



Commissioning for the BBC public services: NUJ briefing on Ofcom's proposed approach to assessing the BBC's compliance with its requirements

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The National Union of Journalists is the voice for journalism and journalists in the UK and Ireland. It was founded in 1907 and has more than 30,000 members.

1. In order that Ofcom can assess the BBC's compliance with its FRNDT requirement, the BBC should be required to publish (or at the very least supply to Ofcom) a significant amount of further information relating to commissioning, including:
 - The precise number of proposals and number/percentage of successful proposals ("pitch success rates"), broken down by individual supplier and by broadcast slot/strand (or at the very least by TV/radio network).
 - Guide prices and average prices agreed for commissioned proposals for each broadcast slot/strand; plus details of which proposals were commissioned above/at/below the guide price, broken down by individual supplier.
 - Details of any proposals where the supplier re-approached the BBC after the initial commission/agreement of price in an attempt to negotiate a higher price (including whether a higher price was later agreed or not). [For explanation of this point see paragraph 7, first bullet point.]
 - Details of all situations in which independent suppliers are required to, or choose to, use BBC in-house facilities (studios, office equipment/space, BBC employees), and comparison of the prices charged with the prices charged to other all other suppliers (including in-house BBC suppliers) for the same facilities. [For explanation of this point see paragraph 7, second bullet point.]
 - Audience appreciation figures for all individual commissions. It is currently impossible to obtain this information for Radio, since RAJAR figures are not granular enough. This deficiency requires urgent remedy.

2. We agree with Ofcom and the BBC that it is "unlikely that there is a single measure which will allow [Ofcom] to assess the BBC's compliance" with its FRNDT requirement [6.22]. Indeed, such assessment is likely to be problematic even if all the information

above is supplied. Interpretation of the information is vital. For example, suppose the figures show that a particular supplier consistently has particularly high "pitch success rates". There would be at least three possible explanations for this: proposals from this supplier could be of particularly high quality; and/or the supplier has a particularly good "weeding" process, so that only the very best of its ideas are put forward as proposals; and/or there is a bias in favour of this supplier. If and when Ofcom identifies any such trends from the information supplied, it should request further specific information from BBC to help it determine the cause of the trend.

3. We agree that it "would be disproportionate (and likely not possible) [...] to require the BBC to provide [Ofcom] with information about every decision made in every commissioning process, and for [Ofcom] to consider each decision in detail." [6.21]. However, we believe that Ofcom should request and analyse such detailed information for a number of commissions in every commissioning process. The BBC should not be notified in advance which commissions may be subject to this requirement. Ofcom could, for example, choose the commissions to be subject to this requirement at random, following the conclusion of the commissioning process. Whenever FRNDT concerns are raised regarding a specific commission, Ofcom should subject that commission to this kind of detailed analysis.
4. It is worrying that Ofcom appears to assume that "independent producers won the large majority of commissions" is in itself evidence of fair and transparent commissioning processes [4.14]. There are many alternative possibilities, including the possibility of bias in favour of independent producers. At the very least, further evidence is required to demonstrate FRNDT compliance in such cases.
5. The NUJ has particular concerns relating to commissioning in BBC Radio, relating to FRNDT compliance in BBC Radio commissioning [see paragraph 7] and the potential adverse effects on BBC Radio output as a result of the large increase in competitive tendering [see paragraph 8].
6. The NUJ has repeatedly raised with BBC Radio management serious concerns relating to FRNDT compliance in BBC Radio commissioning, but there has been little movement towards addressing the issue. Concerns include:
 - NUJ members are aware of numerous cases where independent suppliers re-approach BBC Radio after the initial commission/agreement of price in an attempt (sometimes successful) to negotiate a higher price. At the very least, the BBC should be required to supply Ofcom with detailed information about all such cases, to ensure FRNDT compliance.
 - NUJ members are also aware of numerous cases where a small number of independent suppliers are given free access to BBC in-house facilities (studios, office

equipment/space, BBC employees) that other independent/in-house suppliers are obliged to pay for. Examples include: BBC employees add metadata to programmes from some independent suppliers (whereas other independent suppliers and all in-house suppliers are obliged to deliver programmes complete with metadata); some independent suppliers have been granted free access to a music exchange server set up by an in-house production department to facilitate its work with record companies, despite the conflict of interest and the cost to the BBC in terms of support and server space; independent producers frequently request and are sometimes given access to BBC studios for free whereas others (including all in-house suppliers) pay for them. BBC Radio management have repeatedly stated to the NUJ that all such inequities have been stopped and that all suppliers are charged equally; but management ignore all requests for evidence of this, and our members continue to report new examples of such inequities.

- Although independent suppliers to BBC Radio are required to demonstrate that they have policies relating to such matters as health and safety, bullying and harassment etc, BBC Radio does not impose any minimum requirements on these policies, and many independent suppliers policies fall far short of BBC policies. BBC in-house suppliers are (rightly) obliged to comply with BBC policies, which impose additional costs on BBC in-house suppliers in comparison with independent suppliers.
- BBC in-house suppliers have almost no control over the cost of overheads, which is allocated to them as a proportion of overall BBC costs.
- Independent suppliers can cross-subsidise loss leaders from other income; BBC in-house suppliers cannot, as they have no other income.
- BBC in-house suppliers from different departments are placed in a particularly invidious position in competitive tendering processes: should they collaborate over proposals (in which case the number of in-house proposals is reduced disproportionately – a disadvantage that does not apply to indies) or should they compete with each other (which is a waste of licence fee payers' money)?
- On BBC Radio 3 and BBC Radio 4, contracts with independent suppliers specify that the name of the supplying company will be spoken on air at the end of the programme broadcast. This is not the case for BBC in-house suppliers. Despite repeated NUJ requests, BBC Radio management have so far failed to create a level playing field regarding such on-air credits. The current situation gives independent suppliers a publicity advantage over in-house suppliers.

7. The NUJ has consistently raised serious concerns about potential adverse effects on BBC Radio output as a result of the large increase in competitive tendering.

- We note Ofcom's statements about the potential positive effects of competition [e.g. 4.3, 5.24]. However, the situation in Radio cannot be compared to that in television or online commissioning, because in Radio there is no real market. As Ofcom is aware, "The BBC is the biggest commissioner of independent radio content

in the UK and the only live radio broadcaster to offer these opportunities to the sector." [3.21]. The 2015 survey by Enders Analysis found that more than 95 per cent of the total income from broadcast output of all independent radio production companies in the UK came from the BBC¹ and that the market in UK radio production was static.² The podcast market is growing, but most podcasts are marketing, vanity or hobby products, and we are not aware that any UK supplier has yet established a sustainable business model based on the podcast production. This means that if BBC Radio does not commission a proposal from an independent supplier, it will very rarely be possible to find an alternative outlet for it. (Except in the field of comedy, BBC in-house suppliers can only produce programmes for the BBC, so the same restriction applies to them even more comprehensively.)

- For Radio suppliers, this means that enormous amounts of time are wasted developing proposals that will not be commissioned. Ofcom is clearly aware of this issue – we note such statements as "not all ideas come to fruition, and the process can be time and money consuming for both broadcasters and producers without guarantee of success" [5.29] and "Producers submit thousands of ideas to the BBC every year and the BBC will not develop or make them all" [5.34]. But this hugely understates the magnitude of the problem for Radio suppliers, where it is not unusual for a commissioning process to attract more than 10 times as many proposals as there are slots available. After 18 months of increased competitive tendering in Radio, both independent and in-house suppliers are already finding the increase in wasted work difficult to sustain. Some suppliers (both in-house and independent) have decided that it is not worth their while to compete for Radio work, which can only reduce diversity in the sector. This problem will become even worse as tendering increases still further.
- In contrast with BBC Television, BBC Radio will also almost never pay for development of a provisionally commissioned proposal.
- As Ofcom implies [see e.g. 5.29, as quoted above], increased competitive tendering also diverts money away from programme budgets into the administration of commissioning processes. The NUJ believes that in the first year of increased competitive tendering, BBC Radio diverted more than £1m away from programme budgets into administration. Radio programme budgets are small; £1m would pay for hundreds of Radio 4 programmes or almost two months of programming on 1Xtra or the Asian Network. The possible benefits of increasing tendering need to be weighed against this inherent increasing cost burden.
- Radio daily sequence strands – of which there are a large number, in contrast to Television – are a particular area of concern. For example, if an independent

¹ p. 64 of [The BBC's submission to the Department for Culture, Media and Sport's Charter Review public consultation](#), confirmed by p. 9 of [RIG Business Census](#).

² e.g. pp. 7, 8, 9, 13 of [Opening up BBC Radio production to the independent sector](#).

supplier of such a strand ceases to trade, the programme must continue and the burden falls on BBC in-house staff. This precise situation arose in Radio 1 when an independent supplier Wise Buddah ceased to trade. More recently, in the first six months of the R2 Early Breakfast Show being produced by the reformed Wisebuddah (who won it from in-house production) BBC staff were obliged to step in to keep the show on air on at least five occasions. It is therefore essential that the BBC Radio maintains flourishing in-house suppliers in Radio in a way that does not apply in Television.

- BBC Radio management has repeatedly refused NUJ requests to introduce safeguards into the tendering process that would prevent a race to the bottom on price. NUJ and sister union BECTU propose that BBC Radio should replace the "guide price" in commissioning briefs with a minimum price. This would oblige bidders to compete to produce the best possible programme for the budget available and prevent bids purporting to offer "more for less".
- The potential for large annual variations in the amount of programming commissioned from any supplier makes long-term planning very difficult, and increases casualisation of employment, with risks for quality of output.
- The NUJ hopes that Ofcom will give due weight to all these considerations in judging the success or otherwise of increased competition in BBC Radio.