

22 July 2015

Alex Towers
Director
BBC Trust
180 Great Portland Street
W1W 5QZ

Jonathan Oxley
Group Director, Competition

Direct line: 020 7981 3647
E-mail: Jonathan.oxley@ofcom.org.uk

Dear Alex,

BBC Trust Significance Test – BBC Radio 5 live Sports Extra proposals

In accordance with the Terms of Reference of 15 June 2015 and the Addition to the Memorandum of Understanding¹ regarding significance tests, this letter sets out Ofcom's views on the potential impact on others ("others" being providers or potential providers of alternative products and services) of the BBC Executive's proposed changes to the BBC Radio 5 live Sports Extra public service ('the Proposals').

Our views are provided in order to inform the BBC Trust's decision on the significance of the Proposals. All aspects of the Proposals (including impact on users) are being considered by the Trust Unit and it is the Trust's decision as to whether the Proposals are considered significant for the purposes of Clause 25 of the BBC's Framework Agreement.

The Proposals relate to increasing the programming output of BBC Radio 5 live Sports Extra ('5LSX') so that it would have a standard on-air schedule from 9am-7pm, with longer broadcast hours for coverage of any live events that fell outside these hours. The additional output would be focused on magazine-style content and reversioned or repeated "high quality sports specials". The station would cover at least 30 minority and women's sports each year.

Consideration of the broader public value of the Proposals and the impact on users is a matter for the Trust and outside the scope of our input.

Ofcom's approach to this assessment

We have reviewed the Proposals, information held by Ofcom, and further information provided by the BBC Executive at our request². Given the limited scope of our assessment,

¹ See <http://www.ofcom.org.uk/about/how-ofcom-is-run/committees/ofcom-bbc-joint-steering-group/addition-to-the-memorandum-of-understanding-bbc/>

² The questions covered issues including further clarification of the proposed changes, what the counterfactual was, relevant sports rights holdings, independent production of radio programmes,

we have not commissioned any additional market research, obtained any new information or data specifically for this work, or consulted with stakeholders – some of whom may have particular views about the impacts of the Proposals.

The BBC Trust provided us with four papers submitted by the BBC Executive in relation to its Proposals. The papers covered an overview of the Proposals and four annexes providing further information on the proposition, the modelling conducted and the BBC Executive's own assessment of the impact of the proposals.

The scope of the Significance Test process allows for a high-level assessment of the potential impacts on others of the Proposals. Accordingly this letter sets out Ofcom's high-level views on the nature of the Proposals we have seen and their likely impacts on others.

Scope of the Proposals

BBC Radio 5 live ('5L') is the BBC's national live speech radio station, accessible on AM (analogue radio), DAB (digital radio) and by streaming from the BBC website and iPlayer. 5L is on air 24 hours a day, every day. Its schedule is a mix of news, live sport and business/consumer-focused shows. BBC Radio 5 live Sports Extra ('5LSX') is 5L's "overflow" sister station, used for clash management of live sports. 5LSX does not have a full schedule and in 2014 had no output on 47 days. It is broadcast for 6.5 hours per day on average (2.8 hours per day on average excluding cricket). A digital-only station, it is accessible on DAB as well as digital TV, from the BBC website and BBC iPlayer.

The BBC Executive proposes to change the service provided by 5LSX. Specifically, it proposes to:

- increase 5LSX's hours on air per day from 6.5 (current average) to 12 hours³; and
- expand its editorial focus to include not only live sports coverage but also magazine programming covering repeats of existing sports content, minority⁴, local and women's sports.

The proposed changes appear to deviate from the key characteristics in the 5LSX service licence, and therefore the presumption referred to at Clauses 25(3) and 25(4) of the BBC's Framework Agreement may apply.⁵ Given that the BBC Trust has asked us to consider the

listener habits and profiles, related consumer research, cross-promotion and future plans for the service.

³ From 0900 to 1900 daily, with live commentary continued on days when there is sport outside these times.

⁴ "Minority sport" is not a formally-defined term. Here, we understand it to cover sports other than football, rugby and cricket.

⁵ Clause 25 of the BBC Framework Agreement details the process around Public Value Tests and when they should take place. Sub-clauses 3 and 4 refer specifically to the presumption in favour of applying a Public Value Test to changes in BBC services and the discretion available to the BBC Trust in deciding when to instigate a Public Value Test respectively

http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/about/how_we_govern/agreement.pdf

impact on others of the Proposals, we have done so in accordance with the current framework.

The BBC Executive has set out details of the proposed changes. In particular it states that 5LSX will cover at least 30 sports each year. New content promised includes:

- magazine shows with a maximum of 10 hours per week in this format and each show played out a maximum of three times per week; and
- highlights/repeats of local and international sport sourced from BBC local radio, BBC Scotland, BBC Wales, BBC Northern Ireland and the World Service and of “high quality specials” and the “best journalism” from 5L, with repeat content capped at 10 hours per week (average).

In Year 1 new content includes:

- a weekly Olympic and Paralympic magazine show in the run up to Rio 2016;
- a weekly cycling magazine show;
- a weekly netball magazine show during the domestic season; and
- a weekly women’s football magazine show during the league season.

New magazine content on 5LSX will not cover Premier League or international football, international cricket or international rugby. 5L’s sports coverage will not change.

To assess the impact on others of the Proposals it is necessary to consider the counterfactual; what would happen absent the Proposals. However, while the BBC Executive has referred to certain wider market features (e.g. overall UK radio listening to live sports declining over time and digital listening gradually rising⁶), its modelling of impacts does not explicitly incorporate a view of overall reach/listening share of the BBC Radio 5 live portfolio in the counterfactual.

Impact on others

The Proposals would result in an increase of almost 85% in the broadcast hours of 5LSX⁷. In addition, the creation of a full daily schedule for 5LSX would change the service from one with sporadic output to one with consistent hours of broadcast and a regular daily schedule. As a result, we consider it would cease being primarily an “overflow” station, which listeners would go to largely in response to specific promotion on 5L and other services, and would instead be more likely to become a more independent and established listening destination in its own right. Overall we consider that this could represent a major change in the identity of 5LSX which could affect the way current and potential audiences relate to the station. This

⁶ We have also observed these broad trends; see Communications Market Report 2014, Ofcom, figures 3.35 and 3.40

http://stakeholders.ofcom.org.uk/binaries/research/cmr/cmr14/2014_UK_CMR.pdf

⁷ The Proposals would see broadcast hours increase from 6.5 hours per day to 12 hours per day on average across the year.

degree of change inherently carries a greater potential of impact on others, and rival radio stations in particular.

We consider the following categories of providers could be affected by the Proposals and we discuss these in turn:

- Existing commercial radio stations;
- Proposed commercial radio stations;
- Sports websites and podcasts;
- Independent producers; and
- The sports content rights market.

Existing commercial radio stations

We expect that existing commercial radio stations would be particularly affected by the Proposals. We have looked at the potential for impact on this group in general and on the specialist sports radio station, talkSPORT, in particular.

talkSPORT

While the Proposals could affect a (large) number of other services, we consider that the most direct impact would be likely to be felt by the station's closest competitor, UTV's talkSPORT station, which is the only UK commercial radio sports provider with national coverage. Although the BBC Executive assumes there would be no new listeners to the 5L portfolio as a result of the proposed changes to 5LSX, we consider that new listeners might be attracted by the expanded content, including new minority sports content. This would particularly be the case if some listeners regarded the content on 5LSX as more attractive than that of talkSPORT and if they became aware content was always broadcast throughout the day on 5LSX. In that context we consider the impact on talkSPORT may be increased by:

- the proposal to work with sports governing bodies to target specific audiences via social media; and
- cross-promotion across the BBC's other services.

talkSPORT is an analogue and digital station, though 42% of listening is on a digital platform. As 5LSX is a digital-only station and the share of listening to digital radio is growing,⁸ the impact on talkSPORT has the potential to increase over time.

The BBC Executive stated that the falls in listening time "*are unlikely to materially negatively impact existing advertising and sponsorship revenues of £36m in 2014*". However we have not been presented with analysis to support this statement about the connection between listening hours and advertising and sponsorship revenues and we also observe the inherent

⁸ See Communications Market Report 2014, Ofcom, Figure 3.40. More recent RAJAR data indicates the continuation of this growth in digital listening since this report.

uncertainty in this connection, given it depends on advertisers' and sponsors' specific needs and considerations.

We note that the additional hours of content included in the Proposals would be for magazine show content rather than live sports commentary. However, we do not think that means the Proposal is incapable of affecting radio stations which provide live sports commentary (such as talkSPORT) given 5LSX is proposed to become more of a destination station for sports listeners in its own right.

Other commercial radio stations

We consider that other commercial radio stations which offer some sports coverage, e.g. Absolute Radio⁹, could be affected, although the impact is likely to be less than for talkSPORT. We observe that some local, commercial radio stations feature sports magazine content focused on local sports teams¹⁰. While we recognise that these stations typically focus on football content, we also acknowledge that some local stations may feature minority sports with sizeable local appeal. In some cases these sports could overlap with sports included in the Proposals, e.g. rugby league¹¹. In these cases there would be a potential impact on local commercial radio stations.

Local commercial radio stations could also be affected in cases where the sports in question are not the same. For example, stations with a skew towards sports content more generally, like Rock Sport¹² (a Scottish DAB station), could feel the effects of the Proposals.

Finally, other general commercial radio stations could be affected as 5LSX's incremental radio listening hours would likely come from a mix of different radio stations. We do not however expect the Proposals to have a large impact on other commercial radio stations in and of themselves, particularly given 5LSX is a digital-only station.

Proposed commercial radio stations

The BBC Executive's proposals could have a material impact on UTV's proposed service talkSPORT 2, which is due to launch by March 2016 on the new second national commercial DAB multiplex. The BBC Executive's analysis suggested talkSPORT 2's total listening hours would fall by only 0.7%, as a result of the changes to 5LSX in part because it assumed the majority (70%) of extra listening to 5LSX would come from BBC services and only 30% from commercial services.

⁹ During the football season Absolute Radio broadcasts football-related content from 11am until 7pm on Saturdays, including football news, match build-up, live commentary and phone-in programmes. See <http://absoluteradio.co.uk/football/>

¹⁰ See for example Radio City in Liverpool <http://www.radiocity.co.uk/radio-city-sport/>

¹¹ See for example Wish FM in Wigan <http://www.wishfm.net/on-air/super-league-live/>

¹² See <http://www.rocksportradio.co.uk/wordpress/>

However we consider there is the potential for a significant impact on the launch of talkSPORT 2. We note that in its worst case scenario¹³, the BBC Executive estimated an average fall in listening hours of 13%¹⁴. There are a number of similarities between the two stations; both are sister stations of successful standalone stations with sports content; both plan to cover new and potentially the same sports; both will require talent, guests and presenters with similar skillsets; both are DAB digital radio stations and both plan to launch at a similar time. The Proposals mean that 5LSX would have a potential audience that overlaps with that of talkSPORT 2 and therefore limits the potential audience for talkSPORT 2. However, we also note the potential for the Proposals to expand the market for minority sports coverage if they attract a new audience to radio coverage of the sports¹⁵. That could have a positive impact on commercial radio stations covering minority sports, including talkSPORT 2.

The relative timing between the launches of the extended 5LSX and the new talkSPORT 2 radio stations is especially relevant to considerations of the potential impact of the Proposals. Firstly the impending launch of talkSPORT 2 makes it difficult to gauge the impact, because of the uncertainty about the station's audience composition and behaviour. Secondly it means the potential impact on talkSPORT 2 may be greater as the launch period for the station would be affected by the Proposals.

In addition, 5LSX could limit the branding and sponsorship opportunities for talkSPORT 2 based on specific minority sports, and in general as a "home of minority sports".

Production sector

The Proposals could have a positive effect on independent radio producers, by increasing the opportunity for gaining commissions from the BBC. The BBC Executive stated that the additional magazine programmes would be open to both in-house and independent producers. The level of any positive impact will depend on any related quotas/guidelines that would be included in a modified 5LSX service licence as well as subsequent editorial decisions.

Sports websites and podcasts

We are aware of a limited number¹⁶ of minority sports content providers who might be affected by the Proposals. There could be a negative impact on them (taking audience would

¹³ Where all of 5LSX's increase in listener hours gained from commercial radio stations came from talkSPORT or talkSPORT 2.

¹⁴ The BBC Executive placed a caveat on these figures which it said would vary over the year due to the season and the sports being broadcast.

¹⁵ Though as noted above, the BBC Executive assumes that there would be no new listeners to the 5L portfolio as a result of the proposed changes to 5LSX.

¹⁶ Example services include Offside Rule <http://offsiderulepodcast.com/> (a podcast about international and league women's football); Sky Sports (TV and website coverage of netball); Newspaper websites (cover various minority sports); BT Sports (TV and website coverage of women's football).

reduce sponsorship opportunities/advertising revenue/ability to charge for podcasts) or, conversely, the Proposals could help raise the profile of these sports and therefore increase the opportunities available for these services and others. However, without a clearer understanding of the likely listeners to the new service (e.g. through consumer research) it is difficult to identify the likely impact.

The sports content rights market

The BBC Executive suggests that it will not be bidding for any new rights and that the Proposals would not rely on holding rights. However, it also suggests that there will be a positive effect on sports rights markets and listening (through greater exposure leading to increasing popularity). This suggests the potential for the prices of rights to increase in the future. We note price inflation benefits rights holders, but may have mixed effects for broadcasters and consumers¹⁷.

We consider that even though the Proposals do not rely on holding rights, the BBC would have a strengthened negotiating position for certain sports rights because it could offer national coverage (through 5LSX) alongside its local station coverage, resulting in greater coverage and larger audiences than other local commercial stations.

Conclusion

Overall, given the output of 5LSX is proposed to increase by almost 85% and the potential for it to become a sports destination station in its own right with a regular broadcast schedule, there is a risk that the Proposals may have a material impact on talkSPORT and a potentially greater impact on talkSPORT 2. We have set out above that there are a large number of similarities between the Proposals and the proposed talkSPORT 2 station. Without having a greater understanding of how listening habits might be affected by the Proposals through for example, consumer research, it is difficult to conclude with any certainty that the Proposals would not have a material impact on talkSPORT stations. In our view, further analysis, which is beyond the scope of this process, is therefore required to have confidence about the scope and scale of the potential impacts on others, both positive and negative, resulting from these Proposals.

Yours sincerely



Jonathan Oxley

¹⁷ There is a high degree of uncertainty about the effect of sports rights inflation over the long-term. It is possible the increased costs to broadcasters may have a negative impact in terms of the rights that commercial rivals can acquire (for a given advertising revenue); it is also possible it may result in greater investment in the relevant sport and higher quality content.