
Consideration of a request from Wireless Group Media (GB) Limited for Ofcom to launch a BBC Competition Review

BBC radio sports rights acquisition

Background

- 1.1 **The UK has a successful broadcasting sector, sustained by a competitive media landscape of which the BBC is a central part. But because of its remit and scale, the BBC inevitably has an impact on competition in the wider media market.** The effects of the BBC on competition may be positive: it may serve to stimulate demand and grow markets, as well as encouraging innovation within the sector to the benefit of audiences across the UK. However, as a large publicly-funded organisation, the BBC may also harm the ability of other companies to compete effectively, potentially by crowding-out investment in UK content and services from other companies, which could ultimately reduce choice for viewers and listeners.
- 1.2 **The agreement between the Secretary of State for Culture, Media and Sport and the BBC ('the Agreement') gives Ofcom discretion to carry out a BBC Competition Review ('BCR')** where we have reasonable grounds for believing the carrying out of a public service activity is having a significant adverse impact on fair and effective competition.
- 1.3 **Ofcom's published guidance sets out the procedures we follow in determining whether or not to launch a BCR ('the Guidance').**¹ The Guidance identifies a BCR as a tool for examining existing services to which the BBC has made incremental changes over time, or where market conditions have undergone significant change. It also outlines that a BCR is "not about looking at day-to-day business decisions made by the BBC", nor about "revisiting historic matters settled in the Charter or the fundamental role of the BBC".
- 1.4 **The Guidance explains that we decide on whether to carry out a BCR or not on a case-by-case basis, based on the available evidence.** It includes a non-exhaustive list of factors that we might consider when exercising our discretion on whether to launch a BCR.

The request from Wireless

- 1.5 **On 28 September 2018, Wireless formally requested that we should initiate a BCR into how the BBC acquires sports rights for BBC Radio 5 live ('R5L'), BBC Radio 5 live sports extra ('R5LSE') and Radio 4 long wave.** Wireless claimed the BBC's activities in this area harm competition in the downstream market for commercial sports radio. Wireless also considered that the BBC's activities are unfairly harming the ability of talkSPORT² (Wireless' sports radio stations) to procure rights.

Our assessment and conclusion

- 1.6 As indicated above, we can only carry out a BCR if we have reasonable grounds to believe that the carrying out of a public service activity is having a significant adverse impact on

¹ https://www.ofcom.org.uk/_data/assets/pdf_file/0027/99414/bbc-public-service-activities.pdf

² talkSPORT 1 and (the digital-only) talkSPORT 2, are the UK's only national commercial sports radio stations.

fair and effective competition. Furthermore, we also need to be satisfied that it would be appropriate for us to exercise our discretion to initiate a BCR.

Impact on fair and effective competition

- 1.7 **The BBC is a publicly funded organisation and is therefore not subject to the same considerations as faced by a commercial broadcaster**, including when deciding whether and how much to bid for sports rights. This creates the potential for fair and effective competition between sports rights acquirers to be adversely affected, as the BBC could potentially bid in a manner that limits the ability of its commercial rivals to acquire live sports radio broadcasting rights.
- 1.8 **The BBC holds the largest portfolio of live radio sports rights, which our research shows is the most important feature for sports radio listeners.** It also holds more rights in the most popular sports (for example, about two thirds of the radio rights to live English Premier League football matches – see Figure 3 in the Annex) and appears to have an overall sports rights budget that is much larger than the sports rights budget of talkSPORT.
- 1.9 **However, as explained below, there are several reasons why we should not exercise our discretion to launch a BCR at this time.** It is therefore not necessary for us to conclude on whether there are reasonable grounds to believe there is a significant adverse impact on fair and effective competition.

It would not be appropriate to exercise our discretion to launch a BCR

- 1.10 **Having reviewed Wireless' submission, we consider it would not be appropriate to exercise our discretion to launch a BCR at this time.** This is principally because the way in which the BBC acquires radio sports rights does not appear to have changed materially since the BBC Charter came into effect in December 2016, and any consumer harm resulting from the way the BBC acquires radio sports rights seems unlikely to be material. We discuss these factors in more detail below.

No material incremental change by the BBC or in market conditions

- 1.11 **The Guidance indicates that the purpose of a BCR is to “consider significant competition issues which emerge, in some cases gradually, over the course of the Charter period” or “where market conditions have undergone significant change”.**
- 1.12 **But we consider that the BBC activities that are the subject of the Wireless submission (i.e. the acquisition of live radio rights for popular sports) have been present for a long time.** Wireless' submission does not claim that the practices complained of, such as the BBC's alleged “over-bidding” for radio sports rights, have either emerged or increased since the current Charter came into effect in December 2016.
- 1.13 **We have found no evidence to suggest there has been an accumulation of incremental changes by the BBC or major market developments in live sports radio since December 2016.** Indeed, the evidence suggests that the BBC's radio sports rights expenditure could

be decreasing (see Figures 7 and 8)³ indicating any potential adverse impact may be on a downward trajectory.

No evidence of material consumer harm

1.14 **We have not seen any evidence to indicate the BBC's current acquisition of popular sports rights for radio is causing material harm to consumers.**

- **If the BBC acquired fewer rights for popular sports, such a scenario would most likely lead to a transfer of sports between existing stations**, rather than an increase in the volume of popular sports that are covered. However, we do recognise that under this scenario the BBC might increase the amount of niche sports that it broadcasts or could experiment further with alternative ways of covering popular sports (as opposed to traditional live sports commentaries on the radio).⁴
- **We have not been provided with compelling evidence that there would be a material increase in choice or innovation.** There is no evidence to suggest there is substantial scope for innovation and differentiation in how live radio sports commentaries are provided to consumers.
- **It may be difficult for new stations to emerge and cover live sports, as there are other barriers to entry to overcome.** Other significant difficulties faced by a new entrant would be the limited availability of national analogue licences, as well as the high costs involved with obtaining national DAB radio capacity.
- **There is limited evidence to suggest talkSPORT ability to compete is under threat.** talkSPORT has continued to be a profitable operation in recent years.⁵ talkSPORT has been able to build a sizeable portfolio of sports rights⁶, sometimes beating the BBC in rights auctions, such as its acquisition of exclusive rights to all English Football League matches in May 2017. Furthermore, R5L sports content reach and talkSPORT's reach have narrowed in recent years as indicated by Figure 10 and Figure 11.

Next steps

1.15 **Although we have decided not to launch a BCR, we will continue to observe the sports radio sector and the distribution of sports rights for radio.** The outcomes of upcoming

³ As shown in Figure 5, R5L's content budget has been on a downward trajectory since 2012/13. As per Figure 6, we only have information on how much of this budget was spent on sports rights up to 2014/15. However, if the share of the budget that is being spent on live sports rights has remained stable, the overall expenditure in live sports rights should have decreased.

⁴ For example, after the BBC lost the rights to England's cricket tour of Sri Lanka in October and November 2018 to talkSPORT, the BBC produced '[the Cricket Social](#)', a new online cricket programme that featured live streamed audio discussion of the Sri Lanka matches, but did not feature any actual live commentary of the match.

⁵ This is ascertained from financial statements submitted to [Companies House](#) by 'talkSPORT limited' on 13 July 2018. Its profit before tax was £7.5m for the 18 months up to June 2017.

⁶ As demonstrated in Figure 3, talkSPORT has acquired rights to popular events, such as English Premier League matches.

high-profile rights sales may indicate if there is an incremental change to the sports offering on BBC radio or a significant change in market conditions.

- 1.16 **As noted in our statement on the regulation of the BBC's impact on competition, we will have ongoing oversight of the BBC's activities using a variety of sources of information.**⁷ This will allow us to see if any competition concerns manifest themselves in the sports radio sector and to evaluate the BBC's compliance with its operating licence requirements.

⁷ Ofcom, March 2017. ['Regulating the BBC's impact on competition'](#), paragraphs 6.13 to 6.16.

Evidence Annex

A1.1 In this Annex we set out information on the market context and certain non-confidential elements of the evidence we considered in reaching our decision.

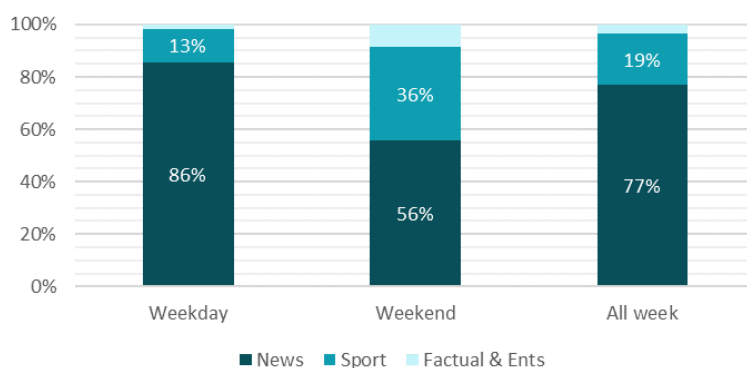
Market Context

Figure 1: Description of the relevant national stations in the UK that broadcast live sport

	Description
R5L	24-hour live speech station, broadcasting a mix of discussion, sports, news and comedy. Obligation for 75% of output to be news and current affairs programming, and to have live commentary on at least 20 sports, as per the BBC operating licence. ⁸
talkSPORT	24-hour sports programming. talkSPORT’s website claims it is the “world’s biggest sports radio station”, with “more exclusive football than any other UK broadcaster”.
R5LSE	Digital-only sports station that only broadcasts ‘overspill’ from R5L. Not a full-time station.
talkSPORT 2	Digital-only station launched in 2016. It devotes its entire schedule to sports content
BBC Radio 4 Longwave ⁹	Radio 4 is a speech radio station. The LW broadcast sometimes has cricket coverage (at which times, the FM station continues with mainstream non-sport programming).

A1.2 On average, in the financial year 2017/18, 77% of R5L’s schedule was devoted to ‘news and current affairs’ programming across the week. 19% was devoted to ‘sport’ and 4% to ‘factual and entertainment’.

Figure 2: R5L output by genre, FY 2017-18¹⁰



⁸ See regulatory conditions 2.13.1 and 2.41 in the operating licence for the BBC:

https://www.ofcom.org.uk/data/assets/pdf_file/0017/107072/bbc-operating-licence.pdf.

⁹ Given Radio 4 LW’s limited sports coverage, our focus is on R5L and R5LSE.

¹⁰ This is sourced from Ofcom’s first Annual Report on the BBC, which can be found at <https://www.ofcom.org.uk/tv-radio-and-on-demand/information-for-industry/bbc-operating-framework/performance/bbc-annual-report>.

Sports rights - who has what?

A1.3 Figure 3 sets out the current distribution of the most popular national radio sports rights.

Figure 3: Distribution of popular sports rights¹¹

Sport	Popularity ¹² to all radio listeners	Popularity to R5L listeners	Popularity to talkSPORT listeners	Competition	R5L / R5LSE	talkSPORT / talkSPORT 2
Football	16%	70%	83%	English Premier League	144 matches (5 packages)	89 matches (3 packages)
				English Football League	None	110 matches
				English cup competitions (FA Cup & EFL Cup)	Split ¹³	Split
				European club competitions (inc. Champions League)	Split	Split
				International tournaments	Both ¹⁴	Both
Cricket	7%	36%	34%	England internationals (all forms) at home	All	None
				The Ashes	All	None
				England tours (Sri Lanka 2018, West Indies 2019, South Africa 2019/20)	None	All
				International tournaments	All	None
Rugby Union	5%	27%	24%	Six Nations	All	None
				England internationals	All	None
				Premiership	Both	Both
				International tournaments	All	None
Tennis	3%	17%	11%	Major tournaments	All	None
Formula 1	3%	17%	14%	-	All	None
Boxing	2%	13%	14%	-	Split	Split

¹¹ Figure 3 is a non-comprehensive list of live radio sports rights held by the R5L and TalkSport. It focuses on the most widely covered sports, namely men's football, rugby union and cricket, as well as major tennis tournaments, Formula One, and boxing.

¹² TouchPoints 2018: respondents were asked "What types of sport do you like to listen to on the radio?"

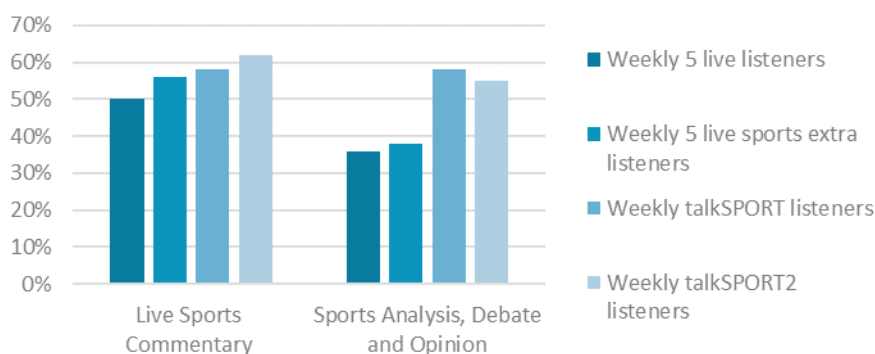
¹³ 'Split' refers to sports/competitions that are broadcast on both stations, but not the same fixtures.

¹⁴ 'Both' refers to sports/competitions that are broadcast simultaneously on both stations.

Relative popularity of live sports commentary vs. sports analysis to audiences

A1.4 Figure 4 shows the relative popularity of types of radio content to different audiences. For talkSPORT’s listeners live sports commentary is roughly as popular as “sports analysis, debate and opinion” (i.e. non-live content), while for listeners of R5L, R5LSE and talkSPORT 2, live sports commentary is the most popular aspect.

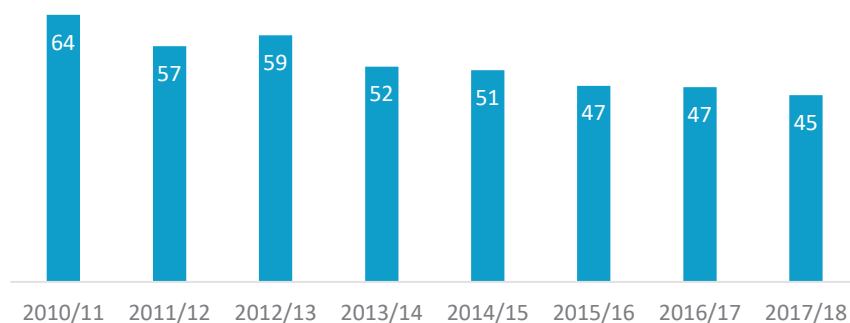
Figure 4: Popularity of radio content to R5L and talkSPORT listeners¹⁵



Sports rights spend

A1.5 According to the BBC’s annual reports, R5L’s overall content budget has been steadily decreasing from about £64m in 2010/11 to £45m in 2017/18.

Figure 5: BBC radio content spend (£m): 2010/11 - 2017/18



Source: BBC Annual Report. Note: Figures are presented in real terms, with figures being presented in financial year 2017/18 prices, with previous years adjusted using CPI.

A1.6 R5L’s expenditure in sports rights was roughly 30% of their total budget between 2010/11 and 2014/15.

¹⁵ TouchPoints 2018: respondents were asked “which of the following types of radio output / content do you particularly value?”

Figure 6: R5L's spending on news and sport, 2010/11 to 2014/15 ¹⁶

	2010-11 (%)	2011-12 (%)	2012-13 (%)	2013-14 (%)	2014-15 (%)
News	46	52	50	50	48
Sport	24	23	21	22	21
Sports Rights	29	26	30	29	32

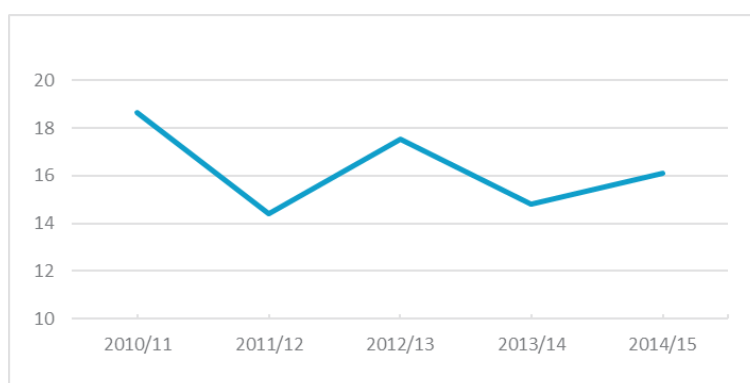
Note: Figures may not sum to 100% due to rounding.

A1.7 Combining levels of content spend on R5L (as reported by the BBC) with the proportion of its spending on sports rights, we have calculated the levels of BBC spending on sports rights.¹⁷ R5L spends significantly more on sports rights than talkSPORT.

Figure 7: R5L's spending on sports rights, 2010/11 to 2014/15

	2010/11	2011/12	2012/13	2013/14	2014/15
£m	18.6	14.4	17.5	14.8	16.1

Figure 8: R5L's spending on sports rights (£m), 2010/11 to 2014/15



Profitability

A1.8 According to Companies House information, talkSPORT's profit before tax was £7.5m for the 18 months up to June 2017.¹⁸

Reach

A1.9 In Q3 2018, R5L had significantly higher weekly reach¹⁹ than talkSPORT (9.2% vs. 5.5%), although the gap has narrowed since Q3 2013 (when it was 11.5% vs. 5.6%).

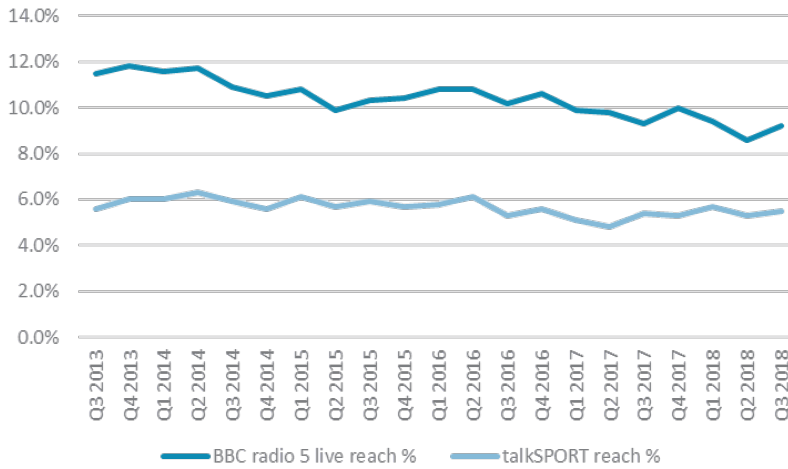
¹⁶ This is sourced from the [BBC Trust Service Review \(August 2015\)](#), Table 8.

¹⁷ Data on sports right content spending is only available to 2014/15, but we note that there is a downward trend in the overall budget for R5L content and expect this to have a downward pressure on sports rights spending.

¹⁸ This is ascertained from the financial statements submitted to [Companies House](#) by 'talkSPORT limited' on the 13 July 2018.

¹⁹ Weekly reach is the % of adults listening to a radio station at least once during a given week.

Figure 9: Weekly reach (%) for R5L vs. talkSPORT (RAJAR)



A1.10 The gap between the reach of R5L’s sports programming and talkSPORT has narrowed over time.²⁰

Figure 10: Weekly reach (000s) for R5L sport programming output versus talkSPORT (RAJAR)

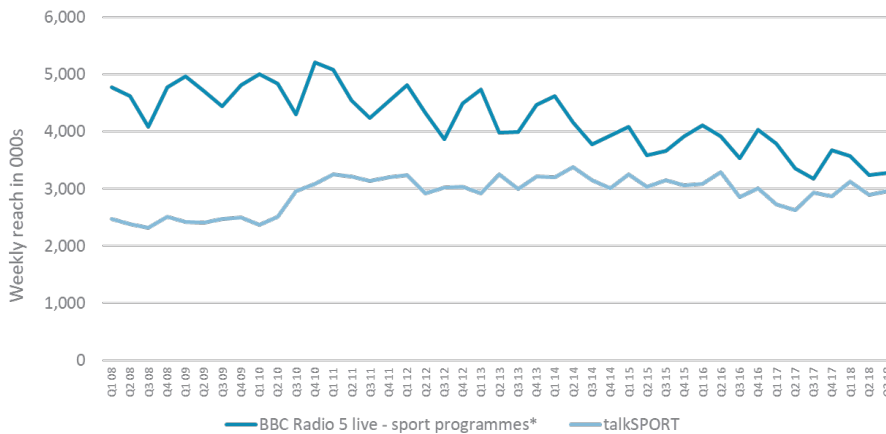
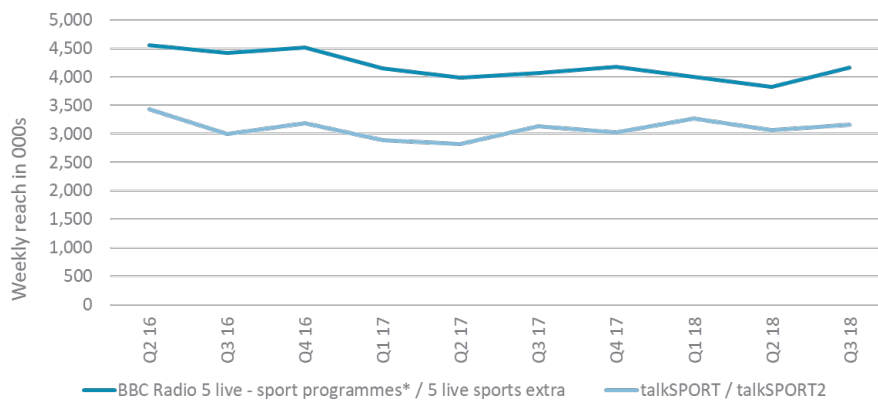


Figure 11: Weekly reach (000s) for R5L and R5LSE sports output versus talkSPORT 1 and 2 (RAJAR)



²⁰ This information on the reach of R5L sports programming is based on RAJAR data, using scheduling information supplied by the BBC to estimate the reach of sports content.