



Rona Fairhead
Chairman
BBC Trust
180 Great Portland Street
London W1W 5QZ

23 October 2015

Dear Ms Fairhead

BBC Trust Fair Trading Policy – Public Consultation

I am writing to you on behalf of Radiocentre, the industry body for commercial radio, in response to the BBC Trust's consultation on its Fair Trading Policy.

Radiocentre has engaged with the BBC Fair Trading Process on a number of occasions, particularly in the early years of the BBC Trust. For example, several complaints were upheld on the BBC's commercial sponsorship of Sports Personality of the Year (2008); the excessive promotion and use of BBC branding to support the bands Coldplay and U2 (2009); and Radio 1's decision to devote a whole day of its schedule to the upcoming cinematic release of the latest Harry Potter movie (2010).

The success of these complaints (and the subsequent amendments to the BBC's Fair Trading framework) suggests that these processes can be a useful check on the BBC's activity and potentially limit any negative impact on the market. However, this is not always a sufficient deterrent as there have been other developments (particularly within radio) where the BBC does not always appear to consider the implications of its actions on Fair Trading and market impact. As you may be aware, Radiocentre has particularly expressed concerns about some of the BBC's online and digital services (including the Radio 1 iPlayer channel and proposal for a new music streaming service) as well as its apparent endorsement and support of commercial products (such as compilation albums featuring BBC branding).

Given the dominance of the BBC in radio, there is a significant risk that these activities and its market impact could have a negative effect of commercial radio businesses and limit the choice and diversity available for listeners. However, we are concerned that the impact of the BBC's actions in radio can be somewhat underestimated by the BBC Executive. Interestingly this also appears to be one of the conclusions of the Fingleton Associates report published alongside this review.

Radiocentre Ltd
55 New Oxford Street
London, WC1A 1BS
+44 (0) 20 7010 0600
radiocentre.org

Registered office: As above.
Registered in England & Wales
No 2669040



In order to address some of these concerns we make a number of observations and recommendations for changes to the Fair Trading framework – and make references to some of the broader changes to governance and regulation of the BBC that are included in the Radiocentre response to the DCMS Green Paper on Charter Review (available on our website at www.radiocentre.org). These comments focus particularly on the market context and market impact, cross-promotion and recommended improvements to the current framework.

Market impact

The BBC's overall share of the UK radio market was 54% in 2014. This is a high level for a single operator in any market and much higher than the BBC's share in any other media. While it has not grown further in recent years (and has recently fallen back slightly from 55%) the BBC has effectively consolidated its dominant position following strong growth throughout the 2000s, as both Radio 1 and Radio 2 shifted to a more populist approach. Between 1999 and 2014 the overall gap in audience share between BBC radio and commercial radio grew from 2% to 11%.

BBC's radio expenditure has also seen an increase of 43% since 2000 – whereas net commercial radio revenues (although recovering following the recession) are down by 10% over the same period. Furthermore, as Radio 1's audience got older, Radio 2's share of the younger demographic grew, attracting away from the commercial sector the much sought after (in advertising terms) 25-44 year olds.

This is not only due to a combination of legacy and funding advantages, but also shifts in programming policy that mean that key stations are not as distinctive as they could be otherwise. For example, music on the main BBC stations is not as distinctive as might be expected, particularly during daytime when 65% of Radio 2 output and 53% of Radio 1 output can be heard on comparable commercial radio stations. This is disappointing because listeners want BBC radio services to be different from their commercial rivals, but according to independent audience research commissioned by Radiocentre they rate key services Radio 1 and Radio 2 lowest of all BBC stations for 'distinctiveness'.

The impact of this has been exacerbated in the last ten years by the rapid growth of digital technology, which has created opportunities for expansion that were not available previously. Essentially, the growth in audiences and funding for BBC radio services risks weakening the provision by the commercial sector, which depends on audiences to raise advertising revenue and remain sustainable in an increasingly competitive market.

An independent report, commissioned last year by Radiocentre, concluded that the audience that migrated from commercial radio to the BBC since 1999 as a result of these trends could have contributed to higher net revenues to the commercial sector of between £50-60m a year.

The Fingleton Associates report succinctly encapsulates the nature of market today and some of these trends. It also highlights how the Executive perceives the BBC as a small player in an



increasingly global marketplace, competing with the likes of Netflix, among other worldwide services. Crucially the report concludes that this may result in the BBC underestimating its impact in some of the domestic markets in which it operates, most notably radio.

It is disappointing that the BBC Trust only views this as ‘a theoretical risk’ and does not propose to acknowledge the dominance of the BBC in radio within the Fair Trading framework. In fact we would argue that the Fair Trading framework should be adapted to more explicitly take into account the BBC’s relative dominance in a sector like radio and its potential for a greater competitive impact on that market.

That said, it is encouraging that the Trust acknowledges in the consultation that ‘a better balance needs to be found so that the views of industry on potential market impacts arising from BBC proposals can be taken into account...’. We address these issues further in our recommendations below.

Cross-promotion

Radiocentre has previously drawn attention to the value of BBC self-promotion and its implications for Fair Trading but, in light of new research, it appears that this value may have been underestimated.

Global Radio recently commissioned an independent report by Intelligent Media to evaluate the extent (and value) of the BBC’s promotion of its radio stations across its own TV and radio outlets. This research found that over a 7 day period at the beginning of September 2015 there were 675 separate items promoting BBC radio content, with an estimated total media value of £10,087,580. This would equate to an annual value in excess of £500m, which higher than the combined net revenue of the whole commercial radio sector.

The sort of exposure that the BBC is able to provide for its services is beyond the reach of most media companies in the UK (certainly any radio companies). There must be a strong public value justification for any future cross-promotion and a consideration of the impact it has on the market. Cross-promotion activities must deliver directly against the BBC’s public purposes, rather than focusing on promoting general entertainment programming (such as the Radio 1 and Radio 2 breakfast shows) or station personalities and presenters.

A distinction must be drawn between raising awareness of new and original programmes and full-blown advertising campaigns for specific services. Much of the BBC’s cross-promotion of its radio services simply constitute advertising campaigns for the stations concerned, or are inappropriately focused on programming with little direct public value that may even compete directly with alternative offerings (e.g. the Radio 1 Chart Show).

We note that there is a Competitive Impact Code on Cross-Promotion as part of the current Fair Trading framework, which incorporates the Competitive Impact Principle (CIP). However, the



way in which this is interpreted and the implemented limits its effectiveness in guarding against excessive cross-promotion.

Recommendations

In light of the potential for market impact by the BBC in radio and the significant cross-promotion of its radio services, we suggest a number of recommendations to the Fair Trading framework. These are consistent with and complementary to some of the broader changes to regulation and governance of the BBC that we have proposed in our response to the DCMS Green Paper on BBC Charter Review.

With respect to the Fair Trading framework we would make the following recommendations.

- Ensure the BBC takes into account its relative dominance in radio – The current Fair Trading policy states that the BBC must take a proportionate approach to its assessment of competitive impact, by paying particular attention to the size and scale of the activity concerned in the context of the relevant market (including consideration of its relative size in the industry that is likely to be affected by any change). However, this does not always seem to be applied in practice and is ambiguous in the BBC Fair Trading Guidelines, which appear to focus more on the BBC's share relative to international operators.
- Increase external involvement in the Executive's assessment of Fair Trading issues – The current framework could be improved to bring greater objectivity and external rigour to assessment of Fair Trading issues. The high level of self-assessments by the BBC Executive, for example, limit the scope of external oversight by their very nature and the Fingleton Associates report found evidence that this area of oversight may not be working as effectively as it could. Its proposal to review (and potentially increase) the current level of external oversight appears to be a sensible recommendation, alongside more regular formal contact between the Trust and the Executive Fair Trading Committee.
- Support periodic reviews of market impact – Radiocentre welcomes the Trust's acceptance that there are arguments for periodic checks on market impact in order to take into account incremental changes and services that evolve over time.
- Support 'own initiative' inquiries into Fair Trading issues – The reliance on complaints from third-parties risks limiting the effectiveness of the current framework. The Trust (or a future regulator) must also have the ability to instigate an investigation into a potential breach of Fair Trading rules.
- Amend code on cross-promotion – There must be a strong public value justification for any future cross-promotion and a consideration of the impact it has on the market. Clear rules should be put in place to provide better guidance and help minimise the market impact of cross-promotional activity. This could include audience size, original programming, and



high value genres; requirements that inherently link to the BBC's public purposes and provide significant public value. In practice consideration should also be given to ways of linking or referring to relevant information from commercial media outlets (broadcast or online), rather than exclusively featuring the BBC's own information sources.

Radiocentre has also made a number of proposals for improvements to the regulation and governance of the BBC as part of its submission to the BBC Charter Review process, which may have implications for Fair Trading and market impact.

- More flexible Public Value Tests - The current situation whereby the Trust must decide on whether to conduct a full Public Value Test or simply provide regulatory approval for a change requested by BBC management (with limited input from Ofcom) is unsatisfactory. This should lead to the development of a process to provide more focused assessment of market impact and public value (a 'mini-PVT'). This should also include more opportunity for the views of third-parties to be taken into account.
- Tighter service licences – The current service licences are too broad in their scope and language. The Trust sets 'conditions' as the only measurable targets within licences, but many lack appropriate metrics or clarity of purpose (or sanctions if these targets are not met). Therefore the remits lack specificity, ambition or guidance on strategic priorities. Tighter, more demanding public service targets in BBC service licences, which focus on how these services can offer distinctive content, would significantly increase the public value generated by the BBC and could limit negative market impact.

I hope that you find these observations helpful. Please feel free to ask your team to get in touch if you require any further information or clarification.

Yours sincerely

Siobhan Kenny
Chief Executive

T +44 (0)20 7010 0600

E siobhan.kenny@radiocentre.org