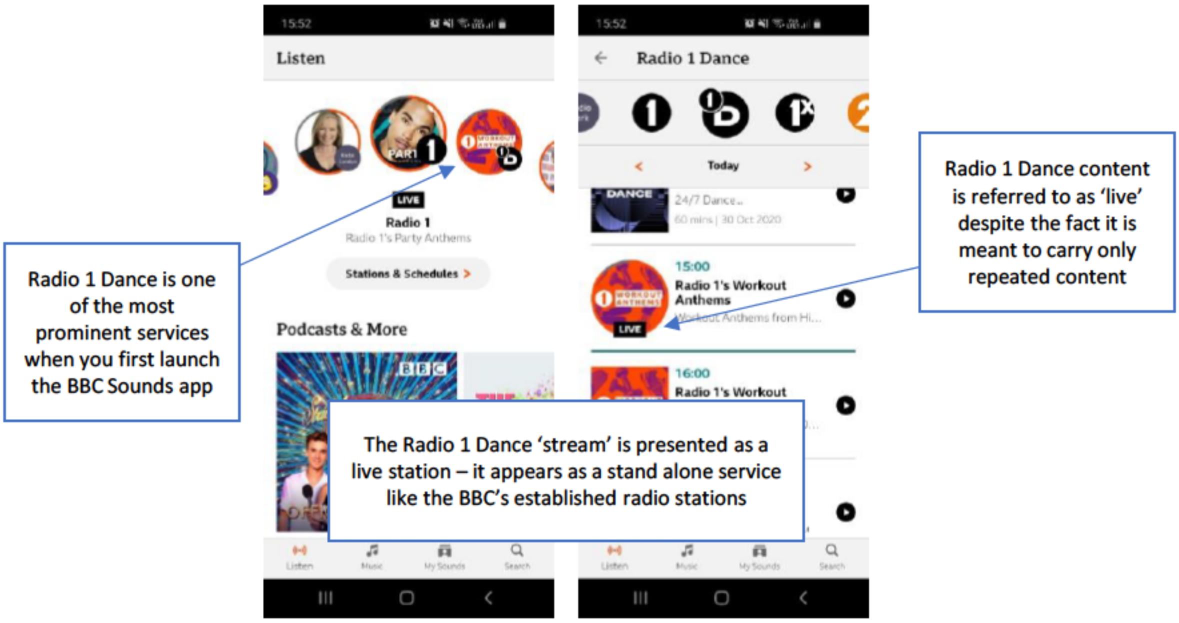
Evidence suggests that in gaining approval for Radio 1 Dance, the BBC has misled Ofcom about its intentions and thus the potential impact on competition.

Radio 1 Dance is both directly and indirectly breaching its commitments to Ofcom:

- In the first week of Radio 1 Dance's broadcast, 82.1 per cent of airtime was taken up by replaying older Radio 1 material, 16.1 per cent consisted of live simulcasts with Radio 1, and 1.8 per cent was new material premiering on Radio 1 Dance (and repeated on Radio 1 shortly afterwards)
- The material premiering on Radio 1 Dance appears to be in breach of Ofcom's agreement
- The description of Radio 1 Dance as a 'stream' is inaccurate and inappropriate given the service is premiering new material; indeed, the BBC is presenting it to listeners as a new and discrete service – positioned alongside other stations on the BBC Sounds' scroll wheel (see screenshots below)

* https://www.bbc.co.uk/mediacentre/latestnews/2020/radio-1-dance-stream

[15] https://www.bbc.co.uk/mediacentre/latestnews/2020/radio-1-dance-stream
[16] The report from Folder Media is included in our submission alongside this document
[17] https://www.bbc.co.uk/mediacentre/latestnews/2020/radio-1-dance-stream



- Furthermore, while the majority of Radio 1 Dance's content sticks to its commitment to not broadcast new or exclusive content, there have been major changes in Radio 1 programming in order to generate content for Radio 1 Dance, including:
  - A new show at 4am weekdays and 6am on a Saturday called Radio 1 Dance 24/7
  - A show called Radio1's Workout Anthems on a Tuesday at 3am
- Evidently, these programmes are essentially new and exclusive content to support the Radio 1 Dance service, but the BBC is circumventing the agreement with Ofcom by first broadcasting these programmes on Radio 1 during the night

Not only has the BBC taken advantage of inadequate scrutiny around changes to its services, it has failed to honour the agreement with Ofcom around the changes which have been permitted.

Recommendation: Greater scrutiny should be given to any changes the BBC proposes to BBC Sounds. To prevent the use of multiple incremental changes resulting in a more substantial shift and scope creep, Ofcom should limit the frequency with which the BBC can propose changes. A proper formal consultation process is necessary for all proposed changes, enabling stakeholders a full opportunity to input into the process.

Right at the heart of the BBC's audio offer

The steady expansion of the scope of the BBC Sounds has resulted in a highly ambitious service and a key part of the BBC's audio strategy. Clearly, with the BBC such a large player in the UK audio market, such ambition for a new service could never be delivered with no significant impact on the market.

As we have seen the breadth and depth of the BBC Sounds service has expanded steadily from an online catch up service for the BBC's radio content to a significant audio streaming platform offering original content. Although it has arrived where it is today via a series of small incremental changes, the BBC has not been shy about stating its ambitions for the service. **Figure 3**, below, sets out a range of quotes from the BBC, which describe its vision for BBC Sounds.

Figure 3: The BBC's vision for BBC Sounds

BBC Sounds and the BBC's overall audio strategy:

"We launched BBC Sounds last year. It's the digital home for all of our audio content, from music to podcasts and of course our stations" – James Purnell, September 2019

"Today, BBC Sounds is right at the heart of our audio offer" – BBC Annual Report 2019/20

BBC Sounds "aims to help build 'audio habit for the next generation'" – Broadcast reporting on Jonathan Wall's keynote speech at the Radio Academy Festival 2020[18]

The BBC's ambitions for BBC Sounds:

"Until recently our regulation constrained us. We were required to concentrate on releasing radio programmes on demand, rather than making original podcasts - a subtle, but vital distinction. Now we've been given scope to experiment" – James Purnell, June 2018

"Our second major priority for this year is focusing on the growth of BBC iPlayer and BBC Sounds … We will keep adding more functionality … as well as greater personalisation of the BBC Sounds app and website" – BBC Annual Plan, 2019/20

"We will need to accelerate the growth of BBC Sounds to meet the new listening habits of audiences in both music and speech… Over the next two years we will evolve the user experience in Sounds to make it easier to use and more personally relevant to each user, innovate around new listening formats within Sounds, develop new exciting content, and in a significant new step incorporate discovery of the best third-party content" – BBC Annual Plan, 2020/21

How the BBC see BBC Sounds in a global context:

"If you're anything like me, you expect your services to be personalised (as Netflix, Spotify, Apple already do) - and we would like our services to be just as compelling and useful as those of the global giants" – Kieran Clifton, March 2019

"With BBC Sounds, we are already offering an alternative audio destination to the global platforms" – James Purnell, March 2019

"To compete in a global tech-dominated marketplace, BBC Sounds must find a distinct space in the lives of our listeners" – BBC Annual Plan, 2020/21

"Sounds controller Wall positioned the platform's main competitors …as Spotify, Apple and Amazon Music, rather than the UK's commercial radio sector" – Broadcast reporting on Jonathan Wall's keynote speech at the Radio Academy Festival 2020[18]

BBC Sounds was considered by the BBC to be the 'biggest launch since iPlayer', the service which blazed a trail for the UK TV sector and forms a key part of the BBC's distribution strategy both now and in the future. Having started life as catch up service, iPlayer has become a destination for content discovery, designed to attract viewers and keep them within the BBC ecosystem. It is clear from the BBC's steady expansion of BBC Sounds and the stated ambition, that the organisation has similar hopes for BBC Sounds. The BBC sees BBC Sounds as

[18] https://www.broadcastnow.co.uk/bbc/jonathan-wall-sets-out-bbc-sounds-future/5154828.article?adredir=1

competing in a global audio market (we discuss this in more detail from p24), battling for relevance and for listeners' attention, not just with UK commercial radio, but with the likes of Spotify and Apple Music.

It is not hard to see why such an ambition is of concern to the UK commercial radio sector. There is a clear contradiction between the BBC's ambition for BBC Sounds as the cornerstone of the BBC's audio product, and the idea that such a service could have limited or immaterial impact on competition.

Promotion

The lack of transparency around BBC Sounds means that promotional spending is not reported, but we estimate the combined annual media value of its cross-promotion on TV and radio, and the BBC's ongoing external marketing campaign to be £394 million – 66 per cent of total UK radio industry advertising revenues.

To deliver on the BBC's ambition for BBC Sounds, it is spending significant sums on promotion. As discussed earlier, the lack of transparency regarding BBC Sounds means that the BBC does not disclose its marketing spending, but The Times reported in November 2018 that the BBC planned to spend around £10 million promoting the BBC Sounds service in its first 18 months. The equivalent of around 10 per cent of the entire annual budget of BBC local radio. This marketing spending involved around £3 million in 2018/19 and a further planned spend of up to £7.65 million in 2019/20. The initial £3 million outlay consisted of about £630,000 within 48 hours of launch, £1.44 million to 'build understanding', and £930,000 to 'drive the habit'. More specifically, the launch event included a stunt to transform the London Eye into the 'London Ear' and the BBC also gave away free headphones to people agreeing to download the app.

Clearly it is important for the BBC to make licence fee payers aware of its services, and its approach was designed to appeal to young audiences. But the scale of investment in promoting BBC Sounds is quite remarkable, particularly given the financial pressure facing the BBC more generally. It is also important to note that this marketing spending is in addition to the extensive cross promotion of BBC Sounds via other BBC Services. Given the use of cross-promotion, which gives the BBC access to a weekly reach of the 91 per cent of UK adults using its television, radio, and online services, it is interesting to note that the reported ambition of the BBC's £10 million external campaign was to reach 96 per cent of Britons – just 5 percentage points higher than its own reach.

While no recent data are available relating to the on-going spending by BBC Sounds on promotional activities, it continues to promote BBC Sounds extensively. There is an on-going advertising campaign and regular cross promotion of BBC Sounds on the BBC's other services. The reach of the BBC's services clearly gives it a significant advantage when it comes to cross-promotion. No commercial radio service can hope to compete with the BBC and the cost of replicating the BBC's overall promotional campaign (external and cross-promotion) would be significant. This is why the BBC is required, under the Agreement, to report transparently on the amount of cross promotion its services receive.

Until 2018/19 the BBC reported the number of minutes of cross promotion received by BBC Sounds: 582 on TV and 1,475 on radio. It also acknowledged further cross-promotion within podcasts available via BBC Sounds and third-party platforms, though it did not provide a number of minutes. Although these statistics did not extend to quantifying the reach/exposure provided by the cross-promotion campaign, the disclosure went some way to providing the transparency required under the Agreement. This information was, however, omitted from the BBC's 2019/20 annual report, when it would have provided visibility of a full year's worth of cross-promotional airtime enjoyed by BBC Sounds for the first time.

This is an issue which Radiocentre, and its members have raised previously with Ofcom. The Agreement sets clear requirements about the BBC's promotion of its output, in particular that such promotion should focus on output contributing substantially to the fulfilment of the mission and promotion of the BBC's Public Purposes. In doing so, it must publish the number of minutes of promotions for each UK Public Service, the time of day of such promotions, and other information which might be in the public interest. Clearly, the fact that BBC Sounds does not seem to be classified as a separate Public Service somewhat limits the effect of this requirement. As such the BBC now seems to be favouring no disclosure of promotional activity of BBC Sounds, and therefore is providing no visibility of the extent to which BBC Sounds is being promoted, and how that promotion focuses on elements which contribute substantially to the fulfilment of its public purposes.

Given the BBC's failure to deliver on its transparency obligations relating to promotion, we commissioned our own research from global media monitoring service, Intelligent Media[19], to examine the extent to which the BBC uses its own services to promote BBC Sounds. Taking a sample week from 23 October 2020 to 29 October 2020 we monitored and recorded the air and on-screen promotion for the BBC Sounds app and related content across the BBC's portfolio of TV and radio – a total of 1,008 hours of broadcast coverage were monitored. In doing so, we distinguished between different categories of promotion, our findings are set out in **Figure 4**, below.

Figure 4: Cross-promotion of BBC Sounds, number of instances across the BBC's radio and TV services

Service	Station idents	Trailers	Mentions	Total
Radio 1	25	35	43	**103**
Radio 2	139	68	36	**243**
Radio 3	9	81	74	**164**
Radio 4	7	102	39	**148**
5 Live	328	71	52	**451**
6 Music	115	73	60	**248**
			TOTAL	**1,357**
Service	**Credits**	**Trailers**	**Mentions**	**Total**
BBC1	17	50	4	**71**
BBC2	21	30	2	**53**
BBC3	5	2	0	**7**
			TOTAL	**131**

Note: The analysis was conducted in a week from 23 October 2020 to 29 October 2020
Source: Intelligent Media

Intelligent Media conclude that, based on the audiences received by this promotional activity, the estimated media value is £7.53 million – £6.25 million on radio and £1.28 million on television. Assuming our one-week sample is representative of the year, we can scale up this airtime to an estimated total of annual value of £392 million, consisting of £325 million on radio and £67 million on television. This is almost certainly an underestimate of the overall value of the 'free' media associated with the BBC's cross promotional activities because we have not included all of the BBC's cross promotional activity, such as within BBC Sounds, and on the BBC's other online services.

[19] The report from Intelligent Media is included in our submission alongside this document

On top of this, the BBC continues to spend money on its external marketing campaign; based on Nielsen data covering the year 2020 up until 19th October the BBC's advertising campaign for BBC Sounds across, outdoor, cinema, digital, and radio is operating at a run rate costing an estimated £2.4 million per year. This suggest that, to compete with BBC Sounds, in terms of its promotional activity, commercial radio brands would need to spend £394.4 million per year. This is ignoring the significant spend of up to £10 million reported for the first 18 months of BBC Sounds. Of course, this might be off set, to some degree by the commercial radio brands' own cross-promotional activities, but this is severely restricted by the smaller reach of the commercial radio groups and, more importantly, the opportunity cost of cross-promotion – since the airtime could be sold to advertisers.

To put the scale of the BBC's promotional activities into context, £394.4 million per year is 66 per cent of total UK radio industry advertising revenues of around £597 million in 2019, after allowing for the commission reported in AA/Warc's numbers[20].

One of the few data points which the BBC does report on BBC Sounds is the number of weekly active users, which totalled 3.4 million at the end of Q2 (April to June) 2020[21] – after the first 20 months of the service. Based on the BBC's reported £10 million external marketing spend to March 2020, and three months spending at our estimated current run rate of £2.4 million per year, the BBC had – by the end of June 2020 – spent around £10.6 million on promoting BBC Sounds. A customer acquisition cost of £3.12. But this has been supplemented by 20 months' worth of cross-promotion, with an estimated media value of around £650 million (based on Intelligent Media's estimate of £7.53 million per week). To compete with this, when taking the extraordinary scale of the BBC's cross-promotion into account, the commercial radio groups would need accept an acquisition cost of up to £195 per weekly active user. To put this into context, commercial radio's average annual revenue per weekly active user is around £16.67, based on 2019 data from RAJAR and AA/Warc.

The level of the BBC's promotion activity is anti-competitive and risks squeezing out the commercial radio groups as well as preventing entry into some segments of the market. We consider this further in the next section.

Recommendation: Ofcom should ensure the BBC adheres to the disclosure requirements of the Agreement. All BBC promotional activity should be properly and fully disclosed, including the promotion of BBC Sounds. It should be easy for third parties to see the context in which BBC Sounds, as well as other BBC services receive promotion and the amount of promotion each service or programme receives. This should be reported quarterly. It should be scrutinised – including the extent to which it delivers against the BBC's public purposes so that promotional effort is focused on services and content which deliver public value – and at a level which does not dwarf what is possible for the commercial sector.

[20] https://expenditurereport.warc.com/media/1219/q42019pr.pdf
[21] https://www.bbc.co.uk/mediacentre/latestnews/2020/sounds-q2

Impact on competition

The impact that the BBC Sounds services has on the UK audio market can be felt in a number of ways and, of course, depends in the first instance on how the market is defined. We therefore consider the question of market definition below, before going on to set out the impact on competition, both now and in the future. As is always the case, a detrimental impact on fair and effective competition presents a risk of stifled innovation, and a harm to consumer choice – both in directly competing markets (via harm to close competitors) and in adjacent markets (i.e. other audio products).

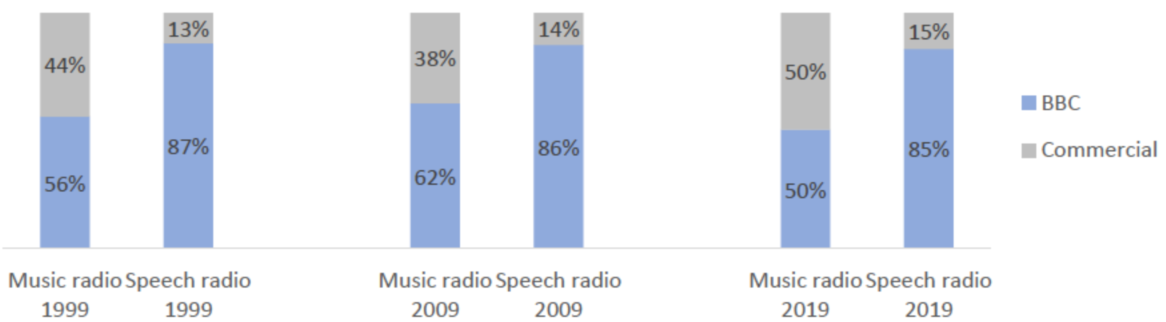
While we understand that the impact on the market is Ofcom's primary concern, rather than the extent to which BBC Sounds delivers public value, these two things are inseparable given that positioning BBC Sounds to deliver content which is almost indistinguishable from that provided by the commercial players both fails to deliver public value and exacerbates the impact on competition within the market. We therefore also present some evidence on the extent to which different elements of the BBC Sounds service currently provide public value.

The BBC's track record for crowding out the commercial sector

The BBC has a history of crowding out the commercial sector. While commercial broadcasters have gained share in music radio listening, they have been almost entirely crowded out of the speech radio market by the BBC's oversupply of such stations. If regulation does not prevent crowding out in new segments of the market the impact can be longstanding.

Before considering the appropriate market definition for BBC Sounds, and the associated impact on competitors, it is worth reflecting briefly on the BBC's long history in radio and the evidence of its impact on competition. The BBC had a 50-year head start on the commercial radio sector, which only arrived on the airwaves in 1973. The commercial sector has therefore faced a long-standing battle to win share from the BBC. Looking at the last twenty years, **Figure 5** shows the commercial sector has steadily gained share in music radio, but in speech radio the commercial sector is massively underrepresented, accounting for just 15 per cent of listening in 2019.

Figure 5: Change in BBC's share of music and speech radio listening over time, 1999 to 2019



Note: Market share is of listening to all radio stations with at least 0.4% market share
Source: RAJAR

In fact, only two significant commercial speech radio stations exist today – talkSPORT and LBC. Whilst LBC has managed to increase its market share of speech radio from around 4 to 6 per cent over the last twenty years, talkSPORT has remained flat at 9 per cent. Perhaps most arresting though, is the fact that no new stations have been able to compete with the BBC, despite strong demand for speech radio content – which accounts for around 27% total radio listening. This is due to a lack of regulation which has enabled the BBC to crowd out competition with its oversupply of advertising-free speech radio, making market entry for commercial players (which requires higher investment and greater risk than for music content) extremely challenging. The BBC has also been allowed to consolidate its position by creating spin off stations such as BBC Radio 4 Extra (formerly BBC Radio 7) which also compete within the speech radio space.

This is clear evidence that, once the BBC is allowed to dominate a market segment, the position can become entrenched. Should BBC Sounds be allowed to further establish itself as the leading destination for audio content in the UK, harming the commercial radio sector and preventing the development of a competitive commercial market for podcasts, the effects could last forever. We consider the competitors, the impact of BBC Sounds to date, and the future outlook in more detail throughout the remainder of this section.

Market definition

The UK audio market, and free audio services in particular, is the appropriate frame of reference for assessing the market impact of the BBC services as required under the Agreement. BBC Sounds is most similar to the offers from commercial radio and these are therefore the competitors most impacted by BBC Sounds.

The market definition concept is not directly part of Ofcom's assessment of the impact on competition, but it is an important consideration because the definition of the market in which BBC Sounds operates determines the relevant competitive set. Clearly, a broadly defined market – perhaps including global audio streaming services – leaves BBC Sounds as a smaller player than in a market defined more tightly around the audio services historically offered by the BBC, where it competes almost exclusively with UK commercial radio. There are arguably three broad tiers of how the market might be defined:

- **Similar services:** BBC Sounds competes with similar services in the UK market, including broadcast radio services and associated online streaming services from commercial radio providers
- **All free audio services:** BBC Sounds competes with all of the above as well as the free tiers of all on demand audio streaming services – i.e. including free audio content from the likes of Spotify, YouTube, and free content from Apple Podcasts
- **All audio services:** BBC Sounds competes with all audio services including the subscription tier of Spotify and other paid audio streaming platforms

It is not clear which market Ofcom thinks BBC Sounds operates in, or should operate in. As we saw in Figure 3, it seems that the BBC's ambition is to operate with the largest of the three definitions, competing with all other audio services and facing off against global audio subscription services such as Spotify, just as the BBC's television services compete with Netflix and Amazon Prime. Indeed, we saw earlier that the BBC's public statements about BBC Sounds clearly position it as competing with the global streaming platforms. Yet this approach does not make sense for audio services for a number of reasons:

- Subscription audio streaming services are the equivalent of music ownership, offering unlimited access to almost all music. The BBC role has never been to provide unlimited on demand access to all audio content, so it should not and cannot compete with subscription audio streaming services
- Although an extremely popular means of accessing audio content, the subscription audio streaming market remains a relatively nascent industry, with monetisation models only recently established and reliant on growing subscription revenues – the BBC should not risk upsetting this balance

- The free tiers of audio streaming services are an important customer acquisition route, leading users to the paid subscription tier. Even the largest service, Spotify, is not yet consistently profitable, so competing directly with its free tier could undermine this new industry and threaten artists' incomes

While competing on this scale might be a longer-term ambition for BBC Sounds, we believe a narrow definition of the market is most appropriate for a number of reasons. Perhaps most significant is the fact that the intention of the BBC's Charter and Agreement was clearly never to provide a mandate for the BBC to monopolise the UK's free audio market to facilitate its ability to compete with global subscription audio services. For that reason, a focus on the impact on competition in the UK's free audio market is the appropriate frame of reference for assessing the market impact of the BBC services as required under the Agreement. This is also a better fit with what the BBC Sounds service offers to consumers.

The main provision of BBC Sounds is most similar to that offered by the commercial radio groups' players, along with the free playlist-style tiers of services such as Spotify and Deezer (albeit, for the reasons stated above there is a potentially significant risk associated with competing with those). **Figure 6** maps the main features of the BBC Sounds service to the most similar competitor services. Features on BBC Sounds, such as the new Radio 1 Dance station and music mixes (including celebrity playlists) are also directly comparable with existing radio stations provided by the commercial broadcasters, in particular, thematic stations such as Classic FM, Absolute Radio's decade stations, Heart's decade stations, and spin offs from Capital FM and Kiss.

Figure 6: Comparison of BBC Sounds key features to competitor products

Service	BBC Sounds	Planet Radio (Bauer)	Global Player	Spotify (free tier)
Content				
Live radio	✔	✔	✔	✕
Catch-up radio	✔	✔	✔	✕
Playlists (music mixes)	✔	✔	✔	✔
Music streaming	✕	✕	✕	✔
Podcasts (+ archive material)	✔	✔	✔	✔
Audiobooks	✔	✕	✕	(✔)
Features				
Advertising	✕	✔	✔	✔
Personalisation	✔	✔	✔	✔
Content downloadable	✔	✕	✔	✕
Social media integration	✔	✔	✕	✔
Web browser supported	✔	✔	✔	✔
App supported	✔	(✔)	✔	✔

TV app supported	✔	✕	✕	✔
Smart speaker supported	(✔)	✔	✔	✔
Track information	✔	✔	✔	✔

Note: Ticks in brackets indicate partial features

Given the BBC referred to the Radio 1 Dance station as its 'first' new 24-hour stream, we expect it intends to launch more, which will likely result in further overlap with the existing provision of the commercial sector. [redacted]

This clearly indicates that not only are new elements of the BBC Sounds service competing directly with existing services from the commercial radio groups, but to a large extent, the provision is the same – this cannot be providing public value, while it is a close substitute for commercial radio services. Furthermore, delivering such overlap will necessarily have an impact on competitors – an issue which would be exacerbated if BBC Sounds were allowed to launch further 'streams' overlapping with other existing commercial services.

We also used our consumer research to understand which services BBC Sounds competes most directly with, and thus test the extent to which BBC Sounds is delivering a service of value to the public. Perhaps most strikingly, only 24 per cent of our respondents thought that BBC Sounds offered a service they could not get elsewhere; confirming our belief that BBC Sounds is a substitutive service and therefore likely to have a negative impact on competition. Of those who use BBC Sounds and thought it offered a unique service, 42 per cent indicated lack of advertising was a key reason for their usage of the service; further diminishing the percentage of people who see it as a truly unique service.

Recommendation: Regulation should carefully consider the impact on the UK commercial radio market, which is the core competitor for BBC Sounds. Licence fee payer money should not be used to fund services which directly duplicate services provided by UK commercial operators under the guise of enabling the BBC to better compete with worldwide subscription audio streaming services.

[22] Repertoire overlap is much lower than airtime here since Radio 1 Dance broadcasts a broad selection of music, but the majority of its airtime is made up of a smaller selection of 'core' tracks; these 'core' tracks have a higher incidence of overlap with Capital Dance than the selection at large. Please see Folder Media's report for a more detailed methodology

An existing impact on the sector through market dominance

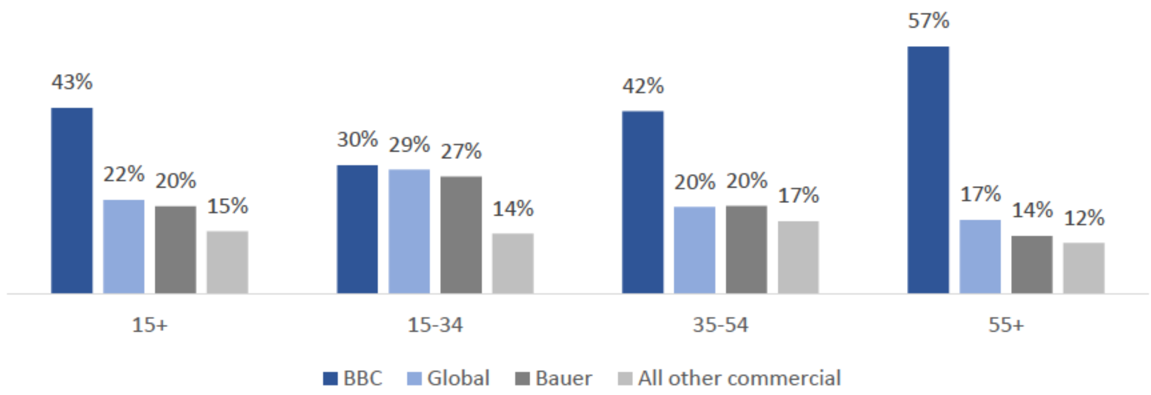
BBC Sounds takes a significant share of the audio market; its dominance is particularly concerning given that more than three quarters of audio listeners do not believe the service offers something they cannot get elsewhere. [redacted]

We saw in the previous section that BBC Sounds competes most closely with the commercial radio sector and that more than three quarters of respondents to our nationally representative survey do not believe it offers something they cannot get elsewhere. It is also important to understand the extent to which BBC Sounds dominates the areas in which it competes – despite offering little that is distinctive.

In the absence of detailed information on the listening to BBC Sounds, online radio consumption as measured by RAJAR, is the best indicator of the BBC's current position in the online audio market.

Within the growing online radio listening segment (see trends data later in this document, on p34), the BBC is by far the largest participant, accounting for 43 per cent of total online radio listening amongst audiences 15+. We can see from **Figure 7** that the BBC's online radio services have almost twice the share of the largest commercial group, Global Radio at 22 per cent. The BBC's online radio stations also appeal disproportionately to older demographics – the opposite of what the BBC has sought to achieve with BBC Sounds. The BBC has a 57 per cent share of the 55+ market, compared to a 30 per cent share of the 15-34s market. Nevertheless, the BBC is the market leader in each age group, clearly dominating the online radio market.

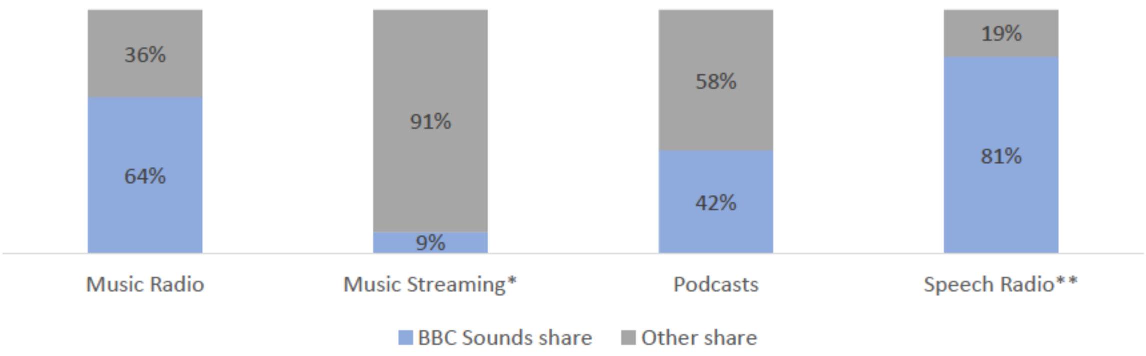
Figure 7: BBC share of total online listening, by group, Q2 2020



Source: RAJAR

We used our consumer research to further test the BBC's dominance of the online radio market, via BBC Sounds. **Figure 8** shows that amongst BBC Sounds users, BBC Sounds is dominating the time listeners allocate to music and speech radio, accounting for 64 per cent of their time and 81 per cent respectively. BBC Sounds also accounts for a considerable share of the time they spend with podcasts.

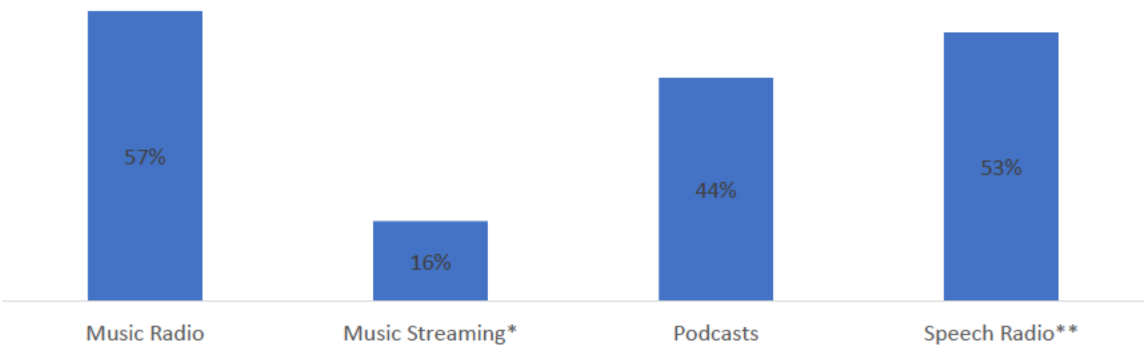
Figure 8: BBC Sounds' share of overall listening by type, total time amongst all BBC Sounds users



Note: **Music Streaming is inclusive of music mix listening. **Speech radio is inclusive of live sports and BBC archive content*
Source: *FlyResearch (n=1,291)*

To take account of the fact that high volume listeners could skew the findings in the previous analysis, we also considered the extent to which BBC Sounds accounts for a large proportion of users' overall listening time. **Figure 9** shows the percentage of BBC Sounds users for whom BBC Sounds accounts for more than 90 per cent of their overall listening time, by type. This is essentially the extent to which BBC Sounds dominates listeners' habits and threatens to crowd out competition. As previously, the survey found that BBC Sounds competes most directly with music and speech radio services, with 57 per cent and 53 per cent of users respectively reporting that more than 90 per cent of their listening time is via BBC Sounds. In podcasts too, BBC Sounds is dominating the listening time of many users, with 44 per cent of users spending more than 90 per cent of their podcast listening time with BBC Sounds.

Figure 9: Percentage of BBC Sounds listeners using BBC Sounds for more than 90 per cent of listening, by type



Note: **Music Streaming is inclusive of music mix listening, **Speech radio is inclusive of live sports and BBC archive content*
Source: *FlyResearch (n=1,291)*

With its relatively recent market entry, steady expansion, and such strong performance, it is clear that BBC Sounds is harming commercial competitors. To better understand the impact on competitors, we asked respondents how their listening habits have changed since they started using BBC Sounds. [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

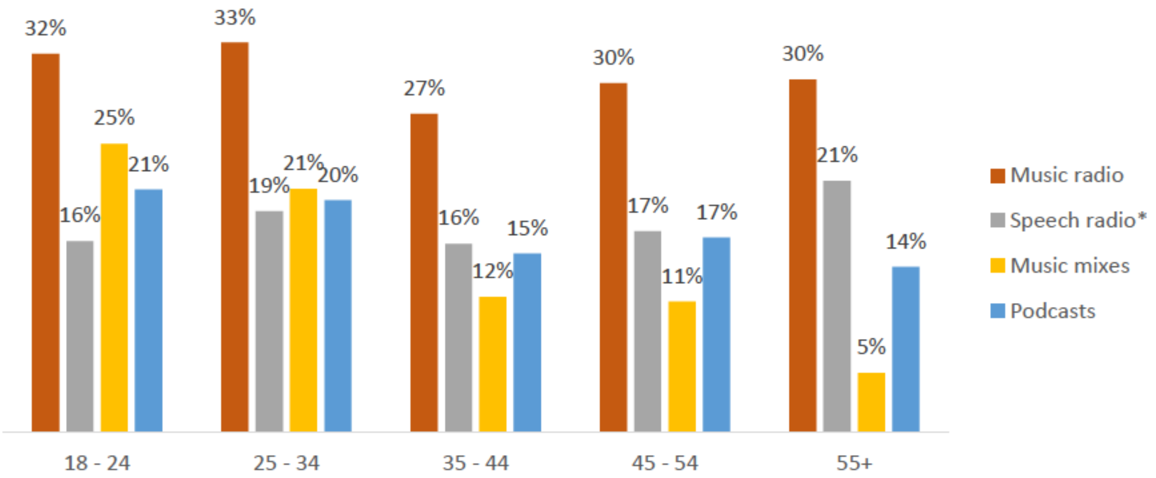
[24] RAJAR

[25] See figure 14 on page 34

[redacted]

Figure 11 shows that in new segments of the market, such as podcasts and music mixes, the BBC does dominate listening by the younger demographics. These are areas where the commercial radio sector should be able to compete with the BBC, but has been prevented from doing so by the BBC's extensive promotion of BBC Sounds as a destination for content. Young audiences are disproportionately valuable to the commercial sector, so the BBC's attempt to corner the market for young audiences in new content areas is of particular concern.

Figure 11: BBC Sounds users, by age group and type, October 2020



Note: **Inclusive of live sport and archive content*
Source: *FlyResearch (n=3,144)*

The current impact may seem relatively small, but the BBC Sounds service remains new and ever expanding into areas where it duplicates or crowds out commercial provision. The BBC's music mixes, in particular are directly comparable with content available from the commercial radio groups and if plans to add yet more stations like Radio 1 Dance are allowed to proceed, BBC Sounds will further duplicate the content available from commercial services, while launching discrete products without proper scrutiny. In doing so, BBC Sounds will consolidate its position as a destination for audio content limiting the ability of the commercial sector to access listeners. In podcasts, the BBC's rapid expansion has already had a significant impact by blocking the development of the commercial podcast market – we look at this in more detail in the next section.

Recommendation: Ofcom should take into account the existing impact on competition and the potential long term implications given the existing dominance of the BBC in the online audio sector, and its apparent ambition to develop BBC Sounds as a destination for listeners – which would restrict commercial radio's access to listeners. Ofcom should give the same weight and regulation to the BBC's online offering as it does to its UK Public Services and regulate them accordingly

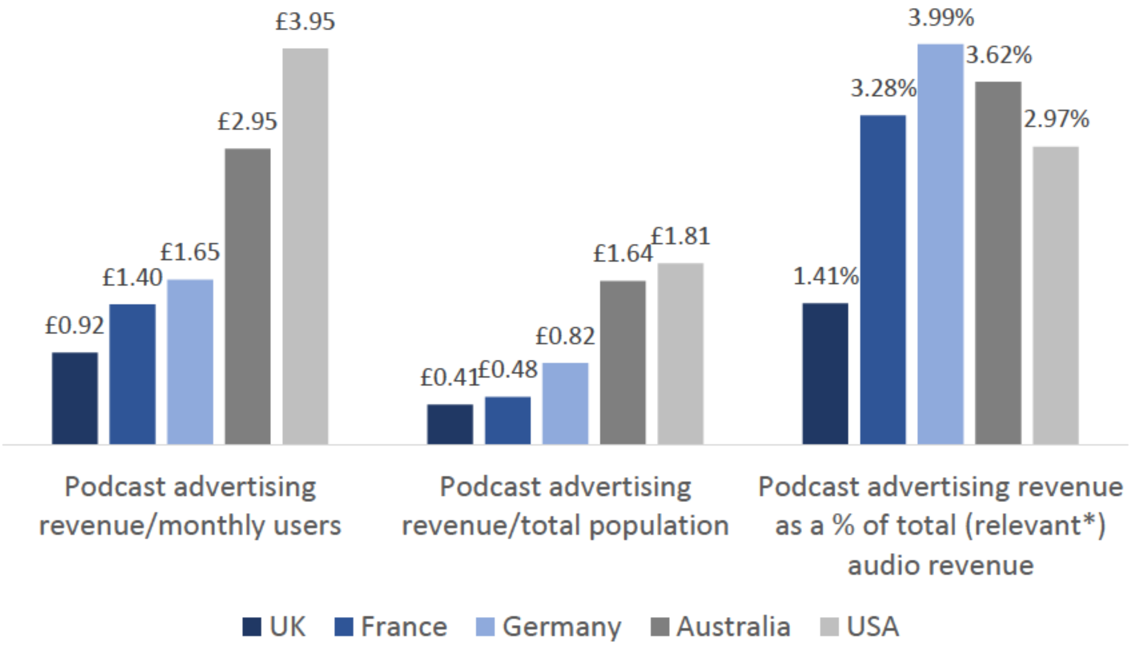
[26] Discussed in more detail from p34

Podcasts

The BBC's dominance of both the UK podcasts market and BBC Sounds' position as the most popular podcast platform, combined with anti-competitive practices, has severely stifled the development of the UK podcast market. The BBC's stranglehold might cost the commercial sector as much as £59 million per year.

While we believe that BBC Sounds' impact on competition in the UK is yet to be fully felt, there are some areas where it appears to already be having a detrimental impact on competition. Podcasts is one segment of the audio market which is booming, with interest growing strongly in many territories, yet the UK is well behind other major markets when considering the advertising revenue generated by podcasts. **Figure 12** shows that the UK is behind France, Germany, Australia, and the US in terms of: ad revenue per user, ad revenue per head of population, and podcasts' share of audio revenue. In fact, not only is the UK's podcast revenue per user behind these well-developed media markets, the UK actually ranks 10th out of the 12 developed markets tracked by PwC – beating only Russia and South Africa.

Figure 12: The UK podcast advertising market in comparison to other developed nations, 2020



Note: **Total (relevant) audio revenue is comprised of podcast advertising, radio advertising, digital music downloads, music streaming advertising, and music streaming subscription revenues.*

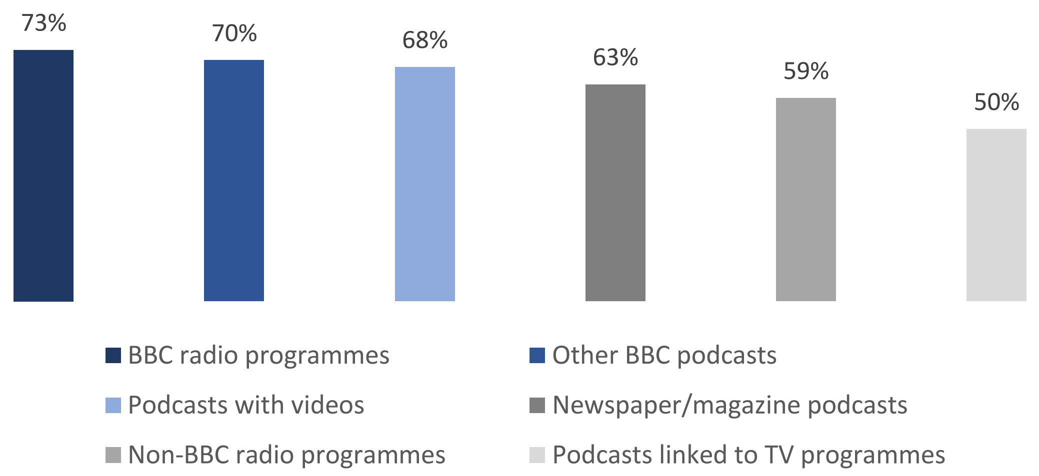
Source: *PwC Global Entertainment and Media Outlook: 2020-2024 www.pwc.com/outlook, Oliver & Ohlbaum analysis*

It is clear that monetisation of podcasts is poor in the UK, and this poor performance is surprising given the UK audio sector is 4th largest globally[27]. The UK also a world leader from a content production perspective, with the creative industries amongst our proudest exports – we are leaders in music, television and film production and, although we do produce high-quality podcast content that is enjoyed globally, it is not being effectively monetised. The impact is also evident when we look at *Chartable's* global podcast chart, where all ten of the top podcasts (as of 4 November 2020) were produced in the US. Other nations do feature, but the first UK entry is *'I weigh with Jameela Jamil'* at number 77 in the chart.

[27] PwC Global Entertainment & Media Outlook: 2020-2024

To better understand this, we need to look at the current structure of the UK podcasts market. Ofcom's own research has revealed that in 2020, 38 per cent of weekly podcast listeners aged 18+ used BBC Sounds to access podcasts, with Apple Podcasts also attracting 38 per cent of users[28]. Furthermore, as shown in **Figure 13**, Ofcom found in 2019 that "the BBC had the highest reach of all podcast publishers" with 73 per cent of all adults having listened to BBC radio programme podcasts and 70 per cent other BBC podcasts[29]. These podcasts are accessed "not only though BBC services but also through services including Apple and Spotify", thus the BBC's share of podcast listening is even higher than the percentage weekly listening figures suggest, since podcasts produced for BBC Sounds are available on other services (but not vice versa currently).

Figure 13: Types of podcast ever listened to, adults 18+



Source: Reproduced from Ofcom's Media Nations report 2019

In 2020, BBC Sounds' market share fell one percentage point to 38 per cent of weekly podcast listeners, putting it joint-top with Apple Podcasts. This robust performance from BBC Sounds comes despite Spotify's huge investment into podcasts, giving credence to our earlier argument that BBC Sounds should not be seen as competing directly with Spotify. It further suggests that the BBC's investment in podcasts, and their promotion on BBC Sounds, is simply crowding out the domestic podcast market. Given BBC Sounds' increased investment in podcasts and continued growth of podcast listening on the platform[30], BBC Sounds' strangle hold over the industry is likely to be even more significant this year.

BBC Sounds is the UK's most used platform for podcasts, followed by Apple Podcasts, and then Spotify – with 44 per cent of users spending more than 90 per cent their podcast listening time with BBC Sounds. The low monetisation rate of podcasts in the UK is, to a large extent, because the BBC's own podcasts – which do not carry advertising – dominate BBC Sounds, and are also popular on other platforms since the BBC's presence has stifled the development of competition. Were the BBC not stifling the development of this growing market, we might expect to see podcasts in the UK monetised at a similar rate to that seen in other developed territories. In 2019 the UK podcast market was estimated to be worth £27 million, but if revenue per monthly user matched that of the US, the UK market could be worth £86 million, indicating that the BBC's dominance might be costing

[28] https://www.ofcom.org.uk/research-and-data/tv-radio-and-on-demand/media-nations-reports/media-nations-2020

[29] https://www.ofcom.org.uk/research-and-data/tv-radio-and-on-demand/media-nations-reports/media-nations-2019

[30] https://www.bbc.co.uk/mediacentre/latestnews/2020/sounds-q2

the commercial sector £59 million per year – a figure which is likely to grow substantially as podcast listening becomes fully developed.

This dominance is being exacerbated by anti-competitive practices, such as the BBC's 'windowing'[31] of BBC podcasts in BBC Sounds – i.e. granting BBC Sounds a limited period of exclusivity before making BBC podcasts available on other platforms. This approach has previously been trialled by the BBC; it forces consumers to use BBC Sounds if they wish to access content when it is first available. There are two issues with this:

- It is an abuse of BBC Sounds' existing dominance of the market; by leveraging its dominance of the UK podcast market, it is forcing listeners to use BBC Sounds, where it then promotes other types of BBC audio content to listeners.
- Such practices impact on the value received by licence fee payers. UK users have already paid for access to the BBC's content via the licence fee, yet their access to podcasts is being restricted by the BBC's anti-competitive practices

Ultimately, the BBC's approach is designed to limit the development of other podcast platforms, further reducing the potential returns to commercial providers and thus stifling investment and reducing choice. Upon completion of this trial the BBC was set to assess the approach for materiality. No subsequent announcements have been made on the outcomes or findings of the trial.

Furthermore, in March 2019 the BBC announced it was removing its podcasts from certain Google products[32], forcing those wishing to listen to BBC podcasts to do so on other platforms, including BBC Sounds. At the time the BBC claimed this was due to Google directing consumers to its own products rather than BBC Sounds or other third-party services, limiting limited choice for consumers and contrary to the BBC's Distribution Policy[33]. Yet the BBC's own retaliatory action also limited consumer choice and no doubt helped convert some listeners into BBC Sounds users.

The BBC's existing dominance of the podcast market, combined with its anti-competitive practices, leaves little space for commercial players to compete in this market. This should be an important growth area for the commercial sector, with PwC forecasting that UK monthly podcast listeners will increase from 29 million in 2020 to 46 million by 2024[34]. But commercial entities need an opportunity to make a return if they are to commit resources to developing and promoting new material. In the free audio space, where commercial radio's podcast content operates, this means a prospect of:

- Gaining access to sufficient listeners and thus the potential to generate an adequate return – despite BBC Sounds being the leading destination for podcast content, thus severely restricting the commercial sectors' access to established podcast listeners
- Persuading advertisers and media buyers that audiences on podcasts offer a valuable means of boosting reach, or complementing their campaign more broadly – despite the existing podcast advertising market being small and podcasts not being an established part of the marketing mix
- The podcast market not being dominated by ad-free podcasts

[31] BBC Annual Plan 2019/20
[32] https://www.bbc.co.uk/blogs/aboutthebbc/entries/d68712d7-bd24-440f-94a0-1c6a4cdee71a
[33] http://downloads.bbc.co.uk/aboutthebbc/insidethebbc/howwework/policiesandguidelines/pdf/bbc_distribution_policy.pdf
[34] PwC Global Entertainment and Media Outlook: 2020-2024 www.pwc.com/outlook

The above requires a significant resource and time investment, with no guaranteed return. The BBC's position is essentially restricting any competition and could lead to the UK podcast industry as a whole remaining significantly underdeveloped. This is exacerbated by the issues around promotion which we discussed in the previous section. The BBC's access to significant cross-promotion as well as a sizable marketing budget essentially means it is able to close the door of the UK podcasts market to the commercial sector, ultimately restricting innovation and limiting choice for consumers, while hampering the UK's ability to participate in the growing global podcast market.

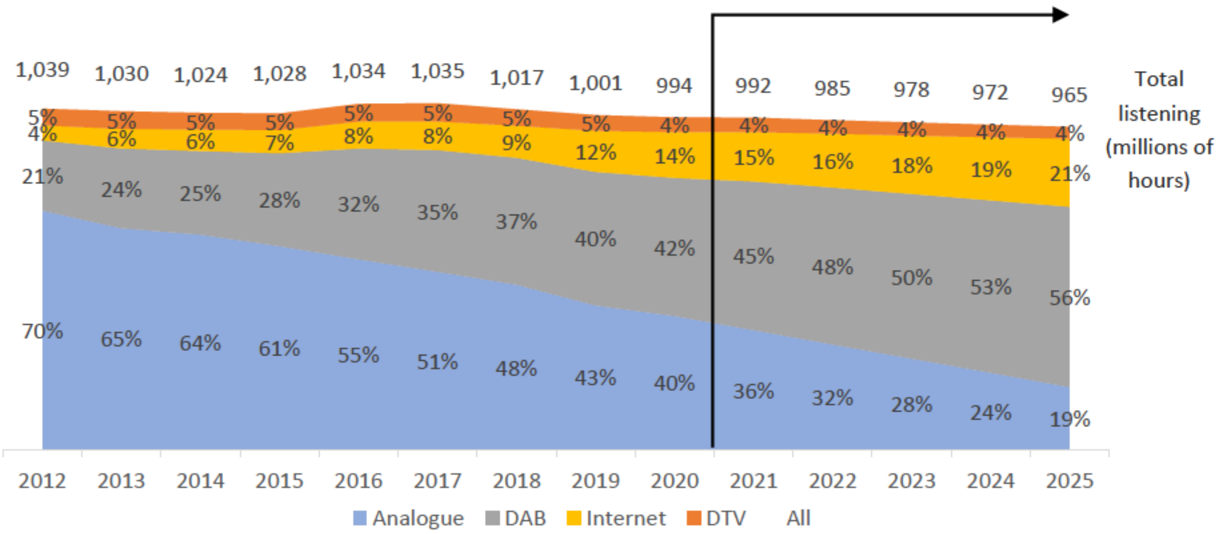
Recommendation: Ofcom should prevent the BBC from engaging in anti-competitive practices which dilute the public value of its services and crowd out the commercial provision of podcasts. Consideration should be given to further restrictions on the BBC's output of podcasts (which by virtue of being BBC produced are ad free and have a competitive advantage in attracting listeners against commercial podcasts) and incentives to help the commercial sector overcome the existing barriers to entry caused by the BBC's dominance.

Longer term risk for the sector

Online listening is an area of strong growth for the sector and BBC Sounds has supercharged the BBC's expansion in this space. Further developing BBC Sounds as a destination for listeners will squeeze out the commercial sector, limiting access to consumers and ultimately necessitate reduced investment in content.

In the longer term, the competitive impact of BBC Sounds could be much more widely felt. In recent years there has been a steady shift in listening towards online services, with 13 per cent of radio listening now online. We expect to see this large shift to online listening continue. In **Figure 14**, we have forecast radio listening by delivery mechanism to 2025, by rolling forward recent trends from historic RAJAR data (we assume no digital switchover). By 2025, around 21 per cent of radio listening will be online.

Figure 14: Radio listening by delivery mechanism, total weekly listening (millions of hours) and % share

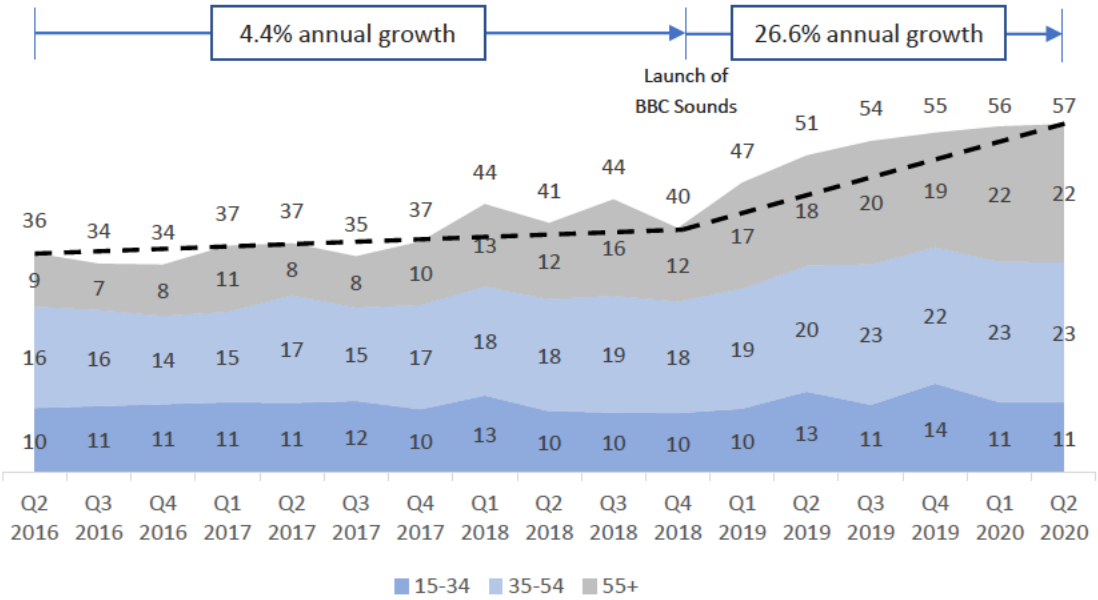


Source: RAJAR, Oliver & Ohlbaum analysis

Figure 15 shows how internet-based listening to BBC services as a whole developed in the run up to the launch of BBC Sounds, and for the period since its launch. From Q2 2016, until the launch of BBC Sounds in Q4 2018 there was a steady expansion of listening to BBC radio services online, with an equivalent annual growth rate of 4.4 per cent – which was broadly similar across all age groups. Following the introduction of BBC Sounds –

between Q4 2018 and Q2 2020 – there was a very notable change in the growth trajectory. With total online listening increasing at an equivalent of 26.6 per cent per year – with particularly strong growth in the older age demos.

Figure 15: Volume of BBC listening (IP delivered), Q2 2016 to Q2 2020, total weekly listening (millions of hours)

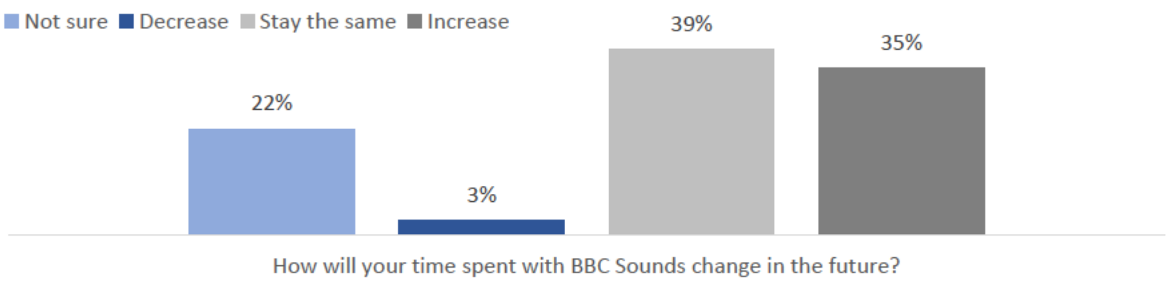


Source: RAJAR

It seems this change in the growth trajectory of the BBC's online listening is driven by the launch of BBC Sounds and the associated aggressive promotional activities; had BBC Sounds not launched, we might expect that the BBC's online listening would have continued to grow at the established rate of 4.4 per cent. BBC Sounds has therefore accounted for an estimated 34 per cent increase in online listening to BBC services – listening which might otherwise have gone to the commercial sector.

We expect that this impact will steadily widen if the BBC is allowed to continue to attract new listeners via its aggressive promotion of BBC Sounds and its unfettered role out of new features and standalone services within BBC Sounds, which encourage users to stay within the BBC Sounds ecosystem. Indeed, we asked our survey respondents how they see their use of BBC Sounds developing in the future. **Figure 16** shows that 35 per cent of BBC Sounds users expect to spend more time listening to BBC Sounds in future, compared to just 5 per cent who expect to spend less time with BBC Sounds. A further 22 per cent are unsure, but one might expect that if the BBC is allowed to continue adding features to BBC Sounds, these users too would spend more time with the service. This continued expansion of sounds via both new users and increased time spent by existing users cannot fail to have an impact on the competition.

Figure 16: Future usage amongst current BBC Sounds users



Source: FlyResearch (n=1,291)

To understand the BBC's potential impact on competition in future, there are therefore two factors to consider relating to listening: the BBC's existing dominant position in the online segment of the audio market, and the growth trajectory, which is likely to accelerate with the increasing ownership of smart speakers. Both have occurred in the context of a steady long-term decline in total radio listening, as consumers have allocated some of their listening time to streaming services[35]. This changing landscape means that the commercial radio sector is operating in a challenging environment and it is particularly exposed to the competitive impact of BBC Sounds.

[redacted]

[redacted]

[redacted]

[redacted] Ultimately squeezing the competition as a result of an uneven playing field and inadequate regulation around BBC Sounds, could reduce both the quality and quantity of the content available to the public. We have already seen evidence that this is the case in podcasts, but such pressure on the core commercial audio products would impact on provision more broadly.

Recommendation: Ofcom must be forward looking in its regulation of BBC Sounds. It must act now to prevent the continued expansion of BBC Sounds leading to a significant problem for the overall health of the UK audio market, characterised by the crowding out of commercial players and reduced choice for listeners.

---

[35] Albeit not operating in the same market, as we discussed previously, but nevertheless there is some competition for listeners between traditional radio audio services and new online streaming services

Conclusion

We have seen that a legacy of inadequate regulation of the BBC's online audio services has continued since Ofcom's took over responsibility for regulating the BBC. Despite BBC Sounds having no clearly articulated scope or purpose and not being subject to any Regulatory Conditions in the BBC's Operating Licence, it has been allowed to steadily expand its features and content offer, including seven significant feature additions beyond the original scope agreed with Ofcom in 2018. In doing so, the BBC has avoided proper regulatory scrutiny, making a series of incremental changes which together amount to a material development of the service. The BBC has even gone beyond the changes agreed with Ofcom to provide new and exclusive content on its new Radio 1 Dance service. These changes support the BBC's vision for BBC Sounds, right at the heart of the BBC's audio offer – a vision which cannot fail to an impact on the competition.

The BBC appears to want to compete with global subscription audio streaming services, but this is clearly not appropriate for a publicly funded organisation whose product most closely resemble those offered by the UK commercial radio sector. In fact, to a large extent, the BBC Sounds service duplicates existing provision – more than three quarters of the population do not believe BBC Sounds offers something which they cannot get elsewhere. Yet the lack of proper regulatory scrutiny and associated lack of transparency has seen the BBC pursue its ambitions by promoting the BBC Sounds service with a media campaign which would cost £394 million annually to replicate – 66 percent of total commercial radio advertising revenue. The commercial sector cannot possibly compete with this level of marketing spending.

Given the BBC's history in the radio market, and its entrenched dominance of the speech radio segment, there is a clear risk that a continuation of the existing inadequate regulation will see the BBC dominate the online segment and crowd out competition. [redacted] Urgent improvements in regulation and increased transparency are required to prevent further and continued harm to the commercial sector. We have set out recommendations for Ofcom in the Summary section of this document.