

Consultation response

Question 1: Do you agree with our provisional view of the market? Please provide evidence in support of your answer.

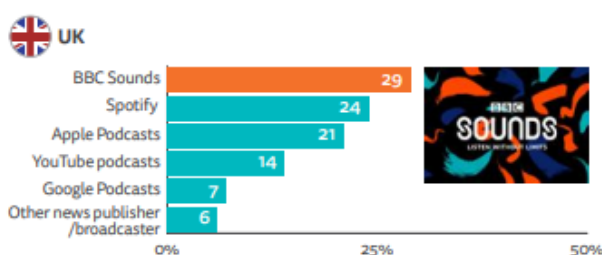
Wireless disagrees with Ofcom’s provisional view of the market. Our view of the market is as set out in our response to Ofcom’s original call for evidence. In responding to this consultation, we have not substantially repeated analysis that was presented in that submission, however to summarise, our previously submitted evidence demonstrated that BBC Sounds is highly challenging for independent providers to compete against.

A key aspect which we believe that Ofcom has failed to consider properly concerns the BBC’s position in the spoken word audio market. This is a hugely valued area of UK media, making significant contributions to news, sport and cultural content provision amongst a broad range of audience groups. The BBC enjoys a significant audience share (in excess of 80% according to RAJAR), and benefits from significant financial, distribution and promotional resources. These advantages are particularly pronounced in relation to the BBC’s speech radio operations and provide a crucial context in considering BBC Sounds.

The BBC often invokes global technology platforms in justifying its own technology investments. In fact, the evidence we submitted in response to the initial call for evidence demonstrated that BBC Sounds is now implicated in many of the potential harms associated with major technology platforms. This is on account of the scale and UK market position it has achieved since launching in 2018 - as well as the BBC’s lack of success in involving industry partners or in using Sounds as a vehicle to signpost the availability of independent content.

Our evidence demonstrated that BBC Sounds has benefited heavily from the BBC’s unique cross-promotion, technology and content resource advantages, as well as its ability to invest without the need to demonstrate commercial returns. Accordingly BBC Sounds is now one of the most used audio apps in the UK – with a very sizeable lead over other UK broadcasters’ equivalent products. Our submission demonstrated that BBC Sounds is now functioning as an effective walled garden, exacerbating distortions and perpetuating an unequal playing field.

Updated research published in the Reuters Digital News Report 2021 indicated that BBC Sounds has extended its lead as the most used podcast app in the UK, with 29% uptake amongst UK podcast listeners, compared with 24% for Spotify and 21% for Apple (pictured below). Notably, BBC Sounds is also unique within this ranking as a podcast app which exclusively provides spoken word audio content from a single provider – and that being the provider that separately commands the lion’s share of the live radio market.



A key finding of Ofcom's market assessment was that commercial radio has been more successful than BBC Sounds at gaining listeners online, particularly among younger age groups, pointing to data that show that while overall radio listening hours are relatively evenly split between the BBC and commercial radio (50% vs. 48% in Q1 of 2020), commercial radio accounts for 54% of all online radio listening hours compared to 41% for the BBC.

An obvious flaw in this analysis is that it does not take into account the fact that all BBC radio services are available on multiple platforms, and/or that the BBC's FM and DAB distribution is significantly more extensive than anything enjoyed by commercial radio services. These structural differences in distribution on their own mean it is not at all surprising that listeners to BBC services will favour listening to BBC services on the more traditional distribution platforms, and that the demographic profile of its audiences will in turn reflect these distribution arrangements. Ofcom's analysis fails to take these issues into account, resulting in a fundamental lack of market insight.

A further structural weakness of Ofcom's market assessment is its treatment of commercial radio as a homogenous whole that can be compared 'in aggregate' to the BBC. This characterisation of independent sector ignores how the BBC looks from the real-world perspective of actual commercial radio operators. Commercial radio is not a homogenous entity, rather it is a collection of two very large players, Wireless, and a long tail of independent operators, each with very different portfolios, strategies and priorities.

A more accurate and nuanced comparison would therefore be to place the absolute scale BBC's operations in context to the absolute scale of each individual commercial radio operator, separately, rather than lump them together. Notably, of the commercial radio players, only Global and Bauer have attempted any form of aggregation strategies, comparable to BBC Sounds, and with much more limited success than BBC Sounds. This speaks to the respective scale that each provider has.

Ofcom also failed to understand the impact of the BBC in the podcast market. Ofcom's assessment was that advertising revenue generated by UK podcasts appeared comparable to other markets; however Ofcom made this statement based on very limited data or evidence. This constitutes a key failing of evidence-based assessment, resulting in an absence of an appropriate counter-factual understanding as to what the size of the UK podcast advertising market would be in the event a large-scale, publicly-funded operator (i.e. the BBC) was not operating in it.

These failings by Ofcom mean it has not fully understood the market, which in turn have affected its assessment of the impact of the BBC's operations.

Question 2: 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.

By its own admission, Ofcom failed to separate out speech and music radio when considering the effect of BBC Sounds on competition, citing a lack of data to make such an assessment. However, as the UK regulator, Ofcom has the powers to request this data from market participants. In Wireless view, Ofcom's provisional view is insufficiently informed by hands-on operational experience and places over-reliance on economic theory and limited desk-based research.

Evidence of speech and music based audio having distinct characteristics and competitive environments can be seen in the way that publishers and content providers treat them as distinct consumer markets and product ecosystems – for example Bauer Media specialises in music based radio whereas Wireless specialises in speech based radio.

Speech radio also has very distinct production inputs, operating a downstream supply chain consisting for example of production companies, rights, independent producers and contractors, speech broadcasting talent, voiceover artists, narrators, suppliers of production library music, suppliers of news archive and footage material.

From a consumer product perspective, it is also notable that whereas Spotify has sought to integrate podcasts within its core music streaming application, investing huge sums of capital in building its podcast offering so as to attract more subscribers to its core music proposition, Apple, Amazon and Google all maintain distinct music and podcast applications.

Ofcom's failure to use its powers to collect appropriate data and to engage with the practical realities of the respective music and speech audio markets has in Wireless view' resulted in a failure by Ofcom to avail itself of the evidence to make an informed assessment on the competitive effect of BBC Sounds on speech radio in the commercial sector.

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In relation to the podcast market, Ofcom's analysis also appears not to acknowledge properly the commercial realities of independent audio businesses. It is important not to confuse the presence of new commercial services in a market with a presumption that these services are commercially viable, or that they will not need more start-up funding to cover an extended period of early-stage losses before reaching breakeven, that is if they ever do so in the face of competition from the BBC.

Our practical experience of the podcast market is that commercial sustainability through external revenue generation remains a highly challenging preoccupation for independent spoken word audio publishers. ✂.

Question 3: Do you agree with our analysis and provisional conclusions about cross-promotion of BBC Sounds? Please give evidence to support your views.

In the absence of any data (published or otherwise) from the BBC to quantify the extent of cross-promotional support enjoyed by BBC Sounds, we find it untenable that Ofcom would have any rational basis for reaching a conclusion on this topic.

Cross-promotion of BBC Sounds is extensive across BBC services, with the prominence and consumer impact of this messaging also benefiting from the absence of commercial advertising on these services.

Question 4: 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.

As set out earlier in this consultation response, Ofcom has failed to build up an accurate counter-factual picture of what the UK podcast market would look like in the absence of the BBC. Further, Ofcom again bases its conclusions here on incomplete data, fails to compare the absolute scale of the BBC's operations to other commercial participants, and confuses market participation with assumed commercial viability.

Question 5: Do you agree with our provisional view that the test for opening a BCR in relation to BBC Sounds is not met?

Ofcom has failed to understand the market, and has used imperfect insights as the basis for its market impact assessment. Ofcom, therefore, has no reasonable grounds to believe that BBC Sounds is not having a significant adverse impact on fair and effective competition, especially in the presence of numerous commercial participants who are making representations to Ofcom that the BBC is having a crowding out effect.

Aside from this, Ofcom's discretionary powers to initiate a BCR (whether in the presence of 'reasonable grounds' or not) continue to present a roadblock to those seeking redress against harm suffered by the BBC's activities. Wireless strongly believes that it would bolster the confidence of stakeholders for Ofcom to prioritise resources in this area.

Question 6: Do you agree with our view above on when changes to BBC Sounds might raise competition issues?

We disagree with Ofcom's view that 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 closer scrutiny, as this ignores any assessment of the R&D investment required to design and implement such updates, or a rational commercial operator's ability to justify such expenditure.

We also disagree with Ofcom's statement that any "changes to the content available on BBC Sounds may be more difficult to assess", since we judge that Ofcom should have the capability to undertake sophisticated assessments that are informed by practical market insight concerning the BBC's effects on independent provision and entail the exercise independent judgement.

Wireless is particularly concerned about the potential for new linear audio services, and curated channel experiences in speech verticals such as news and sport, to impact on choice and competition within the spoken word audio market. Examples would include the continuation of experiments such as the Cricket Social (a linear cricket audio service from BBC Sport) and Squad Goals (a linear EFL football audio service from BBC Local Radio) – each of which services Wireless considers to lack obvious distinctiveness or public service justification, and each of which Wireless considers to constitute a material change to BBC services that has market impact implications.

Question 7: 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?

Wireless remains of the view that announcements of planned changes by the BBC are vague and not clearly defined. An example of this is the reference in the most recent annual plan to curation of news content within BBC Sounds – which could imply that the BBC is seeking to create a new news channel experience that aggregates BBC news audio content together. Such an experience would appear designed to solidify the BBC's already significant share of news radio and audio based consumption in the UK, and to reduce the propensity for consumers to access the independent provision available outside of BBC Sounds.

Ofcom itself has criticised the BBC for its failure to fully meet its obligations as to transparency, openness and accountability. However, in all of this, Ofcom is relying on the BBC to self-regulate,

and there are limited incentives in place for BBC to do that in a way which takes objective account of the market impact and service distinctiveness considerations. There is therefore an inherent structural vulnerability within the current system of regulation, which Wireless considers that the BBC will continue to exploit in the absence of an engaged regulator.

Question 8: Do you agree that further collaboration between the BBC and other players could bring benefits to the UK radio and audio sector?

Wireless strongly agrees that further collaboration between the BBC and other players could bring benefits. Wireless would direct Ofcom's attention to the ideas set out in its response to Ofcom's earlier call for evidence, including our ideas concerning the scope for the BBC to signpost non-BBC UK content. Given the detail outlined in our previous submission, we do not repeat those ideas here.