

## RADIOCENTRE RESPONSE TO OFCOM'S CONSULTATION ON THE FUTURE OF MEDIA PLURALITY IN THE UK

### INTRODUCTION

1. Radiocentre is the industry body for commercial radio. We work on behalf of more than 50 stakeholders who represent over 90% of commercial radio in listening and revenue.
2. We welcome the opportunity to respond to Ofcom's timely consultation on the future of media plurality in the UK. Media plurality remains an important concept for any democratic society. It is crucial that we have a system that is able to ensure and sustain a wide range of viewpoints from different sources, while limiting undue influence of media companies on public opinion and politics. In recent years this has become more complex and challenging with the rise of online intermediaries and digital platforms, which have grown their audience base significantly and come to dominate the advertising market on which many news providers depend.
3. Commercial radio continues to have an important role to play in ensuring media plurality in the UK. However, as with other media sectors, it is experiencing disruption from online intermediaries. Where the platforms use their gatekeeper role to gain commercial advantage, this abuse of their power in the market could pose a serious risk to the revenue streams of commercial radio operators, which in turn would likely trigger significant media plurality concerns in future unless action is taken urgently to update the regulatory and legislative framework regarding the availability, prominence and access to radio, its content and listener data.
4. A number of potential steps in this area are being considered as part of the review currently underway with Government (the DCMS Digital Radio and Audio Review), which we hope will make specific recommendations in this area. There is also a further opportunity for the Competition and Market Authority (CMA) to investigate these issues in the context of its market study into Apple and Google's mobile ecosystems<sup>1</sup> and forthcoming market study into marketplaces, such as Amazon's Marketplace, both of which will feed into the development of the forthcoming Digital Markets Unit regulatory codes of conduct.
5. We also welcome the proposals to update a number of the existing media ownership rules to take into account the role of news creators across all platforms. In addition we can see the case for removal of some of the disqualifications on holding broadcast licences, although we do not believe that there is necessarily a case for further publicly-funded bodies offering radio services given the significant role already played by the BBC.

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<sup>1</sup> <https://www.gov.uk/government/news/cma-to-scrutinise-apple-and-google-mobile-ecosystems>

## MARKET CONTEXT

6. Commercial radio is a critically important provider of news, information and journalism in the UK, adding to the plurality and choice available to audiences. Its content is heard by 36 million people (around 66% of the population) for an average of 13 hours each week. Listeners to commercial radio stations represent a broad cross section of the population, with the sector attracting a significantly more ethnically and socially diverse audience than the BBC.
7. Much of the news and information output on commercial radio takes the form of regularly updated bulletins at regular points throughout the day. These bulletins are valued highly by listeners, many of whom rely on the trusted information provided by radio and do not necessarily engage with the in-depth coverage provided by newspapers and television news. As a result, audiences will often turn to radio for reliable information in significant news moments, for example during emergencies. The commercial radio sector has also risen to the challenge presented by Covid-19, providing greater frequency, depth and duration of news output during a time of uncertainty and where clear, reliable information has been important to transmit to wide audiences.
8. While Ofcom's data on overall news consumption indicates that radio is not the primary source for most audiences 'nowadays' (p.7), it is worth noting that radio is consistently ranked among the most trusted source of news and information available to audiences<sup>2</sup>. In addition, research has found that commercial radio plays a particularly strong role in providing reliable news and information to audiences that are much less likely to access news on other media<sup>3</sup>.
9. Additionally, commercial radio news reaches some groups other media struggle to reach, uniquely connecting to over 12m listeners<sup>4</sup> who are less likely than other listeners to seek out news. Crucially, in an era of news avoidance these listeners are least likely to avoid commercial radio bulletins.

## CALL FOR EVIDENCE ON MEDIA PLURALITY

### Role and impact of online intermediaries

10. In common with many other areas of media and public service broadcasting, the growth of the online platforms has transformed the world in which radio companies operate, creating a huge range of new opportunities while presenting numerous complex challenges.

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<sup>2</sup> European Commission ([Eurobarometer](#) 92, 2019)

<sup>3</sup> [Beyond the Bubble](#) (Radiocentre, Dec 2020)

<sup>4</sup> [Beyond the Bubble](#) (Radiocentre, Dec 2020)

11. The transition of ad-spend to online is the most significant economic trend that has put pressure on the revenues and sustainability of all media. Commercial radio's share of overall advertising revenue has declined significantly in real terms since the early 2000s, while online advertising has grown from around 1% of total UK advertising to become the dominant form of advertising during that time. However, the digital advertising market does not appear to be functioning in a fair and effective manner as major players are able to use their dominant position and unrivalled access to data to the detriment of third-parties. A salient example of this was demonstrated by a Wall Street Journal investigation<sup>5</sup> into Amazon's use of third party data when developing competing products.
12. Radiocentre welcomed the CMA investigation into the digital advertising market in 2020<sup>6</sup> and the establishment of a new competition regime and Digital Markets Unit as a means to address the considerable market power of the online platforms.
13. In addition, competition for audiences has never been more intense due to the range of entertainment options now available. Online services like Spotify and Apple Music – which are not subject to any significant form of content regulation – are starting to account for an increasing proportion of overall listening time (particularly among younger audiences). The last available RAJAR MIDAS survey found that on-demand music services now account for 14% of the share of audio listening on average, rising to 44% for those in the 15-24 year old age group.
14. While this fragmentation has had limited impact on total audience, average time spent listening to radio overall has reduced from 22.5 hours per week in 2008 to 20.2 hours in 2020. Listening habits have been particularly affected by the growth of digital listening on DAB and online platforms like smart speakers, as well as greater competition for listeners from podcasts and music streaming services dominated by US tech giants such as Amazon and Google.
15. While online radio listening through these intermediaries still represents a minority of overall listening time (c.14%) it is now the fastest growing platform and is becoming increasingly important. Online audio devices have become mainstream and the adoption of smart speakers in the UK has been particularly rapid and extensive since their launch in 2016. Around 29% of households were estimated to own one of these devices in 2020, driven by their relatively low cost and voice control functionality<sup>7</sup>.

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<sup>5</sup> <https://www.wsj.com/articles/amazon-scooped-up-data-from-its-own-sellers-to-launch-competing-products-11587650015>

<sup>6</sup> <https://www.radiocentre.org/wp-content/uploads/2020/02/RC-response-to-CMA-online-platforms-study-Feb-2020-FINAL.pdf>

<sup>7</sup> <https://mobilemarketingmagazine.com/uk-smart-speaker-ownership-2020-gfk-techuk>

16. Radio listening is consistently found to be one of the most popular uses on smart speakers, therefore this constitutes a significant opportunity for commercial radio. However, it also has the potential to be a significant threat if one of the most important routes to market for radio is effectively owned and controlled by the US tech companies who will be able to act as ‘gatekeepers’ to radio content and custodians of valuable audience data. This is in stark contrast to the traditional broadcast model for radio where access to listeners is not mediated by a third-party, but managed by regulators that allocate broadcast licences and distributed on transmitters owned or leased by the broadcaster.
17. Due to this shift there is a risk that digital platforms could exploit their market power, and/or their gatekeeper role, in this context, particularly regarding opportunities in digital audio advertising on smart speakers. In addition, it is likely to create greater opportunity for the sort of disaggregation of content that has been so damaging to news publishers. These changes alone have the potential to impact negatively on consumers as operators would have less opportunity to invest in content, but there are also associated risks to consumer choice, media plurality and the provision of easy and free access to both commercial and public service broadcasting (PSB) on radio.
18. The commercial imbalances and competition concerns that arise from the gatekeeping position of digital platforms have also been identified by the European Commission in its preliminary report setting out the key findings of the EU inquiry into consumer Internet of Things.<sup>8</sup> For radio businesses to remain viable in this new environment their output needs to be available for free on all platforms and findable by listeners.
19. A similar set of challenges is also facing radio on other online devices and in vehicles, where radio listening has traditionally been strong. Now a growing number of in-car entertainment systems are internet connected which inserts a platform in between the radio station and the listener, which impacts on prominence, navigation and ease of use for the end user. Without further action, both from industry and regulators, this creates a further risk of commercial and PSB radio being de-prioritised and intermediated by powerful gatekeepers.

### **Media plurality concerns**

20. The development of new audio platforms and devices such as smart speakers have generally been positive for UK radio broadcasters and other audio publishers. Yet the growing dominance of digital voice assistant platforms and piecemeal nature of partnerships between platforms and content providers with different arrangements internationally, creates long-term risk that the interests of the UK radio and audio sector and of UK listeners will be undermined, or overlooked in ways explained below.

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<sup>8</sup> [https://ec.europa.eu/competition-policy/system/files/2021-06/internet\\_of\\_things\\_preliminary\\_report.pdf](https://ec.europa.eu/competition-policy/system/files/2021-06/internet_of_things_preliminary_report.pdf)

21. This potential for platforms to favour their own economic interests does not just challenge the critical role that radio plays in driving growth in the UK digital economy, it also poses a threat to media plurality and the broad range of public value that radio delivers to millions of listeners across the UK.
22. Some examples of the existing and future risks that have been identified and which are likely to cause significant media plurality concerns are outlined below.
23. **Findability, discoverability and prominence:** The growth and proliferation of connected devices and digital audio services increases the risk that radio broadcast content will be lost on connected platform devices. Unlike screen-based devices (smart phone, tablets and laptops), voice-controlled interfaces present more challenges for listeners in finding content. Broadcasters are concerned that their services are being downgraded in voice search while other services are upgraded through paid promotion.
24. **Access to data and listener consent:** Platforms apply restrictions on the amount and types of listener data that they are willing to share with the third-party radio stations they carry, often citing issues such as the need to obtain user consent to share such data. The effect on UK radio as more and more listening shifts could be profound and impacts on the ability of commercial radio to monetise its content and for both commercial radio and the BBC to adapt to meet the needs of listeners.
25. **Charging for access:** Online audio platforms have the capability to charge radio broadcasters, either for carriage or for sharing of listener or performance data about service usage. Moreover, platforms could levy fees to support specific functionality (for example Amazon Skills) that makes content easier for listeners to find, which would be used to charge broadcasters to make public service content “discoverable”.
26. **Overlaying advertising:** Platforms have the means to recognise small gaps between content to identify advertising content. As a result, online platforms could sell advertising slots into these slots or inject adverts into audio streams as YouTube does for video content. The platforms have not yet introduced paid search advertising on radio streams, but it is possible that platforms might seek to monetise voice search in future and this could include overlaying advertising across third party audio streams carried on their audio devices, without permission.
27. **Promoting own services or favoured third parties:** Platforms are able to configure the algorithms that control speech activation to favour their own services – an example would be to direct a requester of Classic FM to a generic classical music stream/playlist and require a second or subsequent request to connect to the requested station. This risk is increased by the fact that voice assistants will typically generate a single response to a voice request made by a user, unlike traditional search engines which will display a list of response choices to users so they have an opportunity to select the correct and intended service. Platforms are also free to develop exclusive deals with particular audio providers and restrict services to other third parties. As platforms gather more data on radio services, the availability of this presents a real risk of fairness for radio broadcasters wanting to compete on fair terms.

## How the regulatory framework might be updated

28. Taken together, the risks identified above present a significant threat to the long-term economic viability of UK radio and its important role in supporting media plurality in the UK. For this reason a number of these issues are already being considered as part of the Government review of Digital Radio and Audio (and in Europe as part of the Digital Services Act/ Digital Markets Act proposals from the European Commission).
29. The sort of measures required to update the regulatory framework will need careful consideration and could only be implemented in partnership with the relevant stakeholders. However, it should be possible to provide a balance between the need to ensure that the platforms can continue to grow and develop, while making sure that the plurality is supported. An example of the sort of interventions that should be considered by Government, Ofcom and the CMA's Digital Markets Unit is provided below.
- **Requirements on platforms to carry commercial and PSB radio services (must-carry) without charge** – regulations to make clear that platform operators should not be able to limit or restrict access to services or charge for carriage, including via car infotainment systems.
  - **Requirements to ensure due prominence and discoverability of commercial and PSB radio services** – commitments from the platforms to ensure commercial and PSB radio is easy to find, including via car infotainment systems, in a reasonable position on electronic programme guides (where these exist) and not unduly prevented from being accessed. Moreover, the algorithms which underpin the discoverability of content must be transparent and impartial.
  - **Protection of the integrity of content** – regulations to clarify that platforms cannot insert or oversell sponsorship or advertising around commercial and PSB radio content without the express consent of the provider. Digital voice assistant platforms (and in particular those enjoying strategic market status) should be prevented from mandating the use of their own ad tech solutions and monetising these for their own benefit.
  - **Assurances on routes of distribution** – support for the ability of audio content providers to mandate how platforms manage their audio streams to ensure that instructions from listeners to hear a radio service comes via the content providers' own skill or through the aggregation service designated by the commercial or PSB radio provider.
  - **Data sharing** – a legal requirement for the platforms to share data on listening and consent mechanisms with the 3<sup>rd</sup> party radio services that they distribute – including all relevant data about the use of services on smart speaker platforms. Platforms enjoying strategic market status should also be prevented from using, in competition with the radio stations, any data which is generated through the activities of these stations or their listeners, via these platforms.

## REVIEW OF MEDIA OWNERSHIP RULES

30. We welcome the review of media ownership rules and the overall approach regarding the scope of the framework and the removal of certain restrictions. However, a number of the issues are not directly relevant to the radio or audio sector (e.g. the national cross-media ownership rules and the Channel 3 appointed news provider rule). Therefore we have not sought to comment on these matters. Instead we have focused our comments on the proposals regarding the Media Public Interest Test and the Disqualified Persons Restrictions.

### Media Public Interest Test

31. On balance we agree with Ofcom's conclusion that it is appropriate to consider broader range of news creators, including online news providers, when considering media mergers in future. Restricting the scope of a Media Public Interest Test to print newspapers and broadcast enterprises is no longer a reflection of the way that audiences consume news and information or the business model that ensures the sustainability of these services.
32. Taking into account 'news creators' across a broader range of platforms when examining media mergers and any public interest considerations is a logical evolution of the existing framework, where the Secretary of State can intervene on certain qualifying mergers. We have no specific comments on proposed implementation of this change at this point. The intention to encompass all entities that have editorial control over the creation and publication of news material by journalists appears consistent with the overall objective.

### Disqualified Persons Restrictions

33. We note the proposal to remove certain restrictions on holding broadcast licences. Overall these seem to be a sensible attempt to modernise restrictions that were introduced to limit undue influence over programming content, especially in an era of spectrum scarcity where consumer choice was limited. However, we would make the following observations and comments on some of the specific categories.
34. **Advertising agencies:** We are not aware of any specific cases of advertising agencies seeking a broadcast licence and in reality the extent of any demand is likely to be limited. However, the rationale for this disqualification as a means to prevent undue influence or unfair commercial advantage would appear to have fallen away. For example, as Ofcom has noted, this restriction has been superseded by revisions to the Broadcasting Code with its requirements on undue discrimination between advertisers and on fair and effective competition. Therefore we see no need to continue with this restriction.

35. **Publicly-funded bodies:** We do not believe the case has necessarily been made for removing the restriction on publicly-funded bodies, at least in the case of seeking radio licences. As Ofcom is aware there is already a very significant publicly-funded intervention in radio through the BBC. BBC radio continues to have a dominant market share of around 50% (more than double that of its nearest competitor), a significant funding advantage, preferential access to broadcast spectrum and huge marketing and cross promotion power across TV, radio and online.
36. According to Ofcom the BBC spends over £740m of this funding on UK radio services, more than the total revenues of the entire commercial radio sector. Given this background – and the opportunities for public bodies to use online platforms and podcasts to make audio content available – we question whether an expansion on publicly-funded radio is necessary, or whether it could risk contributing further to the crowding out of commercial services. At the very least we believe Ofcom should consult separately on this question and consider restricting such services to particular categories of broadcast licence (e.g. Restricted Service Licences or Community Radio Licences).
37. **Analogue community radio licences:** Community radio should remain primarily as a set of individual local services that are not-for-profit and required to deliver ‘social gain’, as required by legislation and set out in the individual key commitments for each station. This helps support a distinction between community radio and local commercial services (although this distinction has been eroded in some cases, as set out in previous reports shared with Ofcom<sup>9</sup>). Therefore we support the recommendation that the restrictions on the ownership of analogue community radio licences should remain in place.

## ABOUT RADIOCENTRE

Radiocentre is the industry body for commercial radio. We work on behalf of more than 50 stakeholders who represent over 90% of commercial radio in terms of listening and revenue.

[www.radiocentre.org](http://www.radiocentre.org)

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<sup>9</sup> <https://www.radiocentre.org/wp-content/uploads/2018/11/SMALL-SCALE-RADIO-IN-THE-UK-ONLINE.pdf>