

## **Ofcom - Market position of BBC Sounds**

Call for evidence

Global response - 11 November 2020

1. Ofcom are seeking evidence and information in relation to the market position and impact of BBC Sounds. Global, along with the commercial radio sector represented by Radiocentre, have, over the past few years, expressed concern at the manner in which BBC Sounds has been able to expand incrementally without appropriate scrutiny.
2. It is unacceptable that the central pillar of the BBC's radio and audio strategy should operate outside the licensing framework, without clarity of purpose or regulatory conditions to assess performance. The majority of the issues that we have raised about BBC Sounds would not have arisen if it had been properly classified as a UK public service and monitored through the BBC's Operating Licence.
3. RadioCentre have prepared a thorough submission to this call for evidence on behalf of the commercial radio sector and Global has worked closely with RadioCentre in the preparation of the sector's response. Rather than duplicate this work, Global is providing a concise summary of our main concerns so that they are registered and acknowledged as part of this important process. This submission should therefore be read in conjunction with RadioCentre's.

## **Main Concerns with BBC Sounds**

### Incremental changes

4. The idea for a new music service was first announced in 2015 and has been developed over time using small incremental changes, each one of which avoid reaching a materiality threshold that would require any external scrutiny.
5. We were told in 2016 by the BBC Trust that;  
  
*"we would expect this to need to be submitted to the Trust for regulatory assessment of some kind as – at face value - it would be a new activity for the BBC and could have the potential for impact on the market. This is fully understood by the Executive and we see no prospect of any launch taking place without independent assessment of some kind, either by the Trust (in the remainder of 2016) or, potentially, by Ofcom next year."*
6. The only assessment that appears to have been undertaken is by the BBC itself and any decisions ratified by Ofcom based on information provided by the BBC. There has been nothing in the way of consultation with the commercial radio sector.
7. The BBC conducts materiality assessments on proposed changes to BBC Sounds but the details of these are never made public despite the requirement in the BBC's

policy on material changes to take account of the views of third parties in reaching a decision. We believe that there should be full transparency around these decisions.

8. There is no question that should the BBC attempt to launch BBC Sounds as it is today, there would be no option but to deem it as a material development. This in turn would trigger a Public Interest Test, where the sector would have the opportunity to comment on the proposal.
9. The most significant developments, the expansion of targeted music mixes, off-schedule podcasts and most recently the launch of Radio 1 Dance, a new stream, positioned in the main navigational menu of BBC Sounds (“the wheel”) were material changes which firmly bring BBC Sounds into direct competition with commercial radio.
10. It should not be the responsibility of the sector to constantly have to highlight the ways in which these seemingly small changes can have a negative impact on competition.

#### Regulation by Ofcom

11. The launch of Radio 1 Dance last month is a clear example of the failure of Ofcom to regulate BBC Sounds effectively. There was no consultation with the sector impacted by the launch and no transparency around the decision-making process within the BBC or Ofcom. Perhaps most concerningly, there has been no adherence to the conditions set by Ofcom. Permission for Radio 1 Dance to launch was given by Ofcom on the basis that there is no ‘new or exclusive’ content, yet within the first week of launching there was both new and exclusive content.
12. It is unclear whether Ofcom see BBC Sounds as a platform or as a service or as both. Its scope has never been properly defined. This is causing issues when it comes to assessing its performance or knowing how best to regulate it. IP connected listening is a key component of future listening and as the BBC’s IP listening platform, it is crucial that BBC Sounds is regulated in line with more traditional broadcast platforms.
13. BBC Sounds is lost within the catch all heading of BBC Online; there is very little information on what it seeks to provide and no individual budget assigned to it. Without clarity around what it is expected to deliver, how can Ofcom possibly reach an opinion on whether it is achieving its public purpose or not?
14. We firmly believe that the BBC Sounds, the core of the BBC’s audio strategy should be recognised as a UK Public Service in its own right and included within the BBC’s operating licence. It would then be developed around the public purposes it seeks to deliver and have specific deliverables to be held to account to.
15. Only as a UK Public Service will it be open to the appropriate levels of scrutiny and accountability and be more reflective of what regulation should look like in a digital age.

## Transparency

16. By its own admission, BBC Sounds is the cornerstone of the BBC's audio strategy. Yet there is no obligation on the part of the BBC to publish detailed information about audiences, development spend or future plans. Its inclusion as part of BBC Online and classification as a 'non-service activity' is a barrier to transparency.
17. A major area of concern is the scale of cross promotion of BBC Sounds across BBC TV and Radio services that goes unreported. We understand that it is important for the BBC to raise awareness of its services but the aggressive promotion of BBC Sounds on its own services and externally goes unchecked and unregulated. The Agreement places a requirement on the BBC to publish information relating to cross promotion but as part of BBC Online, BBC Sounds is all but exempt from this obligation. This loophole must be closed.
18. In the call for evidence, Ofcom notes that "*stakeholders have raised concerns about...the lack of transparency regarding its performance*". Surely this should be a concern shared by Ofcom? There were only three passing references to BBC Sounds in Ofcom's Annual Report<sup>1</sup> into the BBC's performance last year which given how central it is to the BBC's audio strategy is disappointing.
19. Ofcom have stated that they are keen to understand the BBC's future strategy for BBC Sounds as part of this call for evidence. This is something that the sector has been keen to understand since its launch in 2018. The manner in which this process is being run however means that we won't have the opportunity to comment on the BBC's future strategy. There needs to be a more effective way for the commercial radio sector to have a view on the potential impact of changes to BBC Sounds that isn't always after the fact.

## Distinctiveness

20. The commercial radio sector has had cause to complain to the BBC, BBC Trust and Ofcom about the peak time scheduling of Radio 1 and Radio 2 over the last five years. The daytime content often hasn't been sufficiently distinctive so as to offer a real public broadcast service for listeners.
21. This pattern is being repeated on BBC Sounds. What we are seeing now on BBC Sounds is a definite move towards imitating the brand extension strategy that commercial radio has been adopting over the past few years, of specialist and decade-based programming.
22. We believe that with the privilege of guaranteed licence fee funding comes the obligation to provide programming to audiences which is distinctive, and which does not simply replicate that which the commercial sector provides. There is little to stop the BBC from creating streams and music mixes which do this.

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<sup>1</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0015/124422/BBC-annual-report.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0015/124422/BBC-annual-report.pdf)

23. At a time when the BBC is having to make difficult decisions around funding and staffing news and journalism, the decision to prioritise the creation and launch of Radio 1 Dance over higher public value activities is questionable at best.
24. In the case of Radio 1 Dance, there is a high level of music crossover with Capital Dance (38%), Kiss (29%) and Kisstory (17%). When duplicating content already well served by commercial radio, there is a distinct lack of public value offered in doing so given it does little to contribute toward the BBC's public purposes.

### Competition

25. In the Call for Evidence document, Ofcom states that stakeholders have provided for limited evidence of the impact of BBC Sounds on the market. As we mentioned in the meeting with Ofcom's competition team on 6<sup>th</sup> November 2020, streaming is a nascent market, so it is difficult to provide hard evidence, such as impact on revenue. The BBC also don't publish any performance data which makes it challenging to provide hard audience data. The current situation is only likely to worsen though as increasingly more listening is done online.
26. What we do know is that there is a precedent with the BBC in market domination. Its market share in radio is higher than in other media, at 50%. The BBC's radio stations have preferential access to broadcast spectrum and huge marketing and cross promotional power across TV and online which commercial stations could never achieve. Holding such a privileged position can often prevent the market being able to develop and the danger is that as the online and podcast sectors grow, the negative impacts already being seen as a result of Sounds will only get worse over time.
27. We also know that the BBC is able to promote its own services in a way that is beyond the realms of possibility for the commercial sector. As part of this call for evidence, RadioCentre commissioned a period of media monitoring of BBC TV and Radio services to look at the BBC's cross promotion of BBC Sounds which found that the cross promotion and external marketing spend for BBC Sounds alone equalled 66% of the total advertising revenues for the whole of the UK radio industry. This is anti-competitive.
28. There is evidence however of the negative impact that BBC Sounds is having upon the UK podcast market. Ofcom's own research, Media Nations shows BBC Sounds' dominance over the rest of the industry. This has led to the under development of the UK podcast sector as the BBC has saturated the market with advertisement free podcasts, giving the BBC an unfair competitive advantage in attracting listeners against commercial podcasts. This makes it much more difficult for commercial operators to establish a podcast advertising market, as evidenced by the very low levels of podcast advertising in the UK in comparison to other developed markets. It reduces choice and is bad for listeners.

29. We realise that the BBC have global ambitions for BBC Sounds but it is not our belief that the licence fee should be used to enable the BBC to compete with Spotify or YouTube.

### Summary

30. We know that both online radio and podcast markets are growing and are predicted to continue to do so. It is therefore vital that proper regulation for BBC Sounds is put in place now to avoid its already dominant position from discouraging investment and stifling future competition.

31. The only way to do this is to reclassify BBC Sounds as a UK Public Service to align it with the BBC's Mission and Public Purposes and regulate it accordingly.

32. Global recommends the following actions should be taken by Ofcom:

- BBC Sounds should be reclassified as a UK Public Service and included on the list of UK Public Services that the BBC is obliged to maintain and publish.
- Ofcom should conduct a full BBC Competition Review of BBC Sounds, including a public consultation on all the permissions so far granted to the BBC by Ofcom in respect of BBC Sounds.
- There should be greater scrutiny of proposed changes to BBC Sounds, with stakeholders having the opportunity to properly contribute to the process.
- As a UK Public Service BBC Sounds should be subject to clear regulatory conditions in the BBC Operating Licence directly linked to the BBC's public purposes, giving the same weight to its online offering as its terrestrial ones.
- Radio 1 Dance should be removed from BBC Sounds pending the completion of a Public Interest Test by the BBC and BBC Competition Review by Ofcom
- Ofcom should direct the BBC not to launch any new streams or stations in BBC Sounds pending the completion of the above reviews.
- All BBC cross promotion, including BBC Sounds should be properly disclosed on a quarterly basis, to enable third parties to see exactly what promotion each service receives.
- The BBC should be required to provide detailed information on BBC Sounds in both its Annual Plan and Annual Reports and Accounts.