

## **Response to Ofcom Draft Annual Plan 2009/10**

### **1. Background**

- 1.1. RadioCentre is the industry body for Commercial Radio. Formed in July 2006 from the merger of the Radio Advertising Bureau (RAB) and the Commercial Radio Companies Association (CRCA), RadioCentre's membership comprises the overwhelming majority of UK Commercial Radio stations, who fund the organisation. RadioCentre is governed by a board of eight directors, representing a cross section of the industry and including all the major Commercial Radio groups.
- 1.2. The role of RadioCentre is to maintain and build a strong and successful Commercial Radio industry - in terms of both listening hours and revenues. RadioCentre operates in a number of areas including working with advertisers and their agencies, representing Commercial Radio companies to Government, Ofcom, copyright societies and other organisations concerned with radio. RadioCentre also provides a forum for industry discussion, is a source of advice to members on all aspects of radio, jointly owns Radio Joint Audience Research Ltd (RAJAR) with the BBC, and includes copy clearance services for the industry through the Radio Advertising Clearance Centre (RACC).

### **2. What are your views on the continued relevance of Ofcom's three-year strategic framework for the proposed work programme in 2009/10?**

#### **2.1. Ofcom's current strategic framework**

- 2.1.1. We believe Ofcom's strategic framework remains relevant for 2009/10, embodying the need to balance concern for public interest objectives with recognition of the benefits of a market-based approach to regulation.
- 2.1.2. Most importantly, the framework recognises the pressures and challenges currently faced by traditional media suppliers, and the need for Ofcom to adjust its regulatory approach as a consequence. We welcome Ofcom's continued commitment to simplifying and reducing regulation and minimising administrative burdens on stakeholders.
- 2.1.3. However, this strategic framework was written under a very different economic climate to the one that we are now experiencing. Whilst this does not affect its relevance, it does mean that its objectives may need to be tackled with an increased sense of urgency.

### **3. What are your views on Ofcom's proposed policy work programme and top priority areas for 2009/10?**

#### **3.1. Overview**

- 3.1.1. RadioCentre is pleased that Ofcom's draft Annual Plan recognises the significant difficulties currently faced by Commercial Radio. We welcome Ofcom's assertion that *'the implications of economic pressure will also be a common consideration throughout all of our policy work in 2009/10'*. We also appreciated Colette Bowe's recent recognition that Commercial Radio is *'facing really severe challenges'* and her confirmation that Ofcom will soon be examining whether there are ways in which *'the burden of regulation...can be re-shaped in order to give the sector more commercial possibilities'*<sup>1</sup>.
- 3.1.2. RadioCentre identifies three of Ofcom's priorities as particularly important for Commercial Radio: *'supporting the evolution of radio'*, *'preparing for the future of public service broadcasting'* and *'promoting access and inclusion'*. Although Ofcom classifies these three priorities under the umbrella of *'delivering public interest objectives as platforms and*

---

<sup>1</sup> Joint BERR/CMS select committee evidence session: pre-appointment hearing with the Chairman-elect of Ofcom, Dr Colette Bowe, 19 January 2009

*services converge*, we believe they are also relevant to *'promoting competition and innovation in converging markets'*.

- 3.1.3. Commercial Radio seeks to forge a profitable future in a world where consumers' expectations and advertisers' ambitions exist within a converging ecology. Within radio, Commercial Radio's response to the continued domination of the BBC can, in part, be facilitated by an appropriate regulatory approach. Similarly, Commercial Radio's competitiveness depends on its ability to flex its structural and economic models to changing expectations, technology and market conditions.
- 3.1.4. The forthcoming review of the Broadcasting Code is, in this context, significant, and we believe it merits specific inclusion in Ofcom's Annual Plan.
- 3.1.5. It is more crucial than ever that Commercial Radio and Ofcom collaborate closely. This is not simply due to the severe economic downturn but also because of the key decisions to be made about future investment in DAB and other new platforms. We look forward to working with Ofcom over the next year to secure a viable future for Commercial Radio.

### **3.2. Supporting the drive to digital**

- 3.2.1. Ofcom identifies two key strands of activity to support the ongoing evolution of radio. Firstly, taking forward the conclusions of the Digital Radio Working Group (DRWG) and secondly, working with the Government, should it decide to take forward further work on new legislation in relation to the outcomes of the DRWG and the radio ownership rules.
- 3.2.2. The publication of the interim *Digital Britain* report is recognised as a first step on the path towards new communications legislation and we are pleased that the Government accepts the argument that radio needs and should continue to have its own dedicated digital platform, and has made a commitment to DAB as *'a primary distribution mechanism for radio'*<sup>2</sup>.
- 3.2.3. Commercial Radio will now work closely with Ofcom, Government and other key stakeholders to develop a digital migration plan, through the newly created Digital Radio Delivery Group. We note that the *Digital Britain* interim report suggests the Government work with Ofcom to explore further *'which of the recommended incentives and investments it would be appropriate to pursue'*<sup>3</sup>. This process will be key to delivering against Ofcom's priority to support the evolution of radio.
- 3.2.4. We therefore believe that the language used by Ofcom in its draft Annual Plan should be strengthened, to reflect the urgency of the situation currently faced by Commercial Radio. We ask Ofcom to make a commitment to have reached conclusions on Commercial Radio's regulatory and legislative burden no later than by the end of the 2009/10 Annual Plan period.

### **3.3. Localness deregulation**

- 3.3.1. In its drive to digital proposals, Commercial Radio has requested a number of amendments to make dated analogue localness regulation fit for purpose in a digital age. This reflects the recommendation contained within the final report of the DRWG that calls for Commercial Radio to be given greater freedom to provide a sustainable future for local radio in a digital world *'through a relaxation of analogue localness requirements'*<sup>4</sup>.
- 3.3.2. Commercial Radio's proposals include a liberalisation of arrangements for networking and co-location; switching from input regulation to output regulation. The spirit of these proposals fits with one of the themes that cuts across Ofcom's strategic framework – to simplify rules where needed and remove unnecessary intervention that may stifle market development.
- 3.3.3. We note Ofcom's recommendation to Government, contained within its second public service broadcasting review, *Putting Viewers First*, to position Channel 3 and Channel 5 services as

<sup>2</sup> *Digital Britain*: the interim report, p. 32

<sup>3</sup> *Ibid.*, p. 34

<sup>4</sup> DRWG final report p. 7

commercial networks with limited public service commitments. This decision was primarily made in response to Ofcom's recognition of the '*fundamental tension between ITV plc's desire to reduce regulatory burdens so as to maximise profits, and its ongoing ability to maintain investment in public service programming*'<sup>5</sup>.

- 3.3.4. This tension is acutely felt by Commercial Radio, which also requires '*sufficient flexibility to be able to adapt to the future challenges, opportunities and uncertainties of the digital age*'<sup>6</sup>. We therefore believe that the same vein of thinking contained within *Putting Viewers First* needs to be applied to Commercial Radio.
- 3.3.5. We therefore welcome the fact that both *Putting Viewers First* and *Digital Britain* refer to work that Ofcom will undertake in the next year regarding provision of public service content at a local level, across all media including radio. *Digital Britain* states that Ofcom, Government and Commercial Radio will look closely '*at the most effective way to deliver local services in a digital age*'<sup>7</sup>.
- 3.3.6. We look forward to engaging with this process and recommend that Ofcom's finalised Annual Plan should contain further detail on the scope of the research and consultation.

### **3.4. Changes to ownership rules**

- 3.4.1. We believe that Commercial Radio's drive to digital also requires the relaxation, and ultimate removal, of radio-specific ownership rules. If this change is not implemented there is a risk of breaching the current rules if multiplexes are combined. The DRWG final report recommended that '*Ofcom needs the flexibility to address structural problems within the current DAB market, such as the ability to merge together multiplexes*'<sup>8</sup>.
- 3.4.2. We are therefore pleased that the interim *Digital Britain* report states that the Government will invite the Office of Fair Trading, together with Ofcom and interested parties, to undertake an exploratory review across the local and regional media sector and make appropriate recommendations.
- 3.4.3. We urge Ofcom to consider fully Commercial Radio's proposal for the removal of radio-specific ownership rules and hope this review will be referred to in the finalised Annual Plan.

### **3.5. Promoting access and inclusion**

- 3.5.1. Ofcom's draft plan emphasises its commitment to promoting digital inclusion and access to digital communications services.
- 3.5.2. Ofcom is rightly concerned with citizens' and consumers' take-up and effective use of these services. Currently take-up of DAB amongst disabled people, older people, people whose first language is not English and consumers from lower socio-economic groups lags behind take-up across the population as a whole.
- 3.5.3. The digital migration plan, drawn up by the Digital Radio Delivery Group, must ensure that take-up of digital radio can extend across the population. Public funding for DAB coverage build out will be important in this respect.

### **3.6. Ongoing licensing and regulation of radio broadcasting**

- 3.6.1. Ofcom states that it continues to plan '*for the future re-advertisement (by auction) of the three national analogue commercial radio licences*' (having also been a priority in the 2008/9 Annual Plan).
- 3.6.2. As part of our drive to digital proposals, we believe that there should be rollover for all analogue licences (local, regional and national) until DAB coverage build-out is complete. Although different companies' ambitions will lead them to differing individual views, the RadioCentre board has adopted this view in the best interests of the industry as a whole. This will provide the industry with the stability and security required to commit fully to

<sup>5</sup> Ofcom's second PSB review: Putting Viewers First. p. 7

<sup>6</sup> Ibid. p. 4

<sup>7</sup> *Digital Britain*: the interim report p. 34

<sup>8</sup> DRWG final report p. 7

digital and invest for the longer term. The final DRWG report recommended that Commercial Radio should be granted '*a further renewal of its analogue services which are carried on DAB*'<sup>9</sup>. Although the interim *Digital Britain* report rejected '*for the time being*' the industry's proposals for further extensions to analogue and multiplex licences, it did note that the matter would be kept '*under review*'<sup>10</sup>.

- 3.6.3. Given that Ofcom was party to the DRWG recommendations in this regard, we believe it would be appropriate for the Annual Plan to reflect on-going policy consideration of this matter.

### **3.7. Broadcasting Code Review**

- 3.7.1. RadioCentre notes the absence of reference to a review of the Broadcasting Code, despite Ofcom's commitment to it occurring in 2009.
- 3.7.2. We understand that the review is to take a fresh look at the rationale for restricting commercial freedoms through the Code and we welcome this. Broadcasting standards regulation must reflect a media ecology, which is characterised by an increasingly media-literate public, a proliferation of services and declining spectrum scarcity.
- 3.7.3. By deregulating restrictions on Commercial Radio's ability to generate revenue, Ofcom would be further supporting the evolution of radio. We suggest that Ofcom signal its commitment to a review of the Broadcasting Code in the finalised Annual Plan.

### **3.8. Illegal Broadcasting**

- 3.8.1. Commercial Radio remains committed to tackling illegal broadcasting, which continues to blight many of our services, and we value Ofcom's critically important role in the ongoing enforcement programme. We are pleased to note that Ofcom considers '*keeping the airwaves free from interference*' to be a key stakeholder service. Clearly this activity also corresponds with Ofcom's commitment to serving the interests of citizens and consumers.
- 3.8.2. However, as we specified in our response to Ofcom's draft Annual Plan 2008/9, there is a need to identify potential new solutions for reducing levels of unlicensed activity. We note that Ofcom is reviewing its approach to enforcement to ensure '*maximum effectiveness*' and is also anticipating further work in the run up to the 2012 Olympics.
- 3.8.3. RadioCentre would therefore like to meet with Ofcom to discuss ways in which Commercial Radio and its regulator can work together to further minimise the damaging effects of illegal broadcasting.

## **4. What are your views on the elements which should be contained within Ofcom's new strategic framework?**

### **4.1. Ofcom's new strategic framework**

- 4.1.1. We are pleased that the publication of the interim *Digital Britain* report has signalled the beginning of the process towards new communications legislation.
- 4.1.2. We believe that Ofcom's new strategic framework must retain a commitment to balance concern for public interest objectives with recognition of the benefits of a market-based approach to regulation. We also believe that a new strategic framework must contain a specific proposal to achieve cross-platform regulatory parity.

RadioCentre, February 2009

77 Shaftesbury Avenue, London W1D 5DU

t: +44 (0) 20 7306 2567

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

---

<sup>9</sup> DRWG final report p. 7

<sup>10</sup> *Digital Britain*: the interim report p. 33