

RADIOCENTRE RESPONSE TO OFCOM 'BROADCASTING CODE REVIEW'

BACKGROUND

1. Commercial radio welcomes Ofcom taking on responsibility for regulating the BBC, in order to provide genuinely independent oversight of BBC activities for the first time. The BBC Trust system, which has been in place since 2006, was an improvement on previous arrangements (and made a number of positive interventions) but its structure was fundamentally flawed.
2. The 2016 Charter Review provided an opportunity to reconsider this and replace the Trust regime with independent regulation that could hold the BBC to account more effectively. Radiocentre, along with many other stakeholders, communicated these arguments to Government throughout the Charter Review process and to the independent review of BBC regulation, chaired by Sir David Clementi. Therefore we were pleased when he published his recommendations and these were accepted by Ministers.
3. We welcome Ofcom's approach to assuming these responsibilities as it seeks to develop the new 'Operating Framework', but have some concerns about the way in which the division of regulatory responsibility between Ofcom and BBC Unitary Board will work in practice. The BBC Board will play an important role in governance as well as assessing impact, performance and distinctiveness of BBC services initially, but Ofcom must set the framework and take the lead on all regulatory matters.
4. The new Charter and Framework Agreement require Ofcom to regulate content standards for the BBC's UK Public Broadcasting Services and the BBC's UK Public On Demand Programme Services in order to ensure that they meet requirements set out in the Ofcom Broadcasting Code. Section 10 (Commercial Communications in Radio Programming) of the Broadcasting Code, which up to this point has only applied to commercial broadcasters, must now be revised in order for it to include the BBC.

CONTEXT

5. Overall the proposals in this review are reasonable and we broadly support the changes required in order to update the Broadcasting Code. This procedure is largely a technical exercise in order to formally adopt the new legal structure outlined in the BBC Charter and Framework Agreement. However it is important to explore the context surrounding these changes in a little more detail.
6. As the UK's public broadcaster the BBC receives funding (unrivalled in the commercial sector) from the licence fee, which was £3,743m in 2016. Alongside this, the BBC commands an extraordinarily high share – much more than any other media – of the UK radio market. It is unusual for any single organisation to retain a 54% share of a market (by audience) along with a 58% of industry revenues (£717m in licence fee income)¹, but that is the position of the BBC in radio.
7. It is important therefore to understand the implications of the differences in funding and the market between commercial broadcasters and the BBC, as well as the impact this has on their

¹ Ofcom Communications Market Report 2016

respective services. Unlike commercial broadcasters which have to rely upon advertising revenue, the BBC does not need to take advertising or sponsorship due to the income that it receives from the licence fee.

8. Media businesses that are funded by advertising operate in an extremely competitive market, which is already faced with a limited pool of revenue and disruption to their business from digital aggregators. The impact therefore of the BBC entering into this market would have significant implications for commercial stations, many of whom have extremely low margins and high operating costs.
9. While the BBC's income is guaranteed until 2022, commercial broadcasters have no funding certainty at a time of increased economic instability post-Brexit. Moreover, unlike the BBC, commercial broadcasters need to support their entire operations (sales, marketing operations and other core costs) from their revenue. These financial burdens, together with the BBC's dominance in spectrum, provide the BBC with a significant advantage in the radio market.
10. It is for these fundamental reasons that clause 49 of the new Framework Agreement rightly provides for a general prohibition on the BBC taking advertisements and sponsorship. However, it is not simply financial advantages afforded to the BBC that impact on the operators of commercial broadcasters.
11. In terms of broadcasting spectrum the BBC retains a significant advantage, owning four out of five national FM stations, including the only two national FM pop music services Radio 1 and Radio 2. By comparison the spectrum available to commercial operators is extremely limited.
12. This legacy advantage is compounded by out-dated regulation that restricts commercial stations from operating in a way that could provide effective competition to the mass market proposition provided by the BBC's main music radio services at peak times.
13. While the advantages in funding are recognised by the Government, it is important to emphasise the environment in which commercial stations in the UK operate, as they are often in direct competition with a well-funded, dominant public service broadcaster. Nevertheless, in the extremely limited circumstances that the BBC may seek alternative means of finance it is only right that they adhere to the same regulations as commercial broadcasters.

SECTION 10 – PROPOSED AMENDMENT

14. Section 10 (Commercial Communications in Radio Programming) of the Broadcasting Code, which was updated in 2008 to allow commercial references on radio, provides a transparent set of regulations for the radio sector, yet it was clearly never intended to apply to BBC.
15. The reasons why the BBC should not take revenue from the advertising market are clear and while worth reiterating above, do not impact on the technical revisions that are required in order to update the Broadcasting Code. The proposed changes to Section 10 (Commercial Communications in Radio Programming) which will now cover both the BBC's UK Public Broadcasting Services and the BBC's UK Public On-Demand Programme Services are consequently justified and reasonable.

16. The BBC editorial guidelines², specifically Section 14 (Editorial integrity and independence from external interests), also outline rules for the BBC with regard to commercial funding. In conjunction with proposed amendments to Section 10 of the Broadcasting Code, these rules should provide a welcome degree of transparency for the BBC in this area.

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² http://downloads.bbc.co.uk/guidelines/editorialguidelines/pdfs/Editorial_Guidelines_in_full.pdf