



RADIOCENTRE

Submission to Ofcom

Consultation: Market position of BBC Sounds

June 2021

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Summary

Following our detailed report for Ofcom in response to its call for evidence on the impact of BBC Sounds on the UK radio market, we have set out our comments on Ofcom's initial conclusions, providing further evidence where required. Overall, while we welcome Ofcom's positive response regarding the need for increased transparency around BBC Sounds, we remain extremely concerned that the actual and potential impact of BBC Sounds on the wider market for online radio is not being properly acknowledged by Ofcom. The BBC is carrying out activities such as cross promotion and self-dealing in the form of windowing that could lead to crowding out of UK commercial operators.

While the suitability of the regulatory framework is outside of the scope of this consultation, we also have significant concerns that the current approach is not fit for purpose in a market which Ofcom acknowledges is developing very rapidly. The absence of a clear regulatory framework for BBC Sounds enables the BBC to act with limited accountability, and its actions therefore deserve particular scrutiny.

Waiting until significant harm is unambiguously demonstrated across a range of areas before triggering a BCR is a particularly dangerous strategy for this fast growing sector. In this nascent digital market there is a real risk that ineffective regulation and delayed enforcement will lead to entrenched dominance by the BBC, which will be difficult to unwind; particularly given the BBC's ambitions to develop BBC Sounds as the destination for all online audio content. Such outcomes have been seen in tech-related markets where the authorities struggle with existing regulatory frameworks to control the potentially anti-competitive actions of tech-giants such as Amazon, Google and Facebook.

We summarise our findings below, which address each of Ofcom's questions in turn:

Ofcom's provisional view of the market is incorrect or misrepresentative in several areas

- Ofcom acknowledges the growing importance of online listening; this conflicts with the view that BBC Sounds, the most significant UK online audio service, is not having a significant market impact
- Ofcom overlooks the likely impact of COVID-19 in supporting a structural change in listening, which could lead to resetting of where people access their audio content
- Just as it does for traditional broadcast radio, the BBC dominates listening, with a far greater share than the nearest commercial rival. In doing so it dominates valuable socioeconomic groups and is now actively pursuing young audiences by replicating commercial services – placing it in direct competition with, and harming, the commercial sector

The BBC's behaviour is likely to lead to crowding out as this nascent market develops

- Ofcom has leaned unduly towards favouring an interpretation of the data which suggests no harm, or adverse impact on fair and effective competition exists
- It is clear that the impact of BBC Sounds on the sector is growing and is likely to continue to increase as more listening takes place online and the BBC continues to duplicate content types and formats such as R1 Dance and R1 Relax, which put it in direct competition with the commercial sector
- Furthermore, the BBC's positioning of Sounds as a destination for listening is deeply concerning – as it seeks to lock the commercial sector out of access to listeners by offering all audio formats and forcing licence fee payers to access BBC Content on the Sounds service (even when potentially to the detriment of its own objective to maximise reach) rather than distributing content more broadly

We urge Ofcom to look more closely at the level of cross-promotion and marketing of BBC Sounds

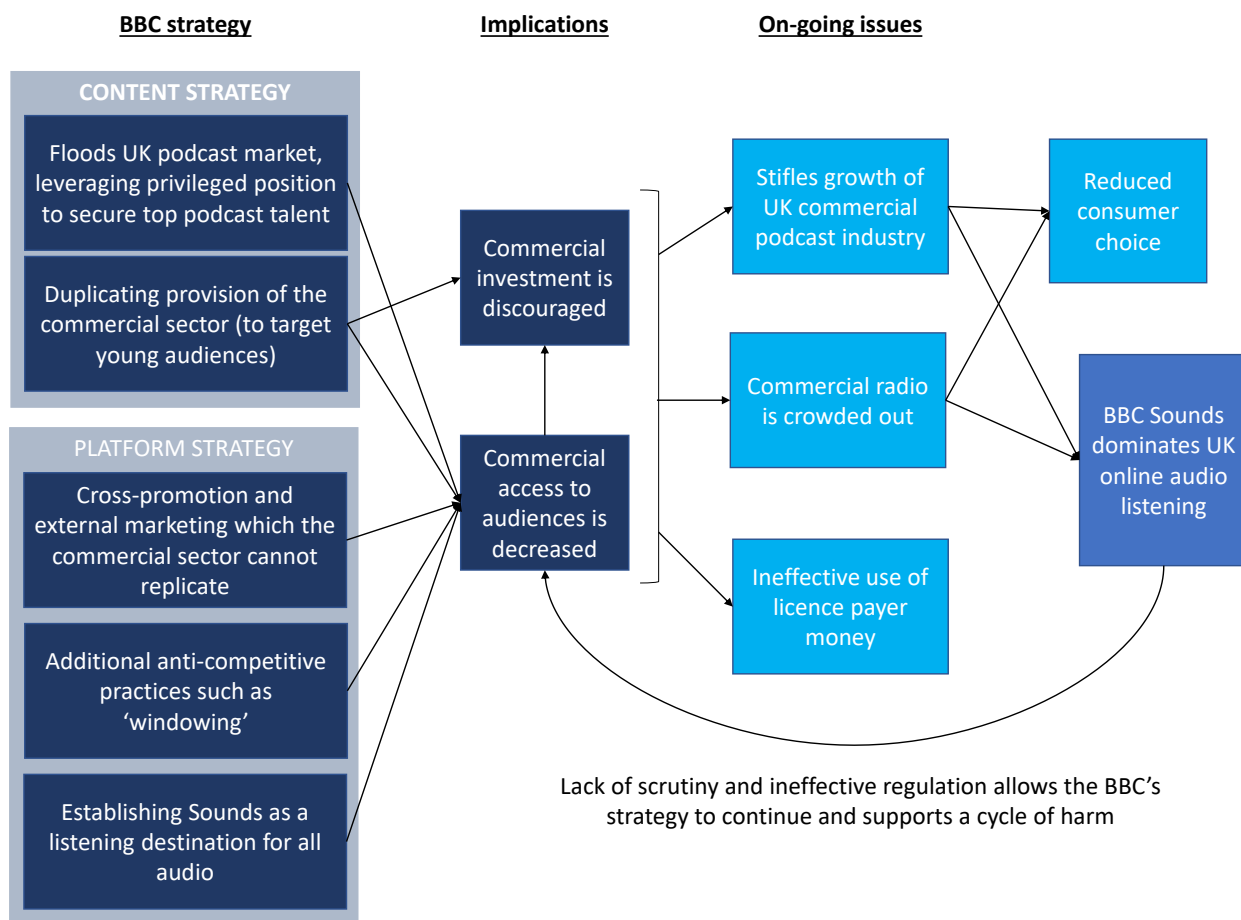
- While Ofcom has focused on the potential impact of the BBC's cross-promotion of Sounds across its own services, the overall level of promotion including external (paid for) marketing is also important since the commercial sector must also compete with this investment. Based on year-to-date data for 2021, external marketing spending for Sounds alone is set to increase again, to around £11 million this year – a significant increase on the £3 million spent in 2020
- Our previously provided quantification of the BBC's cross-promotion at £400m per annum is based on a robust methodology which accurately captures the volume and estimate cost of internal cross-promotional time in the sample week which was reviewed
- Given there is no reason to believe that we had selected an unrepresentative sample week, we stand by our findings that the BBC has an extraordinary marketing campaign in place for Sounds. Furthermore, this same methodology was accepted by the Government as input into the 2016 Charter Review
- While the commercial sector can also cross-promote its online audio services, the opportunity cost is very different. Airtime is valuable and the commercial sector's use of airtime for cross-promotion is at the expense of advertising income – whereas the BBC only loses the opportunity to cross-promote another service
- Overall, Ofcom's dismissal of our evidence hints at a lack of understanding around how the BBC defines and reports cross-promotion of its service. Ofcom should carefully review this if it is to have a proper understanding of how the BBC might be distorting the sector through aggressive marketing

The current and potential future harm caused by BBC Sounds to the podcast market is particularly significant

- Ofcom acknowledges that the sector is developing fast and that a future assessment of BBC Sounds might be required to see how it has evolved to impact competition. BBC Sounds must be properly regulated now, to prevent it from further stifling the sector
- As well as flooding the market with podcasts, the harm considered by Ofcom should include the impact that the BBC has on the commercial sector's access to talent, the cost of that talent, and the extent to which podcast provision by the BBC is distinctive and offers public value – rather than simply duplicating commercial provision
- It is particularly concerning that Ofcom views the BBC's 39.44 per cent market share as evidence that the BBC is not dominant, especially in this digital market that is 'tipping' in nature
- If this new market is competitive, as Ofcom suggests it is, then there is no reason for the BBC to have a similar share to linear audio listening. The BBC's 39.44 per cent share indicates that the BBC has leveraged its position of dominance in linear audio
- We again stand by the evidence we provided in response to Ofcom's original request – we have added 2019 data to illustrate that the UK podcast market is clearly underdeveloped. If Ofcom remains unconvinced, it should conduct its own analysis or provide clarity on how and why the existing evidence is deemed inconclusive
- The BBC has engaged in anti-competitive practices in several areas; where its content is available on other platforms it aims to draw users back to Sounds. It has also used 'windowing' to first publish podcasts on its own platform – favouring the development of Sounds as a destination over maximising reach and convenience for licence fee payers

There are therefore many areas where we believe Ofcom should conduct a more detailed review of evidence. In doing so, it should reflect on the fact that an accurate assessment of the overall impact of BBC Sounds is complicated by the interrelatedness of each of the issues. As things stand, Ofcom's apparent reluctance to consider each issue in detail, along with how they interact and reinforce each other, is leading it to an incorrect conclusion. In the Figure

below, we have set out an illustration of how each individual element supports the direction of travel towards a stronger and more dominant BBC service at the expense of the commercial sector and, ultimately, of listeners.



Increased transparency and engagement with the sector is necessary, but not sufficient to deal with the scale of the issues at hand

There should be a BCR into the market impact of BBC Sounds and concern should be given to prevent a similar problem arising again

- Based upon our analysis of Ofcom's theories of harms and the necessity to consider them in totality rather than individually, the threshold needed to initiate a BCR has been passed
- The likelihood that harm will increase means it is imperative Ofcom utilises its discretion to begin this process
- Regulation should also be updated to enable future competition concerns to be assessed on an *ex ante* basis, in line with the CMA's Digital Markets Taskforce position on digital markets
- In the future, new radio launches such as those of R1 Dance and R1 Relax should be recognised as new services and assessed as such by Ofcom's regulatory framework, and what constitutes a material change to BBC Sounds should be based on objective factors so as to provide a rigorous approach and certainty to the wider industry

Ofcom should impose regulatory conditions on BBC Sounds and strict reporting requirements

- Such measures would ensure BBC Sounds targets its investment in a way which better delivers against the BBC's public purposes and operates for the benefit of licence fee payers, rather than unduly focusing on reach

- Regulatory conditions should ensure the BBC correctly reports and is limited in the levels of cross-promotion it engages in, and that the BBC is encouraged to deliver innovative programming whilst targeting all audiences, rather than duplicating commercial services
- BBC Annual Plans and public announcements should be more comprehensive and provide clarity around the purpose of BBC Sounds and what it is expected to deliver
- BBC Sounds performance data should be publicly available and sufficiently granular to provide a clear view of how BBC Sounds is performing relative to the commercial sector, and against its objectives

We do not feel that collaboration with commercial radio on BBC Sounds would be beneficial

- We do not believe it would be in the interests of the industry to have commercial players operating under a BBC branded and controlled platform, nor would amplifying commercial sector content further the mission or public purposes – it would simply serve to entrench the BBC’s dominance
- The BBC should be more transparent in its consultations with commercial radio on developments relating to BBC Sounds

1 Introduction

This document sets out Radiocentre’s response to Ofcom’s provisional findings and associated consultation on the market position and impact of BBC Sounds. It follows our detailed submission to Ofcom’s original call for evidence on the same subject and so, in this response, we aim to address Ofcom’s specific questions while drawing on the evidence already provided, clarifying and strengthening this where necessary.

1.1 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 provisional findings on the impact of BBC Sounds, on behalf of the UK commercial radio sector.

1.2 Radiocentre’s submission to Ofcom’s original call for evidence

Radiocentre’s submission to Ofcom’s call for evidence at the end of 2020 set out the key areas in which BBC Sounds has a negative market impact, as well as the associated regulatory failings and lack of transparency under the current regime. The key points made in that submission were as follows:

Regulatory issues

- **BBC Sounds is inadequately regulated** since it is not distinguished as a service in its own right in the BBC’s Operating Licence, instead falling under the broad remit of BBC Online
- **There is a lack of transparency** around BBC Sounds in terms of ambition, strategy, finances, and audience data. This is enabled by the inadequate regulation and prevents evaluation of the public value offered by BBC Sounds
- **A considerable number of incremental changes** have been made to BBC Sounds since its launch which constitute a material change and should be assessed as such. Even where changes have been agreed by Ofcom, the BBC has pushed the scope beyond that which was approved as exemplified by the exclusive content carried on Radio 1 Dance (R1 Dance)

Competition issues

- **The BBC has engaged in an extensive marketing and cross-promotional** campaign for BBC Sounds which we value at £400m/year. This is equivalent to 66 per cent of commercial radio’s total annual advertising revenue – and on that basis commercial radio is clearly unable to compete. Lack of adequate regulation and transparency allow this to go unchecked and unchallenged
- **The BBC is by far the largest player in online radio**, accounting for 43 per cent of total listening time with the next largest player at just 22 per cent. A significant proportion of users spend more than 90 per cent of their listening time on BBC Sounds, and the platform is leading to market dominance for the BBC



- **The UK podcast sector is being stifled by BBC Sounds**, as evidenced by the diminutive size of the UK podcast advertising market in relation to total listeners, total population, and the UK audio sector at large. BBC Sounds is one of the UK's most popular platforms for podcast listening, and the BBC is the UK's most successful producer; 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 considerable long term-risk that BBC Sounds limits the growth of the UK online audio market**, given the BBC's current dominance of online radio and podcast listening, its strong growth in listenership since the launch of Sounds, and the trend towards online listening as a whole

We also made recommendations for improving the accountability, regulation, and transparency of BBC Sounds, including:

1. BBC Sounds should be treated as a standalone service under the BBC's Operating Licence
2. The BBC should disclose information on the cost and performance of the BBC Sounds service
3. Greater scrutiny should be given to any changes the BBC proposes to BBC Sounds, and any new services launched on BBC sounds
4. Ofcom should ensure the BBC adheres to the disclosure requirements of the Agreement – particularly in relation to promotional activity
5. Improved regulation is needed to limit the impact of Sounds on the UK commercial audio market, both to reduce the current impact and prevent this impact from increasing as BBC Sounds evolves, and prevent the BBC from engaging in anti-competitive practices
6. Ofcom should launch a BCR of BBC Sounds

1.3 Scope of this submission

Based upon its own findings and the evidence submitted by Radiocentre and others, Ofcom has provisionally concluded that there are no reasonable grounds to believe BBC Sounds is currently having a significant adverse impact on fair and effective competition. However, it does believe that the BBC must improve its stakeholder engagement, transparency, and reporting in relation to BBC Sounds. Ofcom also suggests that there is scope for further collaboration between the BBC and other audio content providers on the Sounds platform. As part of its first periodic review of the BBC, Ofcom intends to examine the regulatory framework that governs BBC Sounds and will seek additional feedback on this at a later date.

This submission therefore seeks to clarify Radiocentre's position on these provisional findings, outlining where we agree and disagree with Ofcom, and in instances of disagreement provide evidence to support our view. Some of the evidence from our original report is repeated, and expanded upon, where relevant; we have aimed to clarify this in the text where necessary.

This report is structured around the eight questions Ofcom seeks feedback on in their provisional findings:

Market Context:

Q1: Do you agree with our provisional view of the market? Please provide evidence in support of your answer

Theories of Harm:

Q2: Do you agree with our analysis and provisional conclusions on BBC Sounds crowding out the commercial sector? Please provide evidence in support of your answer

Q3: Do you agree with our analysis and provisional conclusions about cross-promotion of BBC Sounds? Please give evidence to support your views

Q4: Do you agree with our analysis and provisional conclusions about the impact of BBC Sounds on podcast publishers' ability to generate revenue? Please give evidence to support your views

Scrutiny of BBC Sounds:

Q5: Do you agree with our provisional view that the test for opening a BCR in relation to BBC Sounds is not met?

Q6: Do you agree with our view above on when changes to BBC Sounds might raise competition issues?

BBC Transparency and Engagement:

Q7: What further detail, if any, would you expect to see in the BBC's Annual Plans and public announcements to enable stakeholders to meaningfully comment on its plans for BBC Sounds?

Collaboration with Third Parties:

Q8: Do you agree that further collaboration between the BBC and other players could bring benefits to the UK radio and audio sector?

We have therefore started by setting out where our view of the market differs from Ofcom's, before exploring our views on the evidence of market impact and how this relates to the need for a BCR, outlining our thoughts on how the BBC can improve engagement, transparency, and reporting, and finally giving our position on suggested collaboration between BBC Sounds and third parties.

2 Market context

In this section we seek to answer **Question 1** of Ofcom's consultation document:

Q1: Do you agree with our provisional view of the market? Please provide evidence in support of your answer

Whilst we agree with the majority of Ofcom's portrayal of the audio market, we feel that there are some areas in which Ofcom's view is misinformed or incomplete. In this Part we set out the main areas of disagreement; where we do not comment on Ofcom's view of the market it may be assumed that we are in agreement.

2.1 Listeners *are* moving their radio listening online

In points 3.37 and 3.38 of its provisional findings, Ofcom states that 'online radio listening as a proportion of all online listening fell from 43 per cent in 2015 to 24 per cent in 2020 ... as audiences continued to favour the traditional radio set and online streaming services became more popular'. Ofcom goes on to further state that 'this trend indicates that listeners are not moving their radio listening online and are turning to other online content instead'.¹ Whilst we do not dispute the fact that online radio listening as a proportional of all online listening has fallen, we do dispute the conclusion that this means 'listeners are not moving their radio listening online' and 'continue to favour the traditional radio set'. Radio's proportion of online listening has fallen simply because music streaming has grown so significantly over this timeframe, greatly increasing the total amount of online listening and thus lowering radio's proportion.

2.1.1 Ofcom's evidence indicates that online radio listening, and its share of total radio, has grown rapidly

Ofcom's own findings earlier in its report show that online radio listening has been growing steadily as a proportion of all radio listening, and that lockdowns may have greatly accelerated this trend; although different methodologies are used, the last RAJAR survey pre-COVID found 26 per cent of adults listen to online radio, but Ofcom's most recent March 2021 survey gives a figure of 43 per cent.²

Elsewhere in its report, Ofcom presents evidence that COVID-19 has likely had a negative impact on radio listening, claiming that in summer 2020 'around 14% of online adults³ had stopped listening to radio since lockdown' and that 'the number of people listening to radio since summer 2020 has stayed consistent each week'.⁴ Whilst we do not have quantitative data on analogue/DAB listening for all of this period, it is certainly not true for online listening. Both commercial radio and the BBC have seen the amount of online listening increase significantly since the onset of the pandemic, with the BBC recording 'record plays across all audio for the first quarter of 2021'⁵ and '900,000 more 16-34 accounts [using] Sounds for the first time' over the last six months.⁶

¹ Market position of BBC Sounds, Ofcom Consultation, p.18

² Market position of BBC Sounds, Ofcom Consultation, p.16

³ Adults who can be accessed by online surveys

⁴ Market position of BBC Sounds, Ofcom Consultation, p.15/16

⁵ <https://www.bbc.co.uk/mediacentre/2021/louis-theroux-grounded-top-podcast-q1>

⁶ BBC Annual Plan 2021/22, p.8

2.1.2 There is evidence that to suggest that total radio listening has also increased – with online growing most

Evidence suggests that the impact of COVID-19 has seen an increase in radio listening across all distribution channels (with online the biggest winner). Research released by RAJAR on listening in April, May, and June of 2020, following the suspension of RAJAR tracking, found that while ‘All Radio’ reach declined marginally compared to Q1 2020, average hours per listener saw a significant increase that more than offset this. RAJAR concludes by stating that ‘most notably, listening online has continued to thrive through March to June’.⁷ RAJAR has not released new research since then, but the available data captured the impact of the first national lockdown, and given the extensive periods of lockdown since June 2020, this trend is unlikely to have reversed. This is, of course, further illustrated by the continued growth of BBC Sounds radio listening, as outlined in the BBC’s public reporting.

2.1.3 Expected structural changes resulting from COVID may also support listening, and online listening in particular

Furthermore, with fewer consumers set to commute and more time spent at home around digital devices capable of playing online radio, COVID-19 has likely brought about structural changes that will only increase the importance of online listening in the long term. This, along with improvements to Wi-Fi infrastructure, the development of 5G technology, improving technological literacy amongst all adults, and the increasing prevalence of connected devices in homes and cars, will only continue to accelerate the trend towards online radio listening.

2.1 – Conclusion:

Given online radio listening has increased considerably, we must recognise the fact that online radio listening is now more important than ever and the rate at which people are switching their listening from analogue/DAB to online is increasing.

Ofcom’s view of the market downplays the current and ever-growing importance of online listening to the radio industry. This view incorrectly supports Ofcom’s assertion that there is no significant market impact currently, and also clouds judgement around the likelihood of a significant future impact. Furthermore, it misunderstands the impact of the COVID-19 pandemic on the volume of radio consumption, and the potential for structural change to accelerate the trend towards online listening.

2.2 The UK podcast market is an increasingly significant battle ground

Our other main point of contention is around Ofcom’s understanding of the podcast market. As a nascent market, this is particularly important, since the absence of proper regulation risks crowding out the commercial players and stifling the development of the UK podcast market – hindering its ability to catch up with more developed markets where podcasts are monetised much more effectively.

2.2.1 Podcast advertising revenue severely lags other developed markets

Ofcom states ‘advertising revenue generated by UK podcasts appears broadly comparable to other markets, although evidence is limited’.⁸ We strongly disagree with this viewpoint and provide extensive evidence that the UK

⁷ https://www.rajar.co.uk/docs/news/Listening_in_Lockdown.pdf

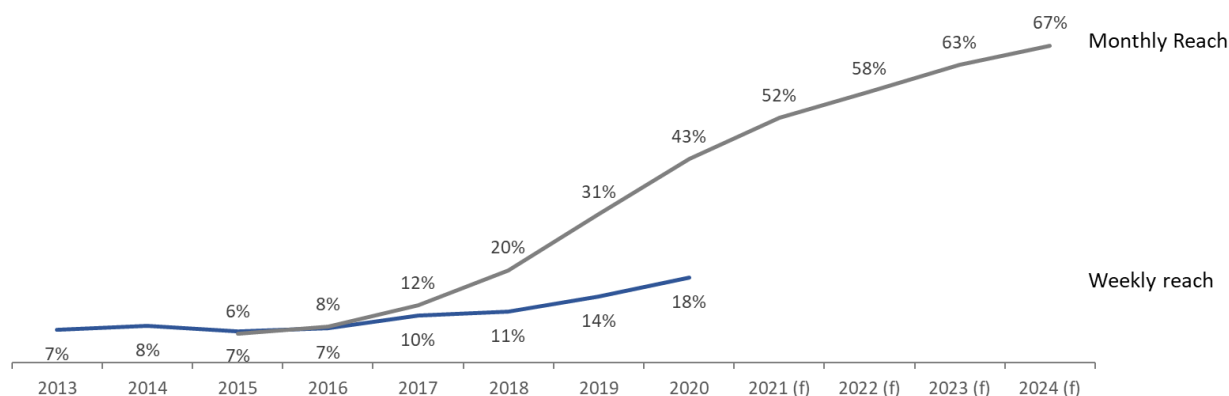
⁸ Market position of BBC Sounds, Ofcom Consultation, p.23

podcast market significantly lags behind other comparable markets later in our response in **section 3.3** when addressing Ofcom’s theory of harm around BBC Sounds podcasts.

2.2.2 Podcast listenership is a rapidly growing and increasingly significant listening segment

Ofcom frames podcast listening as ‘growing steadily’ and notes ‘its share of audio time remains relatively small’.⁹ **Figure 1** below shows how podcast listening has developed in the UK in recent years. Weekly reach amongst UK adults has grown by 14 per cent p.a. since 2013 and even more rapidly in recent years – by 25 per cent p.a. since 2016. Ofcom’s own research also found that in 2021, 25 per cent of adults now listen to podcasts each week,¹⁰ so growth is showing no signs of slowing. We would argue it is more reasonable to frame podcast listening as a medium that is exploding in popularity. In the US, podcast listenership currently stands at 28 per cent (a 17 per cent year-on-year increase)¹¹, so it stands to reason that podcast reach in the UK still has significant scope to increase. Indeed, PwC forecasts UK monthly podcast listeners will increase from 29 million in 2020 to 46 million by 2024 – by which point monthly reach will stand at 67 per cent.¹²

Figure 1: UK weekly and monthly podcast reach, 2013 – 2024(f)



Source: RAJAR MIDAS Spring surveys, PwC Global Entertainment & Media Outlook: 2020-2024, ONS

Note: RAJAR numbers are 15+ UK weekly reach and relate to Q1 of each year, PwC numbers are given as millions of all UK listeners at Q4 and have been applied to ONS population figures and projections. PwC numbers for 2020 onwards are forecasts

Ofcom also acknowledges that advertising revenue was ‘up by 66% year on year in real terms’¹³ but does not comment further on the implications of this. As with listening figures, this indicates significant growth in the podcast industry and that it could be an increasingly important source of revenue in the UK audio space.

2.2 – Conclusion:

By downplaying the extent to which podcast listening is important, and growing in importance, in the UK, Ofcom reaches unjustified conclusions relating to concerns around the impact of BBC Sounds on the UK audio market.

⁹ Market position of BBC Sounds, Ofcom Consultation, p.21

¹⁰ Market position of BBC Sounds, Ofcom Consultation, p.24

¹¹ The Infinite Dial 2021, Edison Research and Triton Digital

¹² PwC Global Entertainment and Media Outlook: 2020-2024

¹³ Market position of BBC Sounds, Ofcom Consultation, p.23

2.3 The BBC dominates audience share and the most valuable demographics

We question Ofcom's framing of commercial vs BBC's share of online radio listenership and demographics. Ofcom states that 'the BBC's share of online radio listening is lower than commercial radio, and has an older demographic'.¹⁴ Whilst this is true, the way in which it is framed ignores the fact that the BBC's share is 2 times as large as the nearest single commercial competitor.¹⁵ At 50 per cent of all radio listening hours and 41 per cent of all online radio listening hours¹⁶ it is clear that the BBC is dominating the sector – even in TV the BBC's share of broadcast TV hours is only 31 per cent¹⁷ and considerably lower for online viewing. Furthermore, whilst the BBC's online radio audience may be older, it is also considerably more valuable, with 71.9 per cent of listeners falling into the ABC1 socio-economic profile, compared to 54.3 per cent for commercial radio.¹⁸ Under UK and EU competition law case law, a market share above 40% is prima facie evidence of dominance.

2.3 – Conclusion:

This framing downplays the dominance the BBC has over online radio. Emphasising the demographic differences also implies that it is acceptable for the BBC to use Sounds to imitate the successful strategies commercial radio has employed to attract younger online listeners (i.e. offering new radio services on Sounds that replicate commercial radio's brand extensions) rather than providing content which offers public value. This incomplete consideration of the respective roles of the BBC and the commercial sector leads Ofcom to downplay the impact the BBC's launch of its two new stations – R1 Dance and R1 Relax, which duplicate the commercial offer – is likely to have on commercial radio.

¹⁴ Market position of BBC Sounds, Ofcom Consultation, p.20

¹⁵ RAJAR Q1 2020

¹⁶ Market position of BBC Sounds, Ofcom Consultation, p.20

¹⁷ The Viewing Report 2020, BARB

¹⁸ Market position of BBC Sounds, Ofcom Consultation, p.20

3 Theories of harm

In this part we respond to the criteria by which Ofcom has sought to assess the impact of BBC Sounds on competition in the audio sector, addressing each of its theories of harm and related questions in turn:

Theory of harm 1: BBC Sounds is ‘crowding out’ online commercial radio

Q2: Do you agree with our analysis and provisional conclusions on BBC Sounds crowding out the commercial sector? Please provide evidence in support of your answer

Theory of harm 2: The BBC’s extensive cross-promotion of BBC Sounds is harming commercial radio’s ability to compete

Q3: Do you agree with our analysis and provisional conclusions about cross-promotion of BBC Sounds? Please give evidence to support your views

Theory of harm 3: BBC Sounds supplies the UK podcast market with a large amount of ad-free, ‘archive’ content, making it difficult for other podcast publishers to make money

Q4: Do you agree with our analysis and provisional conclusions about the impact of BBC Sounds on podcast publishers’ ability to generate revenue? Please give evidence to support your views

We are pleased Ofcom agrees that the market impact of BBC Sounds should be assessed in relation to commercial UK online radio and UK podcasts, rather than against a larger global online streaming market.

We are also in agreement that the relevant features of BBC Sounds (the features which the BBC would not be offering in the absence of Sounds) are ‘its improved functionality (including different ways of curating content) and personalisation, as well as the provision of increased amounts of off-schedule content, all under a single unified brand’¹⁹. However, we would like to see the launch of new services within Sounds (i.e. R1 Dance, and R1 Relax) included here and acknowledgement that the BBC is expanding the scope of these relevant features.

We set out our views on Ofcom’s findings for each theory of harm in turn in Sections 3.1, 3.2 and 3.3.

3.1 The lack of conclusive evidence does not mean there is no crowding-out issue

The first theory of harm examined by Ofcom concluded that ‘commercial radio has been more successful than BBC Sounds at winning online listeners’. While the available evidence may not conclusively show a negative impact on competition, this relates largely to the difficulty in proving harm for a service which only launched a few years ago and for which limited listening data are available for a number of reasons:

- The lack of transparency and reporting of the performance of BBC Sounds²⁰
- The absence of RAJAR measurement since early 2020 due to government restrictions preventing the recruitment of the panel

¹⁹ Market position of BBC Sounds, Ofcom Consultation, p.28

²⁰ Covered extensively in our original response to Ofcom’s Call for evidence on The Market Position of BBC Sounds

- The resultant gap in measurement during a period when online listening has accelerated and BBC Sounds has become a much more established service

The lack of recent RAJAR data also means it is not possible to see what impact the launch of R1 Dance (and, more recently, R1 Relax) has had on listening share. We would expect these launches to have attracted more young listeners to BBC Sounds at the expense of the commercial players. Indeed, the BBC states in its latest Annual Plan that 900,000 more 16-34 accounts used Sounds for the first time over the last six months,²¹ but whether these listeners are consuming predominately radio content on the platform is not disclosed.

Perhaps the most concerning issue is that the BCR framework focusses on current harm rather than the likelihood of future harm. Ex-post regulation of emerging distribution types and content formats is a dangerous approach since harm will not be observed until it is too late, and underlying causes are already entrenched and difficult to unwind. This risk in digital markets, such as digital audio, is recognised by the CMA - which has concluded that ex-post regulation and intervention can be insufficient to prevent harm in such markets. We expand more upon this point in **Section 4.1** of our report.

Notwithstanding the lack of available data, we do feel there are a number of issues with the way that Ofcom has analysed/interpreted the evidence, which we explain below.

3.1.1 Ofcom's analysis of listening data is not robust and only captures part of online listening

In our submission to Ofcom's call for evidence we projected online listening share to 2025 based on recently observed trends. We believe this approach is valid since it reflects trends in commercial radio online listening over a longer time frame than Ofcom has considered, featuring the impact of the steady launch and development of online services over an extended time period, and a shorter-term view of BBC Sounds only since its launch. Based on these trends, we showed that the BBC's share of online radio listening is set to grow.²² This runs counter to Ofcom's conclusion that commercial radio has been most successful in attracting online listening.

While we acknowledge that the limited RAJAR data since BBC Sounds' launch makes drawing strong conclusions difficult, for the same reason, we do not agree it is helpful or accurate for Ofcom to conclude that 'commercial radio has been more successful than BBC Sounds at winning online listeners'.²³ Furthermore, the Ofcom analysis understates BBC Sounds listening, because it does not take into account listening to audio content beyond broadcast radio content, such as music mixes. Such other types of listening also occur on BBC Sounds (supported by the BBC's championing of Sounds as a destination for all listening); this is clearly listening time that commercial radio might otherwise enjoy.

Furthermore, Ofcom has not engaged in a proper definition analysis – the overly broad approach – that of regarding all audio services not transmitted conventionally as competing in a single "online audio" market has the effect of ensuring that almost any actions by the BBC are likely to be regarded as having a "muted" effect on competition.

Analysis is further complicated by the effect of the transition from iPlayer Radio to BBC Sounds. BBC Sounds launched in October 2018 and BBC iPlayer Radio was officially decommissioned in the UK in September 2019. The BBC only acknowledged that BBC Sounds had overtaken BBC iPlayer listenership in Q4 2019²⁴, implying that in the year since the launch of BBC Sounds, BBC online radio listenership saw little real growth as the BBC focussed on migrating

²¹ BBC Annual Plan 2021/22, p.8

²² Radiocentre response to Ofcom's Call for evidence on The Market Position of BBC Sounds, p.36

²³ Market position of BBC Sounds, Ofcom Consultation, p.28

²⁴ <https://www.bbc.co.uk/mediacentre/latestnews/2020/sounds-2019>

current audiences from one platform to the other – this means the BBC online radio listening growth rate from Q1 2019 is lower than otherwise might be expected.

3.1.2 The current direction of travel indicates a growing negative impact on competition

We accept that for now there is limited evidence of the negative impact of BBC Sounds on competition but, as previously stated, this does not mean that there is not a significant risk of future impact, which could be irreversible if not actively regulated. In particular, the recent launches of R1 Dance and R1 Relax are problematic for the commercial sector and we expect they are only the first in a series of new station launches planned by the BBC. There are several issues if the BBC continue to be allowed to launch and run new services without proper regulatory oversight:

- **Duplication of the commercial offer:** These are new online radio stations which copy the successful brand extension strategies of the commercial sector and duplicate much of the commercial sector’s output (in our previous report to Ofcom we showed that R1 Dance was duplicating 35.5 per cent of Capital Dance’s repertoire).²⁵
- **Undue prominence given to services offering limited public value:** R1 Dance and R1 Relax are prominently positioned on the BBC Sounds ‘wheel’ and enjoy the all the benefits that come with the BBC Sounds listening ecosystem and BBC Sounds marketing across TV, radio and online. Given their high similarity to commercial stations already in existence and the prominence the BBC has given these stations, it is inarguable that they will take a portion of the equivalent commercial stations’ listenership.
- **R1 Relax duplicates commercial services but it exploits the BBC’s licence fee funded status:** R1 Relax is directly competing with three commercial players; Magic Chilled, Virgin Chilled and Smooth Chill – duplicating services already available to the public. Furthermore, because ‘chill’ listeners are typically looking to relax and hence are especially sensitive to advertising, the entrance of the BBC’s ad-free service will have an even larger impact on the sector than the entrance of another commercial player carrying advertising.

[REDACTED]

It is therefore clear that the BBC is directly attacking the position already occupied by commercial radio, by aggressively pursuing younger demos, which are most valuable to the commercial sector, rather than offering more innovative ideas which genuinely create public value. This is a poor outcome for licence fee payers, with their money being used by the BBC to duplicate commercial provision and potentially ultimately reduce choice, rather than pursue distinctive new services that fulfil the BBC’s Public Purposes. Should the BBC launch more online-only services, the impact on the commercial sector will only increase.

²⁵ Radiocentre response to Ofcom’s Call for evidence on The Market Position of BBC Sounds, p.26

3.1.3 The intent to develop Sounds as a destination has a broad impact on commercial players

In addition to the above concerns, we also feel that Ofcom's theory of harm is over simplistic. The framework for assessing the market impact of BBC Sounds on the UK audio market (as well as more narrowly defined markets) should consider the overall market context and the BBC's apparent intended development path. The BBC is aiming to develop Sounds as a destination for all listening: radio, music mixes, and podcasts. Once it has listeners within the Sounds ecosystem, it aims to keep them there, with recommendations, auto start into the next programme, and aggressive cross-promotion.

This behaviour is illustrated by the BBC's approach to content sharing, in particular with regard to Radioplayer, the industry's online radio app, carrying content from both the BBC and the commercial players. [REDACTED]

[REDACTED] This is indicative of an overall BBC desire to direct listening towards Sounds, control first party data, and ensure that BBC Sounds becomes the go-to destination for all audio listening – despite the fact that doing so has limited consumer choice and stifled the BBC's ability to reach audiences who only listen via Radioplayer. Further evidence of such behaviour around podcasts is discussed in Section 3.3.5.

This behaviour is akin to that of the global digital platforms like Google and Facebook: attracting users into their ecosystem, harvesting their data, and aiming to keep them there. But this is a licence fee funded PSB, which should be focused on delivering distinctive content not already available from the commercial players. Instead, it aims to contain listeners and exclude them from access to commercial FTA content, while duplicating the material that they offer. This pattern of behaviour will necessarily harm other types of commercial listening, since there is a finite amount of listening taking place and the more the BBC is able to exclude other players, the more the commercial sector will be squeezed.

3.1 – Conclusion:

While we agree with Ofcom's conclusion that there is currently only limited evidence to show that BBC Sounds has had a significant adverse impact on fair and effective competition to date, there is still significant cause for concern. By positioning itself as a destination for listening, BBC Sounds undeniably reduces listening to the commercial sector and whilst this may not currently be manifesting as a significant adverse impact on fair and effective competition, the impact of BBC Sounds on the commercial sector is only likely to increase.

The issue is exacerbated by the recent launches of R1 Dance and R1 Relax, designed to replicate commercial offerings and win their valuable younger listeners. We understand that the BBC is likely to pursue further station launches which will add to the impact on the commercial sector.

3.2 Promotion of BBC Sounds is far beyond the means of commercial radio

We have a range of concerns with how Ofcom has approached assessing its second theory of harm: that the BBC's extensive cross-promotion of BBC Sounds is harming commercial radio's ability to compete. Ofcom has concluded that 'BBC Sounds is not contributing to the crowding out of commercial radio',²⁶ but has failed to take full account of all available evidence and potential competition issues beyond crowding out.

²⁶ Market position of BBC Sounds, Ofcom Consultation, p.36

3.2.1 Cross promotion is only part of the total marketing for BBC Sounds

We do not feel it is correct to only focus on cross-promotion and ignore the remainder of the BBC's extensive marketing campaign. As discussed in our previous submission to Ofcom, 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.²⁷ This marketing spend comprised 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. The reported ambition of this £10 million external campaign was to reach 96 per cent of Britons.

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.

While no data are published by the BBC to inform licence fee payers of on-going spending by BBC Sounds on promotional activities, it continues to promote BBC Sounds extensively with an on-going advertising campaign in addition to its cross-promotional activity. 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 was operating at a run rate costing an estimated £2.4 million per year. With the full Nielsen data for 2020 now available, we can see that our original estimate was too low; according to Nielsen, £3.2 million was eventually spent by the BBC in 2020. For the year 2021 up until 31st May, Nielsen data suggests that the BBC has already surpassed this level of spending with a total of £4.5 million – extrapolating this to the full year for 2021 gives an annual value of £10.9 million.

Whilst this may not be a significant sum for the BBC, it is a very large number for many of the players in the commercial radio sector and the trend of increasing spend over time is worrying.

3.2.2 Ofcom has been too quick to dismiss evidence about the extent of BBC cross-promotion

We provided Ofcom with detailed evidence of the level of cross-promotion of BBC Sounds within a sample week. Ofcom was too quick to dismiss this hard evidence, rather than engage with the apparent lack of transparency around the BBC's existing reporting of cross-promotional activity. We feel that the level of cross-promotion of BBC Sounds is a very important area, which has and will continue to stifle the commercial sector. Below, we reiterate and expand on the evidence previously provided.

The BBC's vast scope and scale deliver cross-promotional reach which commercial players cannot replicate

With respect to cross-promotion, Ofcom notes that 'cross-promotion activities regarding BBC Sounds can only reach audiences who are already consuming BBC content' and 'it will not attract listeners who do not currently engage with BBC services'.²⁸ Not only does this point overlook the BBC's complementary external marketing campaign, it is important to note that 91 per cent of UK adults use BBC television, radio or online per week on average²⁹ (only 4 per cent lower than the BBC was hoping to reach with its mass publicity launch). Cross-promotion on BBC services is

²⁷ <https://www.thetimes.co.uk/article/bbc-splashes-10-million-on-selling-radio-app-to-young-listeners-s69b2g9p5>

²⁸ Market position of BBC Sounds, Ofcom Consultation, p.34

²⁹ BBC Annual Report 2019/20, p.3

therefore clearly a highly effective means of using the BBC's scale and dominant position as a media provider to raise awareness of BBC Sounds and strengthen the BBC's position.

We note that Ofcom raises the point that 'many commercial radio stations have substantial cross-promotion opportunities in addition to being able to cross-promote their online platforms on their own portfolio of radio stations'.³⁰

This may be true, but the BBC has a dominant share of the radio market with 50 per cent of weekly listening,³¹ it is the largest UK TV broadcaster with 31 per cent weekly viewing share,³² and its online services are some of the most visited in the UK.³³ This privileged position and scale is clearly incomparable with what any of the commercial radio broadcasters can compete with. Indeed, the three largest commercial radio groups, Global, Bauer, and Wireless have weekly adult reach of 43 per cent, 33 per cent, and 9 per cent respectively; compared to the BBC's weekly radio reach of 61 per cent. Cross promotion between commercial radio stations is also ineffective since commercial stations typically serve distinct audience segments.

Furthermore, unlike the BBC, commercial operators suffer an opportunity cost by using their advertising inventory for cross promotion instead of revenue generating advertising. As noted below, the total UK radio industry advertising revenues in 2019 were £597m, vs the £403m the BBC spent on cross promotion. It would therefore not be financially viable for the commercial radio industry to use its advertising inventory for anything approaching the level of cross promotion undertaken by the BBC.

Finally, we note that just as the BBC has a multimedia presence, major UK commercial radio groups also have the ability to reach audiences through other owned media (e.g. Global's outdoor advertising portfolio, and Bauer's magazines), but they would also suffer an opportunity cost in using these mediums for cross promotion.

Unlike the BBC, the commercial sector cannot afford to take full advantage of its cross-promotional opportunity

The commercial radio sector is advertising funded, which means that airtime is valuable. To retain listeners, a fine balance must be retained between the time allocated to content and that used for advertising. The time used for advertising drives commercial revenues; any use of airtime for cross-promotion therefore has an opportunity cost – it could have been used for advertising instead. Cross-promotion by the commercial broadcasters therefore amounts to lost revenue; there is no such trade-off for the BBC. Therefore, not only does the BBC have a much larger opportunity to cross-promote its online audio service than any of the commercial players, it can do so without suffering lost revenue. The only 'cost' to the BBC of cross-promotional activity is that it loses the chance to promote another of its services.

The true extent of cross-promotion is likely to be far beyond what is reported by the BBC

We note Ofcom's belief that 'Radiocentre may have over-estimated the commercial value of the cross-promotion of BBC Sounds'.³⁴ This assertion is based upon the fact that we have arrived at an annual estimate of 31,304 minutes per year of cross-promotion of BBC Sounds across TV (BBC One/Two/Four) and radio (BBC Radio 1/2/3/4/5 Live/6 Music), whilst the BBC only reported 11,060 minutes of cross-promotion in 2019/20 for BBC radio and BBC Sounds combined.³⁵ But the approach taken to our estimation is robust; it is based on a one week sample of known use of

³⁰ Market position of BBC Sounds, Ofcom Consultation, p.34

³¹ RAJAR

³² BARB

³³ BBC Sites were the 6th highest ranked online property in terms of reach (87%) amongst UK online adults in 2019 – Ofcom Online Nation 2020 report

³⁴ Market position of BBC Sounds, Ofcom Consultation, p.34

³⁵ BBC Annual Report 2019/20, page 135

airtime to promote BBC Sounds – so our quantification of cross-promotion in that week is inarguable. The methodology used by Intelligent Media is set out in the box below – it focuses on quantifying the airtime associated with mentions of BBC Sounds, which represents the time which could otherwise have been used for something else.

METHODOLOGY: MEASURING THE LEVEL OF BBC SOUNDS CROSS-PROMOTION

Intelligent Media’s analysis uses the most logical definition of cross-promotion, so as to capture the volume of airtime which could otherwise be used for something else. It looks at:

- **TV:** Standalone trailers and promos, other BBC Sounds App content/podcast mentions and presenter mentions
- **Radio:** Station idents, trailers and presenter mentions

Relevant airtime is captured in an automated process using purpose-built technology. This analysis counts the full length of any trailer/mention/promo as this is the equivalent airtime that a commercial advertiser would buy (i.e. even if the words BBC Sounds are only be mentioned for two seconds out of a 26 second promo, the additional 24 talking about BBC Sounds is part of the promotion).

The Intelligent Media findings for one week’s worth of cross-promotion will understate the true total since:

- They only looked at the main TV channels and radio stations and not at any additional promotion on the minor BBC services nor on digital assets (such as BBC iPlayer and BBC podcast pre-rolls).
- Channels/stations were only monitored between 7am and 11pm and any cross-promotion that fell outside of this timeframe was not captured (any such cross-promotion would have a low audience and low associated value, but there are exceptions to this such as cross-promotion following *Match of the Day*).

The analysis found that there were 602 minute’s worth of cross-promotion across the TV and radio services monitored during the sample week, with an equivalent media value of £7.5 million. This is based on average CPTs of £2 for radio and £4.50 for TV (which are prudent assumptions), and captures the cost of purchasing the same promotional time were it purchased from a commercial provider.

To estimate the level of cross-promotion over the whole year, we simply scaled up the sample week by a factor of 52 and so we assume that the sampled week (albeit understated), is representative of the year as a whole. This approach gave total minutage of 31,304 and an estimated value of £392 million per year.

Combined with the BBC’s estimated spend on external promotion of BBC Sounds, this gives a promotional media value of £402.9 million per year; 67 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.*

* <https://expenditurereport.warc.com/media/1219/q42019pr.pdf>

This large disparity between the BBC’s reported cross-promotional minutage and the estimate based on Intelligent Media’s work can only be due to definitional differences. The BBC appears to have taken an extremely narrow view on what constitutes cross-promotion and the lack of transparency around its definition means that Ofcom is not well placed to judge the validity of the reported cross-promotional minutes, and it is certainly not well placed to dismiss robust third-party analysis which is based on an appropriate definition and reliable, automated, quantification by a global media monitoring agency. We have raised this issue of lack of transparency around BBC Sounds cross-promotion reporting on numerous previous occasions; we were told that BBC Sounds-specific cross-promotion would be broken-out in the most recent BBC Annual Report, but this was not the case.

Without clarity on how the BBC is counting cross-promotion, we can only speculate as to why the discrepancy exists; possible explanations include:

- The BBC is not counting categories of cross-promotion such as presenter mentions and idents
- The BBC only counts the airtime that relates to direct mentions of the words 'BBC Sounds' rather than the full length of the trailer/mention/promo associated with BBC Sounds.

Clearly, when assigning a value to the cross-promotion of BBC Sounds it is appropriate to consider the full duration of any BBC Sounds promotion, to properly capture the volume of airtime and associated airtime value that BBC Sounds has benefited from. This is the equivalent of the lost advertising revenue a commercial broadcaster would suffer if it were to promote its own services (on the media used by BBC Sounds) rather than sell the inventory to an advertiser.

We do, of course, recognise that using a single week of monitoring to estimate the level of cross-promotion for the entire year can only provide an estimation. But this approach has been accepted in the past; we ran a similar exercise in 2016 and the Government at the time accepted our analysis as robust, and recognised the points we made in its Charter Review response. We have no reason to believe that the week in question is likely to be unrepresentative – and just as it could overrepresent the annual average, it could also underrepresent it. In any case, the evidence we have provided undeniably highlights an issue with the transparency and scale of cross-promotion of BBC Sounds conducted by the BBC. Even if our estimate overstated BBC Sounds cross promotion by a factor of three, which is highly unlikely, the BBC would be benefiting from cross-promotional media value which would cost the commercial sector £131 million to replicate – 22 per cent of total industry advertising revenue.

Finally, Ofcom raises the concern that 'the amount of cross-promotion received by BBC Sounds in a given year may not necessarily be a reliable indication of the ongoing amount of cross-promotion'.³⁶ This is true, but the concern goes both ways; indeed, it is perhaps more likely to assume that the BBC will increase the levels of cross-promotion to support the recent launches of R1 Dance and R1 Relax, along with its plans to focus on 'bigger, world-leading podcasts',³⁷ particularly since our updated Nielsen estimates of external media spending by the BBC on Sounds illustrate an increase in promotional activity. And, in any case, this does not detract from the fact that the evidence we have presented clearly illustrates a problem with the scale of the BBC's cross-promotion and the transparency of its reporting of the same.

Ofcom's assertion that the BBC's cross-promotional activity has had no significant impact is baseless

Ofcom goes on to note that 'cross-promotion does not appear to have significantly driven listeners to BBC Sounds, away from commercial radio' and that since 'BBC Sounds users tend to use a wider variety of audio services than the overall average ... this suggests that the use of BBC Sounds does not make listeners less likely to use other services'.³⁸ Of course, such statements are redundant in the absence of a counterfactual; the reality is that we do not know the impact of the BBC's promotional campaign for BBC Sounds, but we do know that marketing works – it is a £25.4 billion per year industry in the UK³⁹ – so to conclude that the BBC's extensive marketing campaign for Sounds is ineffective is surprising. Were the BBC's cross-promotional activity more aligned with that of the commercial sector, then use of BBC Sounds would almost certainly be lower than it currently is.

As we noted in our previous submission to Ofcom, based on our estimated media value enjoyed by the BBC through cross-promotion and spent with external providers, the equivalent customer acquisition cost for the BBC has been

³⁶ Market position of BBC Sounds, Ofcom Consultation, p.34

³⁷ BBC Annual Plan 2020/21, p.26

³⁸ Market position of BBC Sounds, Ofcom Consultation, p.34/35

³⁹ AA/WARC Expenditure Report Q4 2019

£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. Clearly this is a hugely inefficient campaign, and a wasteful use of BBC air time and licence fee payer money. It is only because of the BBC's scale and the lack of an opportunity cost that it can operate such an inefficient campaign at a scale well beyond what is possible for the commercial sector.

3.2 – Conclusion:

For all the reasons presented here we believe that Ofcom should reconsider their position 'that cross-promotion of BBC Sounds is not contributing to the crowding out of commercial radio'. Ofcom should also expand its theory of harm to include additional external marketing spend.

Furthermore, it should consider the fact that the cross-promotional findings we have previously presented are more likely to be an underestimate than an overestimate, and accept that the promotional effort, however effective, can only be distorting the market when it is so out of kilter with what the commercial sector can compete with.

Greater transparency is also required regarding the BBC's definitions and assessment of cross-promotion to support analysis in this area.

3.3 As a nascent market, podcasting is particularly exposed to BBC Sounds' dominance

Ofcom's third theory of harm states that 'BBC Sounds supplies the UK podcast market with a large amount of ad-free, archive' content, making it difficult for other podcast publishers to make money'.⁴⁰ Ofcom concluded that 'the distribution of BBC podcasts through BBC Sounds is not significantly hampering other podcast publishers' ability to generate revenue'.⁴¹ We have a number of concerns about both the framework for analysing this theory of harm and the analysis contained within.

3.3.1 Ofcom ignores the BBC's commissioned podcasts and privileged access to top talent

Our first concern is Ofcom's focus on repackaged speech radio and archive content; it does not give sufficient consideration to the large volume of podcast content specifically commissioned for BBC Sounds. There are limited public data on the volume of these off-schedule podcasts produced for BBC Sounds, but in its first materiality assessment the BBC proposed producing approximately 1,500 off-schedule podcast episodes per year.⁴² Clearly this is considerable; if we assume each episode lasts 40 minutes, as most podcasts do,⁴³ then this constitutes around three hours of new podcast content from the BBC per day – on top of the podcasts based on existing BBC radio programming.

It is these expensive, high production-value, typically celebrity-led podcasts (e.g. *Grounded with Louis Theroux*, *That Peter Crouch Podcast*, *Match of the Day: Top 10*, *Evil Genius with Russell Kane*, *James Acaster's Perfect Sounds*, etc.) which drive listenership to Sounds and therefore represent a concern to the commercial sector. Clearly such content is great for listeners, but this is an example of the BBC using its access to talent – including those who make television programmes for the BBC – as a means of dominating the market. In doing so, the BBC prevents the commercial sector from accessing top talent while reducing the overall pool of talent available to commercial operators and

⁴⁰ Market position of BBC Sounds, Ofcom Consultation, p.36

⁴¹ Market position of BBC Sounds, Ofcom Consultation, p.39

⁴² BBC response to Ofcom's Call for evidence on the Market position of BBC Sounds, p.14

⁴³ <https://blog.pacific-content.com/podcast-episodes-got-shorter-in-2019-69e1f3b6c82f>

driving up prices. In a nascent – as yet hard to monetize – sector, this could be the difference between the commercial sector being able to compete and being crowded out.

It is widely accepted that listenership (and revenue) are concentrated in a small percentage of top podcasts. Podcast hosting platform Buzzsprout states that the top one per cent of podcasts on their platform receive around 15,000 downloads/episode on average; this then drops to around 1,000 for the top 10 per cent and just 100 for the top 50 per cent.⁴⁴ In their review of the podcast industry, Altman Solon state that ‘reach and ad revenue are highly concentrated in the top 15 per cent of podcasts. With select groups of podcasts dominating reach and revenue, smaller players run the risk of being squeezed out’.⁴⁵ This is exactly what the BBC is doing, squeezing out the smaller UK commercial podcast players by dominating listenership with their highest profile podcasts.

The BBC recognises the strategic importance of top podcasts, and in its 2020/21 Annual Plan stated ‘we will focus our commissioning spend to ensure we are delivering bigger, world-leading podcasts as well as long-running commissions that will become favourites for years to come’.⁴⁶ This poses a serious risk of growing future harm to the commercial sector since the BBC will prevent the commercial sector from properly developing.

3.3.2 The BBC overpays for podcast content and invests in areas offering no clear public value

In the same way that we have raised concerns about the BBC’s new online radio services duplicating the output of commercial radio to the detriment of the commercial sector and with very little added value to consumers, we believe that much of the podcast output commissioned for Sounds adds little public value whilst harming the market. Popular BBC Sounds podcasts such as *The Gemma Collins Podcast* offer entertainment value but little else. Such reality TV/celebrity-led podcasts are already offered in abundance by the commercial sector; examples include *Rob Beckett and Josh Widdicombe’s Lockdown Parenting Hell*, *Geordie Shore: The Podcast* and *Alan Carr’s ‘Life’s a Beach’* to name just a few.

As such, there would be little impact on consumer choice if the BBC ceased to commission such podcasts and that licence fee money could instead be spent on producing more distinctive and innovative content. As we have already seen with the new R1 Dance and R1 Relax stations, the BBC’s approach to podcasts is very much focused on seeking to attract younger audiences at all costs, and at the expense of offering innovative programming – even though the BBC’s focus should be on appealing to all audiences with distinctive and innovative programming. This quest to capture young listening can only be at the expense of the commercial sector, since the commercial sector is currently very good at appealing to young audiences.

Furthermore, if we consider the supply of podcasts into the market more generally, many podcasts commissioned for BBC Sounds are initially pitched to multiple UK audio players and would appeal to the commercial sector.⁴⁷ However, the BBC’s ability to attract talent with the lure of extensive promotion across all of its channels, and future potential opportunities in both audio and TV, means that commercial players have to pay more than the BBC to attract such talent – often making deals uneconomic. Although this could be argued to be beneficial to UK podcast producers, ultimately it is harmful for the industry and UK consumers as it crowds out the commercial sector and it means that licence fee money is being used to fund podcasts that would have been produced by the commercial sector – and therefore would have been available to the public anyway.

⁴⁴ <https://www.buzzsprout.com/blog/how-much-can-you-make-podcasting>

⁴⁵ <https://www.altmansolon.com/insights/global-appetite-for-podcasting-is-increasing/>

⁴⁶ BBC Annual Plan 2020/21, p.26

⁴⁷ Based upon discussions with commercial radio stakeholders

3.3.3 There is clear evidence that the BBC is dominating the podcast market

Ofcom states that ‘podcast listeners do not appear to use only BBC Sounds or be “sticky”, once there’ and goes on to state that ‘BBC podcasts are available on other platforms’ with ‘240 million global podcast downloads on third-party platforms in Q2 2020’ and that ‘the success of BBC podcasts does not necessarily translate to increased listeners on BBC Sounds’.⁴⁸ This demonstrates a misunderstanding of two key points:

- **BBC podcasts are squeezing the commercial sector on many platforms:** The BBC’s extensive supply of podcast content is competing with the commercial sector for a finite supply of listening time. While BBC Sounds is clearly the BBC’s preferred location for listening, the issue of crowding out is platform agnostic – the availability of the BBC’s podcasts across multiple platforms contributes to the problem.

Indeed, BBC podcasts frequently take up many of the top spots on the podcast charts of platforms such as Apple Podcasts and Spotify,⁴⁹ and in doing so take up considerable share of listening on these platforms which might otherwise go to the commercial sector.

- **The BBC uses its content on other platforms to redirect listeners to Sounds:** the availability of the BBC’s podcasts on other platforms is an effective means of increasing reach and serving a broader audience, in an environment where they have access to other content. But the BBC typically uses this as a means to encourage listeners to use Sounds directly, whether through cross-promotion, or direct linking as discussed previously in section 3.1.3.

Notwithstanding the above issues with Ofcom’s consideration of the BBC’s dominance, the main problem in this area is the sheer volume of the BBC’s podcast content. Ofcom’s findings disagree with this, stating that ‘UK podcast listeners are offered a broad range of content, not only from the BBC but also from the independent sector and international producers’ and that ‘BBC podcasts are popular but have not “flooded” the market’.⁵⁰ The main basis for this conclusion is that the BBC’s share of on-demand audio listening as a content producer was 39.44 per cent in Q1 2020. In most markets of course, a 39.44 per cent share would be considered significant – in a nascent market, even more so. Given the ‘tipping’ nature of nascent digital markets, there is a high risk that this leads to long run harm to competition and innovation – ultimately reducing choice for listeners. Furthermore, if this new market is as competitive as Ofcom suggests, then there is no reason for the BBC to have a similar share to linear audio listening. The 39.44 per cent share instead implies that the BBC has leveraged its position from the adjacent linear audio market into on-demand listening.

While we do not have access to the materiality assessment analysis, which is the source of this data point, we suspect that a trend analysis of the same data would show the share of BBC-produced podcasts growing considerably. This is something we believe Ofcom should look into more closely. It may be that a more detailed analysis also shows that a considerable share of listening is taken by foreign (mainly US-based) producers, and no other UK-based producer has a share comparable to that of the BBC. The 39.44 per cent is also the BBC’s share of on-demand audio listening as a whole; the BBC’s share of the podcast-specific portion of this is likely to be far higher – indeed, Ofcom notes that in 2019 it found the BBC had the highest reach in the UK of all podcast publishers.⁵¹

As Ofcom notes, podcast listening charts must be treated with caution, and part of the issue in demonstrating BBC market dominance is that there is no single industry standard for compiling charts nor an industry-accepted chart measuring performance across all platforms.

⁴⁸ Market position of BBC Sounds, Ofcom Consultation, p.37/38

⁴⁹ Market position of BBC Sounds, Ofcom Consultation, p.37/38

⁵⁰ Market position of BBC Sounds, Ofcom Consultation, p.37

⁵¹ Market position of BBC Sounds, Ofcom Consultation, p.22

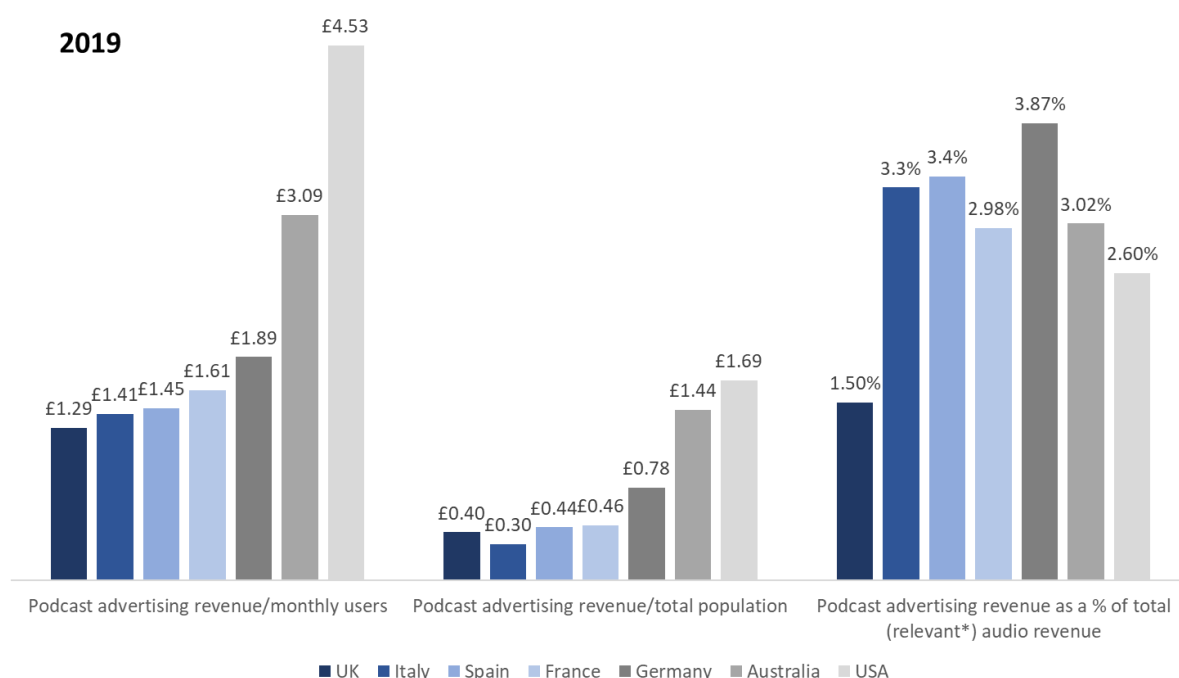
3.3.4 Available data clearly show that the UK podcast advertising market is underdeveloped

There are two areas to Ofcom’s conclusion on podcast advertising which require review: its assessment of the impact of advertising on listening – which could put ad-free BBC podcasts at an advantage – and its characterisation of advertising revenue in the UK podcast sector as ‘not particularly low compared to other countries’.⁵² The former point is less significant, but we would like to point out that the 37 per cent of podcast listeners Ofcom quotes as reporting that the podcasts they listen to contain too many adverts rises to 42 per cent when we exclude those using BBC Sounds to listen to podcasts ad-free.⁵³ Both of these numbers are large, and clearly demonstrate that the BBC has an advantage with a significant proportion of listeners by not carrying adverts. Crucially, Ofcom’s question also fails to capture the extent to which consumers have switched to Sounds or paid platforms to avoid listening to ads and now no longer feel they hear too many ads.

More important is the under monetisation of podcasts in the UK; in Section 2 we explained that we believe Ofcom’s assertion that podcast advertising revenue in UK is not particularly low compared to other countries is inaccurate, and we expand on this here as it is a key tenet of Ofcom’s view that BBC Sounds is not distorting the UK podcast market. In our original submission to Ofcom’s call for evidence we submitted data comparing podcast advertising revenue in the UK with four developed markets (Australia, France, Germany, and the US) and illustrated that the UK market was significantly weaker than these. Ofcom dismissed our findings on the basis that there is considerable uncertainty around revenues in a pandemic year, definitions of podcast listening and timeframes over which it is measured frequently differ, and revenues are assigned to the country of production regardless of where listening takes place.

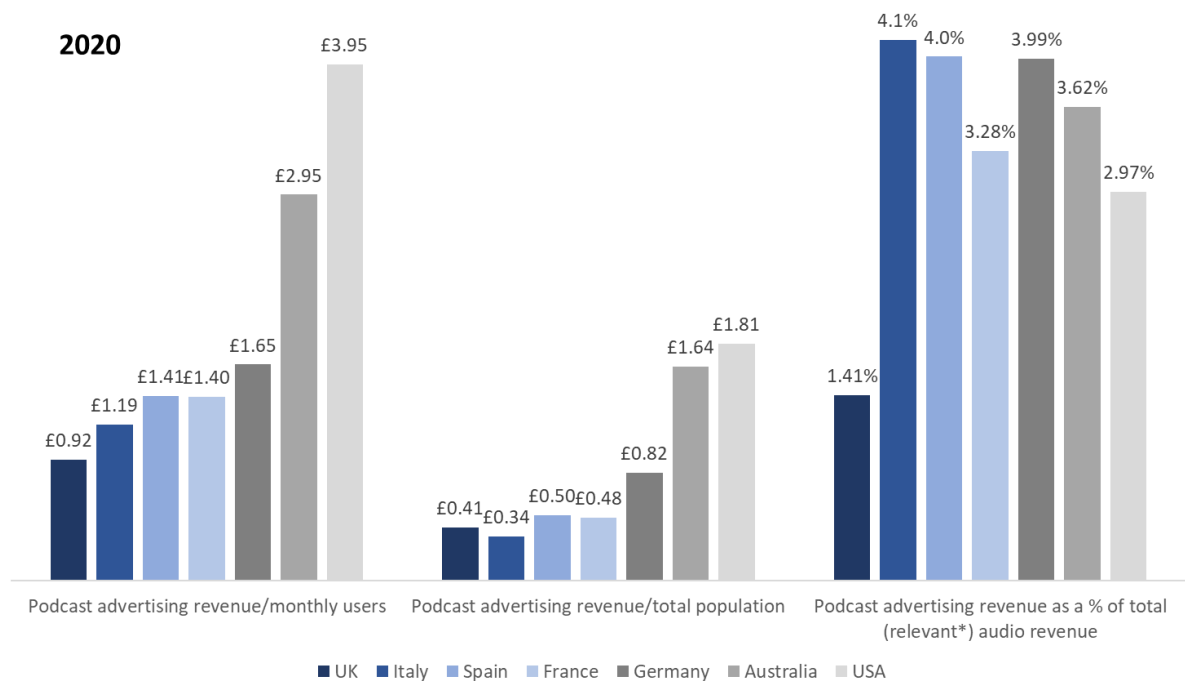
We replicate and expand upon our original findings below in **Figure 2**, showing data for 2019 as well as 2020 and with the addition of Italy and Spain (markets which Ofcom has identified as having lower total podcast advertising revenue than the UK).

Figure 2: The UK podcast advertising market in comparison to other developed nations, 2019 and 2020



⁵² Market position of BBC Sounds, Ofcom Consultation, p.38

⁵³ Ofcom Podcast Survey, March 2021



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

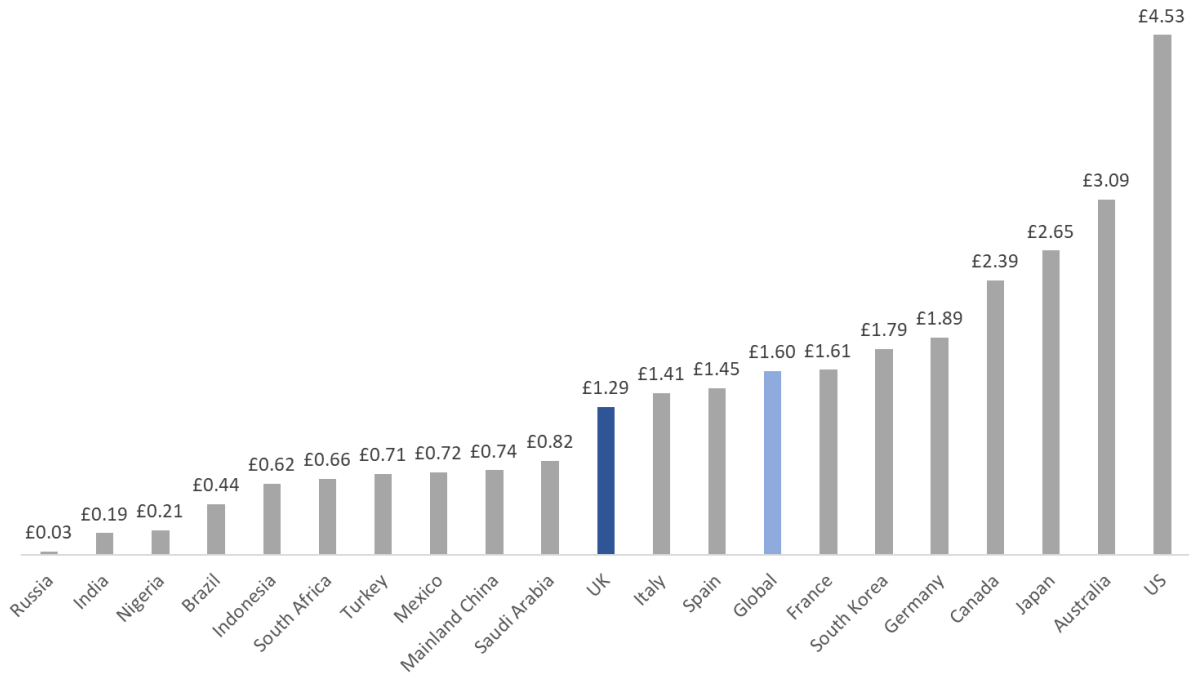
Source: PwC Global Entertainment and Media Outlook: 2020-2024, National Statistics Offices

Rather than raise untested concerns about the validity of the data, Ofcom should conduct any further work required to test its assertions and determine whether alternative sources exist and/or whether its concerns are valid. In any case, we are surprised that Ofcom raised concerns over the data given that PwC is a source Ofcom itself frequently uses. Indeed, elsewhere in its report on findings, Ofcom has used PwC podcast advertising revenues as its basis for analysis.

The figure above shows that the analysis yields the same conclusion whether you look at 2019 or 2020; that the UK podcast market is considerably underdeveloped, even compared to nations such as Italy and Spain which have lower total podcast advertising revenues. This is especially concerning given the UK audio sector is the fourth largest globally.⁵⁴ Italy has lower podcast revenue per total population than the UK but outperforms the UK in podcast revenue per monthly listeners (the most relevant metric) and podcast revenue as a percentage of total audio revenue. All other nations shown here outperform the UK in all of these key metrics. To take this analysis a step further, podcast revenue per monthly listeners is given below in **Figure 3** for all markets which PwC tracks – placing the UK tenth, and below the global average.

⁵⁴ PwC Global Entertainment & Media Outlook: 2020-2024

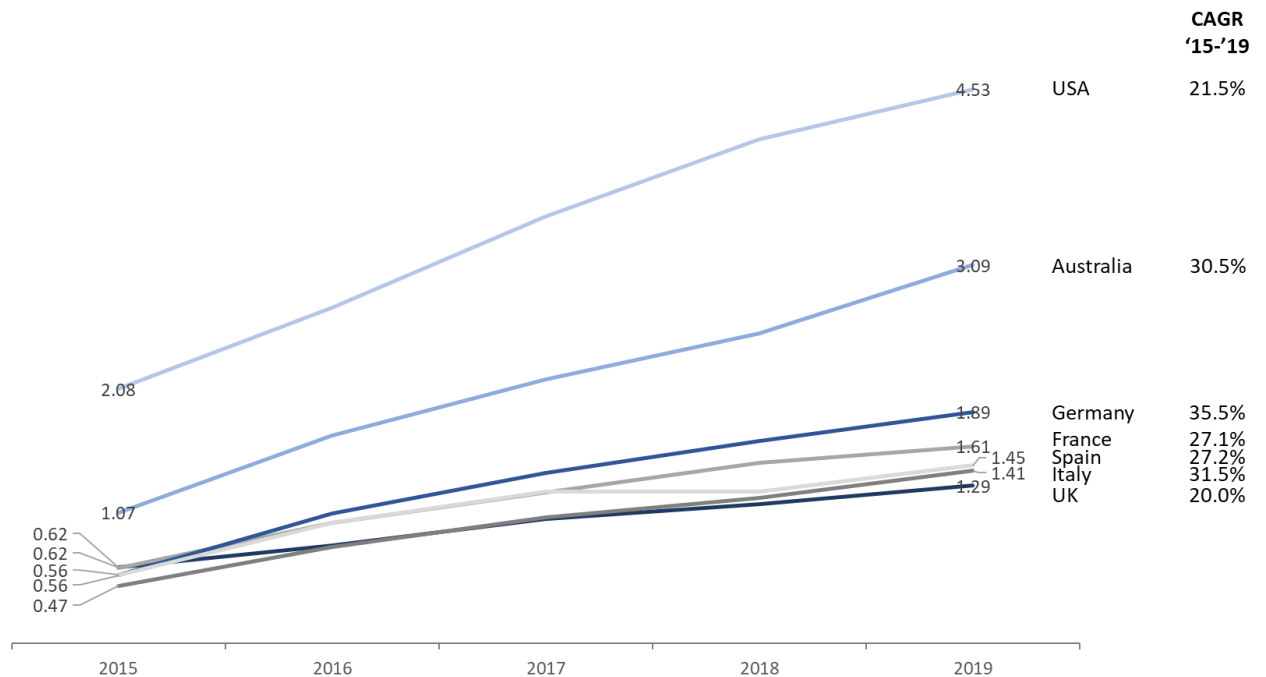
Figure 3: Podcast adverting revenue per monthly podcast listeners, 2019



Source: PwC Global Entertainment and Media Outlook: 2020-2024

Furthermore, the UK is set to fall even further behind other countries in terms of its podcast monetisation, based on average advertising revenue per monthly listener. In **Figure 4**, we can see that UK podcast advertising revenue per monthly podcast listeners has grown more slowly than that of comparable markets since 2015. Therefore, it cannot be argued that the poor state of podcast monetization in the UK is simply a result of where the UK sits on the development curve. Instead, it must be accepted that market conditions (most likely the dominance of the BBC) are stifling growth and hampering monetization.

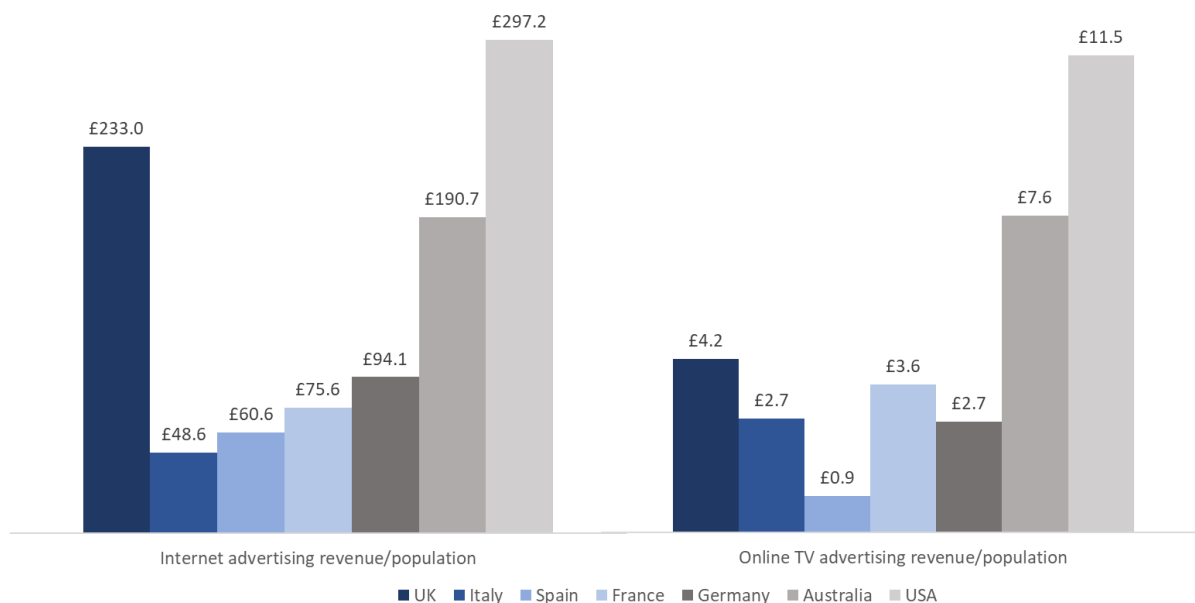
Figure 4: Podcast adverting revenue per monthly podcast listeners, 2015-2019, £



Source: PwC Global Entertainment and Media Outlook: 2020-2024

Additionally, we show in **Figure 5** that for other forms of new media (online as a whole and online TV advertising), the UK advertising market is more advanced than these EU counterparts. As such, it is especially worrying that UK podcast advertising is so far behind the curve. In particular, for internet advertising as a whole, the UK far exceeds the performance of other EU nations and this is especially pertinent given podcasts are a digital medium.

Figure 5: State of UK advertising sector in comparison to other developed nations, 2019

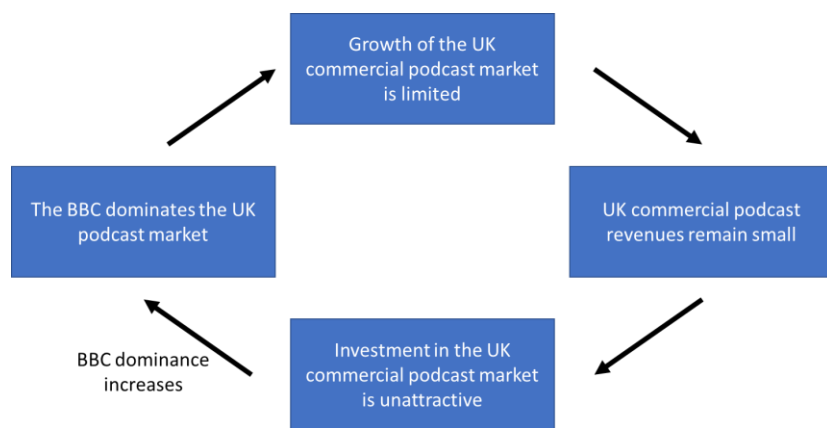


Note: Advertising revenues per total populations have been used here rather than per specific users (i.e. online TV users) for consistency across all sectors and due to difficulty in sourcing consistent usage metrics across all markets. However, per capita analysis is still robust, with only minimal differences in reach of radio and online TV across markets, and indeed is a metric Ofcom have consistently used in their international communications market reports.

Source: PwC Global Entertainment and Media Outlook: 2020-2024, National Statistics Offices

In our previous submission, we noted that by not achieving the same level of monetization as US producers, the UK commercial podcast sector currently loses out on £59 million per year – a figure which is likely to grow substantially as podcast listening becomes fully developed. Clearly, low monetisation is a bad outcome for the UK podcast market, and the fact that it looks set to fall further behind other territories is even worse, but perhaps most worrying is the negative feedback loop caused by, and perpetuating, the BBC’s dominance. Illustrated in **Figure 6**, below.

Figure 6: Negative feedback loop discouraging commercial podcast investment in the UK



Commercial radio groups are therefore disincentivised to enter the market as potential revenues are very small – further perpetuating the BBC’s dominance and stifling growth. This is particularly problematic because advertising revenue does not just happen; commercial broadcasters need to educate advertisers to consider podcasts as part of the marketing mix. This is supported by having a critical mass of podcasts to offer to advertisers. It means the commercial sector needs to invest time and money ahead of a return to make this work and grow the market. But with little prospect of doing so, given the BBC’s extensive supply of podcasts, monetisation of podcasts could remain in the negative feedback loop described above.

There are also limitations to Ofcom’s other arguments around podcast monetisation in the UK

Ofcom notes the US as a market which produces ‘content with global appeal’ and hence has large podcast advertising revenues. Of course, this is not really an explanation of the UK’s inability to monetise podcasts, since there is no reason UK podcast producers should not be able to do the same, as has been the case in the TV, music, and film industries. Indeed, the UK’s TV production sector is one of the most successful in the world and continues to grow rapidly as we export our creativity around the globe.

Ofcom also notes that advertising is not the only way the commercial sector can monetize podcasts and that ‘a significant percentage of podcast listeners (34%) would be happy to pay to subscribe to their favourite podcasts’.⁵⁵ However, it should be noted that reported behaviour is typically well ahead of the observed outcome when the question involves additional spending,⁵⁶ and subscription podcasts are currently a seldom used model;⁵⁷ we were unable to find data on its prevalence. Where subscription podcasts do exist, of course, is within global audio streaming services such as Spotify and Amazon music, where they are an increasingly important part of the audio offer. Clearly the UK commercial sector is not well placed to compete for subscription revenues with a bundled global audio service – and so advertising is likely to remain the most important model for UK commercial podcasts.

3.3.5 The BBC’s additional anti-competitive practices should also be addressed

We believe that the above clearly demonstrates a significant adverse impact on fair and effective competition, however, there are additional mechanisms by which the BBC is distorting the market and affecting competition.

We discussed earlier that the BBC’s cross-promotion and marketing activity cannot be matched by the commercial sector; this also applies to podcasts specifically. Clearly the UK commercial podcast sector is unable to match the £402.9 million annual marketing activity of BBC Sounds generally. From the Intelligent Media report we are able to quantify the share of TV cross-promotional time devoted to podcasts specifically as 14 per cent of the total. We are not able to break out podcast mentions specifically for radio, due to differences in the data collection used by Intelligent Media, but assuming 14 per cent of radio cross-promotional time was also allocated to podcasts (likely an underestimate), then podcasts on BBC Sounds received an estimated annual marketing value of £55 million – more than double total UK podcast sector advertising revenue in 2019.

The BBC also engage in ‘windowing’ (i.e. granting BBC Sounds a limited period of exclusivity before making BBC podcasts available on other platforms) as we referenced in our previous submission⁵⁸ and demonstrated by the

⁵⁵ Market position of BBC Sounds, Ofcom Consultation, p.38

⁵⁶

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/209107/greenbook_valuationtechniques.pdf, p33

⁵⁷ Both Apple and Spotify have recently released tools that will enable producers to monetize their podcasts within these platforms via subscriptions and this could mean subscription becomes a viable and widespread model in the future. However, whether this will be the case remains to be seen – it is likely to be hard to convince podcast listeners to pay for content they have been consuming (with or without advertising) for free for years

⁵⁸ Radiocentre response to Ofcom’s Call for evidence on The Market Position of BBC Sounds, p.33

BBC's current marketing campaign stating certain football podcasts are only available on Sounds. This practice forces consumers to use BBC Sounds if they wish to access content when it is first available. There are two issues with this from a fair and effective competition point of view:

- **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 further podcasts and other types of BBC audio content to listeners.
- **Restriction of licence fee payers' access to content:** 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.

As we discussed in Section 3.1.3, the BBC's approach is designed to establish BBC Sounds as a destination at the expense of other platforms. This further reduces potential returns to commercial providers, further stifling investment and reducing choice. In the past the BBC has also removed its podcasts from certain Google products,⁵⁹ forcing those wishing to listen to BBC podcasts to do so on BBC Sounds (or other platforms which retained access). At the time the BBC claimed this was because Google was directing consumers to its own products, limiting choice for consumers and contrary to the BBC's Distribution Policy.⁶⁰ Yet the BBC's own retaliatory action also limited consumer choice. The BBC has indicated it intends to continue to engage in such practices – stating in its most recent Annual Plan that it 'will focus on commissioning exclusive content' for Sounds.⁶¹ Clearly this will have a negative impact on competition (across all of audio) and is in breach of the Distribution Policy.

3.3 – Conclusion:

Ofcom concludes its analysis of this third theory of harm by stating that 'the audio sector is developing rapidly ... [and] this might call for a future assessment of how BBC Sounds has evolved and how it may have impacted competition'.⁶² This is a saddening admission that the impact of BBC Sounds on competition is likely to increase, but rather than proactively regulating, it will only act after the nascent commercial podcast industry has suffered further harm. Ofcom goes on to say that 'the BBC and commercial radio are likely to face increasingly strong and direct competitive challenges from global players such as Spotify, Apple, YouTube and Amazon/Audible'⁶³, which gives even more reason to regulate now and investigate the market impact with a BCR.

Radiocentre's stance is that this theory of harm should be extended to take into account the specific effect of top BBC podcasts on the market, and the listening to of BBC podcasts on platforms other than Sounds. Ofcom should also consider other negative implications on the market, such as the difficulty in convincing advertisers to spend on podcasts. There is sufficient evidence from the available data and the BBC's behaviour to illustrate that existing harm exists and is likely to grow. Even if it is not currently possible to definitively show dominance in terms of share of listening, it is inarguably clear that Sounds is having a negative impact on the market in terms of stunted revenues, with the problem exacerbated by the BBC's anti-competitive practices.

Therefore, we believe that there are reasonable grounds in this instance to argue that BBC Sounds is having an adverse impact on fair and effective competition, and that Ofcom should reconsider its provisional stance.

⁵⁹ <https://www.bbc.co.uk/blogs/aboutthebbc/entries/d68712d7-bd24-440f-94a0-1c6a4cdee71a>

⁶⁰ http://downloads.bbc.co.uk/aboutthebbc/insidethebbc/howwework/policiesandguidelines/pdf/bbc_distribution_policy.pdf

⁶¹ BBC Annual Report 2021/22, p.23

⁶² Market position of BBC Sounds, Ofcom Consultation, p.38

⁶³ Market position of BBC Sounds, Ofcom Consultation, p.38

4 Scrutiny and transparency of BBC Sounds

In this section we respond to Ofcom’s questions on scrutiny of BBC Sounds, first providing our view on whether the threshold to consider a BCR has been met, and then our views on which future changes to BBC Sounds could raise further competition concerns:

Q5: Do you agree with our provisional view that the test for opening a BCR in relation to BBC Sounds is not met?

Q6: Do you agree with our view above on when changes to BBC Sounds might raise competition issues?

We then address **Question 7** of Ofcom’s consultation document:

Q7: What further detail, if any, would you expect to see in the BBC’s Annual Plans and public announcements to enable stakeholders to meaningfully comment on its plans for BBC Sounds?

All of the issues identified and evidenced in the previous parts of this document demonstrate that the BBC’s development of BBC Sounds and its conduct and approach to expanding BBC Sounds is a problem for the UK commercial sector and, as a result, a threat to consumer choice. Proper scrutiny and transparency around the BBC’s objectives and how BBC Sounds delivers public value is therefore crucial. We are pleased to see that Ofcom appears to be in agreement that greater transparency is important, though we believe that a BCR would be the proper means of testing the impact of BBC Sounds more fully. We address each issue relating to scrutiny and transparency of BBC Sounds in turn below.

4.1 A BCR should be triggered and/or further scrutiny is needed

We believe that there is more than sufficient evidence to trigger a BCR. Furthermore, it is clear that more scrutiny of BBC Sounds is needed and that ex-post regulation is unhelpful since it could lead to long term and entrenched disruption to the UK audio sector.

4.1.1 We believe there is sufficient evidence to pass the threshold for a BCR

Ofcom has taken the view that none of its identified theories of harm provide ‘reasonable grounds to believe that BBC Sounds is having a significant adverse impact on fair and effective competition’ and hence ‘the test for launching a BCR in relation to BBC Sounds is not satisfied’.⁶⁴ In light of the objections in terms of framework and analysis that we have raised in this report, we believe that Ofcom should review this position. We believe we have clearly demonstrated that both the cross-promotion and podcast theories of harm provide ample evidence to show there is a significant adverse impact on fair and effective competition.

Furthermore, we believe that the theories of harm should be treated in totality rather than assessed on an individual basis. When we consider all of the theories of harm together, there is clear evidence in all three theories of harm to suggest that BBC Sounds is having a significant impact on fair and effective competition, and significant concern around the impact of the BBC in terms of the BBC’s crowding out of the commercial sector.

⁶⁴ Market position of BBC Sounds, Ofcom Consultation, p.41

4.1.2 Alternative mechanisms available to Ofcom are unlikely to suffice

We recognise that even where reasonable grounds exist, opening a BCR would still be at Ofcom's discretion – given resource requirements. We would, however, like to stress that given the rapid growth of the online radio and podcast industries, it is highly likely that the adverse impact of BBC Sounds will continue to increase – especially as Ofcom expects 'BBC Sounds to evolve further'.⁶⁵ Now is therefore the time for proper scrutiny, before it is too late; too often have we raised issues with Ofcom and a significant period of time has passed before any action has been considered. We are concerned that alternative responses will not suffice; in particular, Ofcom suggested that increased transparency and industry engagement could be a solution.⁶⁶ Whilst we welcome these things, we do not believe they are a solution to the adverse effects on competition BBC Sounds is having/will continue to have.

- Increased transparency could be useful in ensuring that new service launches such as R1 Dance are recognised as such and subject to an appropriate regulatory process.
- Industry engagement is only useful if it is taken on board and evidence is properly considered. In our previous submission we raised concerns around both the BBC's transparency and industry engagement:
 - The industry has seen numerous FOI requests rejected
 - There has been a general lack of correspondence by the BBC with us and our members, and with Ofcom
 - Despite being aware of continued industry concerns, the BBC has continued this track record with a lack of adequate transparency/engagement around the launch of R1 Relax

Given the BBC's clear preference for a lack of transparency and its poor track record on industry engagement, we are extremely sceptical that these measures would be enough to prevent continued and growing harm to the sector. Furthermore, we are concerned that the BBC will continue to find loopholes and deliver only the bare minimum; more concrete regulation is therefore needed to ensure there is proper engagement on these important issues and continued and growing harm is prevented. To support this, we would propose clear regulatory conditions in several areas:

- **Cross-promotional reporting requirements:** Ofcom should ensure that cross-promotion of BBC Sounds is reported in its own right and such cross-promotion is clearly and broadly defined.
- **Limitations on cross-promotion:** Once this transparency is in place then Ofcom should consider placing limits on the amount the BBC is able to cross-promote the Sounds platform. In a similar vein, the BBC should also be required to report the extent of its external marketing.
- **Genre or format based regulatory conditions to support the delivery of distinctive public value content:** regulatory conditions should be used to encourage the BBC to deliver innovate programming whilst targeting all audiences, rather than allowing it to duplicate commercial services and aggressively compete for young audiences. These regulatory conditions should be on a service-by-service basis to ensure that they are not addressed through programming on obscure services or dayparts.

Ultimately, we believe these regulatory conditions are needed to ensure BBC Sounds offers a distinct service and public value, and that the BBC prioritises these metrics over reach, given that the BBC already has a roughly 50 per cent market share of the UK radio sector and already has mass appeal and reach. Such regulatory conditions could help ensure that the BBC gives a platform to under-represented voices, and prioritises the development of new talent, with new types of content which is not provided by the commercial sector (e.g. social action content for

⁶⁵ Market position of BBC Sounds, Ofcom Consultation, p.42

⁶⁶ Market position of BBC Sounds, Ofcom Consultation, p.42

younger demographics which is currently underserved rather than replicating the output of many commercial stations).

4.1.3 The ex-post approach to regulation is not appropriate

Although this may be beyond the scope of Ofcom's current enquiry and is likely to be addressed in future regulatory projects, we would again like to stress that the BCR process suffers by being too focussed on the current impact of BBC services. This results in an *ex-post* system of regulation rather than *ex-ante*, as it requires proof that damage has been done – proof which frequently does not come to light until years after the damage itself. By the point at which damage is recognised, it is very hard, or even impossible, to reverse and create healthy competition. Ofcom itself makes an admission of the failings of this system when it states that 'the audio sector is developing rapidly ... [and] this might call for a future assessment of how BBC Sounds has evolved and how it may have impacted competition'.⁶⁷

Organisations such as the CMA have recognised that in rapidly evolving digital markets acting later can carry heavy costs, and this was one factor in setting up the Digital Markets Unit,⁶⁸ and indeed BBC regulation has traditionally relied heavily on extensive *ex ante* measures which makes inaction around regulation of BBC Sounds and (and BBC Online in general) especially puzzling. The CMA recognises that such markets have the ability to 'tip' if there is one or few dominant players (i.e. BBC Sounds) and for interest/usage to become further concentrated in these players. They also recognise a number of other potential harms if these nascent digital markets are not adequately regulated such as the impact of 'default behaviour' and issues stemming from unequal access to data.⁶⁹

4.1.4 A framework needs to be in place to ensure regulatory conditions are monitored and enforced

Hand-in-hand with an *ex-ante* approach is the need for regulatory framework to ensure that once Ofcom has made a ruling on BBC Sounds, this is followed. In the past there has been a significant time lag between BBC action, Ofcom reaction and continued flouting of commitments made by the BBC. For example, we have previously raised the issue of the lack of transparency around BBC Sounds' cross-promotion and Ofcom has agreed with us and committed to ensuring reporting is more robust in the next Annual Report, only for us to find a year later that there is still a considerable, if not greater, lack of transparency. The burden of responsibility to ensure BBC Sounds follows its regulatory conditions should not be upon the commercial sector.

4.2 Future changes to BBC Sounds require careful scrutiny

We appreciate that Ofcom has opened the present enquiry in recognition of the number of incremental changes that have been made to BBC Sounds since launch and we would like to see increased scrutiny of future changes to prevent a similar situation in the future.

4.2.1 What constitutes a material change should reflect industry opinion

We agree that 'most changes to BBC Sounds' functionality, such as additional features (e.g. alarms, ability to subscribe etc.) and greater personalisation, would be less likely to require greater scrutiny'.⁷⁰ Furthermore, we

⁶⁷ Market position of BBC Sounds, Ofcom Consultation, p.38

⁶⁸ The CMA's Digital Markets Strategy

⁶⁹ Online platforms and digital advertising: Market study final report, CMA

⁷⁰ Market position of BBC Sounds, Ofcom Consultation, p.42

welcome Ofcom's suggestion that 'closer scrutiny' is likely to be required of 'the addition of new types of content or of content pertaining to a new or embryonic market area'.⁷¹ However, we do note that in the past this scrutiny has been lacking, especially around the recent launches of R1 Dance and R1 Relax. Furthermore, these changes are not always in keeping with those agreed with Ofcom, as evidenced by the inclusion of exclusive content on R1 Dance.⁷² We are still of the opinion that these 'streams', as the BBC refers to them, are in fact substantive new services (with there being little distinction between a broadcast and online radio station) and that they should be recognised as such.

Any new services such as these should always require a Public Interest Test (PIT) and potentially a BBC Competition Assessment (BCA) by Ofcom. Whether a change is material must be assessed on the basis of objective factors so as to provide a rigorous approach and certainty to the wider industry. Such factors will include the likely content of the service, its projected listener numbers, how it will be presented (e.g. on the Sounds Wheel), and the extent to which it competes with existing services.

Furthermore, any proposed changes should always be presented with transparency and proper engagement with the industry. A defined process should be put in place to ensure this industry consultation truly does take place, and that the BBC is not able to claim such engagement has occurred when it clearly has not (as has been the case in the past). Clearly there is also an issue where immaterial changes might add up to material changes – we raised this point in our original call for evidence, because it is apparent that the BBC has pursued a series of small incremental changes to avoid triggering proper scrutiny. For this reason, the net effect of smaller changes should be taken into account on a periodic basis. Assessing each change on its own fails to capture the overall impact of a raft of new services which will collectively attract very significant listener numbers.

4.2.2 There is a further need for an improved regulatory framework around changes

Again, we have concerns with the framework for assessing materiality, which may go beyond the current scope of Ofcom's enquiry, but that we believe are pertinent to mention here. Currently, any change to BBC Sounds is assessed as material in the whole context of BBC Online. Given BBC Sounds constitutes just a fraction of BBC Online, and any change to BBC Sounds affects only a portion of the audio platform, it seems to us that such a framework for assessment presents a risk that no change to BBC Sounds could ever be considered material. Clearly this is a flawed process given the size and importance of BBC Sounds. The truth is that the current framework is a legacy from a time when online services were seen as peripheral to the mainstream services then provided by the BBC. Everything has changed since then.

This is evidenced by the fact that of the three materiality assessments the BBC has carried out in relation to Sounds, not a single development was considered material:⁷³

- The development of BBC Sounds as a replacement for iPlayer Radio, off-schedule music mixes and off-schedule podcasts;
- The further development of BBC Sounds regarding commercial radio aggregation, podcast aggregation and a limited music streaming service; and
- The launch of the Radio 1 Dance stream (and seemingly to date, the Radio 1 Relax stream).

⁷¹ Market position of BBC Sounds, Ofcom Consultation, p.43

⁷² Radiocentre response to Ofcom's Call for evidence: Market position of BBC Sounds, p.17

⁷³ BBC response to Ofcom's Call for evidence: Market position of BBC Sounds, p.13

To address this, BBC Sounds needs to be recognised as its own service under an updated Operating Licence – something which we understand will be discussed as part of Ofcom’s Future Operating Licence Review, to be launched this summer.

4.3 BBC Annual Plans and public announcements need to be more complete

We appreciate Ofcom’s acknowledgement that ‘the BBC need[s] to be more proactive in engaging consistently with others in the industry about its plans’ and that it can do this through improved Annual Plans and public announcements, and should additionally ‘seek comments from stakeholders on potential changes to its services, particularly when plans are developed outside the Annual Plan cycle’.⁷⁴

Radiocentre would like to see the following further detail in such reporting:

- True indications of plans with likely timelines rather than vague hints. Where significant plans are included in the Annual Plan/Annual Report, they should have a concurrent press release
 - In both the 2018/19 and 2019/20 Annual Reports, for example, the BBC referenced plans to introduce a ‘limited music streaming service’⁷⁵ but there has been no mention of this in any other BBC material and Radiocentre and other industry stakeholders are still in the dark as to whether the BBC intend to pursue this plan and if so its likely timing
- Clarity on the objective of BBC Sounds and how it contributes to the BBC’s public purposes
- How Sounds’ performance is measured against the stated objectives – and details of this on-going performance measurement
- Comprehensive cross-promotion figures (with BBC Sounds specifically broken out from radio) and with an accompanying clear definition of cross-promotion

We would also like the BBC’s materiality assessments to be available to view by industry stakeholders. Currently we must take it on good faith that these assessments are rigorous and fair.

This improved reporting/engagement is essential as up until now the BBC has failed to engage in meaningful consultation with us. For example, Radiocentre were provided with insufficient detail on the launch of R1 Dance, and more recently we have not been provided with requested information relating to the launch of R1 Relax; despite much of this information (such as proposed name of the service, and likely content mix and scheduling) being very basic material readily available to the BBC. In the recent instance of R1 Relax, the BBC also ignored Ofcom’s suggested process for engaging with stakeholders and launched the new service with little warning, thus preventing Radiocentre and other stakeholders from providing their views to Ofcom on the likely impact on competition and ensuring that stakeholder engagement was impossible. Only following lobbying from ourselves did Ofcom undertake a more rigorous review – some considerable time after the service launched – and still on-going.

4.4 BBC Sounds performance data should be publicly available and granular

We note that Ofcom has not explicitly asked for comments on the availability of BBC Sounds performance data, and that it is ‘continuing to explore with the BBC the additional information that it can make available regarding the

⁷⁴ Market position of BBC Sounds, Ofcom Consultation, p.43

⁷⁵ BBC Annual Report 2019/20, p.120

performance of BBC Sounds'.⁷⁶ However, Radiocentre's view on this is that as a minimum the BBC should include in its Annual Reports the same metrics by which it measures the performance of other services. These are:

- Content costs (split out between talent, production and right/royalty spend)
- Reach
- Total weekly plays
- Time spent listening to service each week
- Cost per listener hour
- Listener demographics
- Listening by content type (live/ on-demand; music/ speech)
- Most popular content (live radio shows; podcasts; music mixes)

We would also like to see improved performance reporting in the BBC's quarterly Sounds performance press releases. Such improved reporting would include clearer definitions, monthly active listeners (MAUs), and total listener hours across all audio types. These reporting requirements should be set externally by Ofcom and included in the Operating Licence.

⁷⁶ Market position of BBC Sounds, Ofcom Consultation, p.44

5 Collaboration with Third Parties

In this section we seek to answer **Question 8** of Ofcom’s consultation document:

Q8: Do you agree that further collaboration between the BBC and other players could bring benefits to the UK radio and audio sector?

Ofcom suggests that ‘there may be benefits in the BBC revisiting its plans to include third-party radio stations on Sounds, as this could bring more listeners to BBC Sounds and provide UK radio companies and stations with a new means of distribution’.⁷⁷ Whilst we agree that there are potential benefits that could arise from adding commercial content to BBC Sounds, we feel that the potential negative impacts of such collaboration outweigh these, including:

- Commercial players would have less control, and likely less visibility, over user data – a key component of effectively monetizing online listening and effective strategy
- Without adequate regulation there would exist the possibility for the BBC to promote its own content over that of commercial radio
- It would further strengthen BBC Sounds’ position as a one-stop destination for all audio listening –allowing the BBC to become a gatekeeper for online audio content
- Monetization of content would likely be hampered by the terms the BBC offered to commercial radio players
- The public may take issue with providing commercial radio content on a BBC branded platform (a problem that does not arise when content is bundled on independent platforms such as Radioplayer)
- As Ofcom acknowledges, the commercial sector may be disincentivised to invest in new platform functionality, thus stunting innovation, entrenching Sounds as the only place for online radio, and harming consumers

If the BBC were open to sharing data fully with the commercial sector, allowing integration of commercial content with their players, not restricting the amount or type of advertising on commercial content in any way, and agreeing to promote all content equally then the idea of collaboration could be appealing and should be explored in greater detail.

However, it is also worth noting that Radioplayer already exists as a destination where consumers can listen to both commercial and BBC radio live on the same platform. This would arguably be the more logical place to collaborate – promoting a jointly-owned single platform for on demand as well as live audio content. Indeed, we have previously had discussions with the BBC along these lines, prior to the launch of BBC Sounds. But it was clear from these discussions that the BBC preferred to pursue an owned-platform strategy, so that it could leverage its brand, control the data, and aim to outcompete the commercial players as a destination for audio in a manner similar to that of the global tech giants.

Given the above concerns about supporting a BBC branded service, we do not believe that collaboration should extend to including third-party radio stations on Sounds, though we do, of course, believe it is of paramount importance that the BBC engages in constructive dialogue with the commercial sector with regards to any further development of BBC Sounds.

⁷⁷ Market position of BBC Sounds, Ofcom Consultation, p.45