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The possible impact of the deregulation of commercial radio on audiences in Wales

In May 2017, the Advisory Committee submitted a response to the consultation by the UK Government Department for Digital Culture Media and Sport (DDCMS) on proposals to deregulate commercial radio within the UK. We supported the broad thrust of the proposed relaxation of current regulatory provision, including the removal of existing music format requirements and Ofcom's role in ensuring a range of choice in radio services. It is worth explaining why.

It is an understandable reaction to suggest that relaxing these requirements will lead to the homogenisation of the radio provision for listeners in Wales. The music will all sound the same and it will be increasingly difficult to tell the stations apart. Surely local commercial stations were meant to be local and reflect the communities they serve instead of becoming (in some cases) just links in a chain of commercial stations across the UK?

Commercial radio, however, faces a number of challenges in the coming decade. It already faces competition from the internet, where equivalent stations undergo no regulation of any kind. The potential switchover to digital, whenever it may come, also poses a similar problem. Existing legislation does not provide for any regulatory requirements on digital commercial stations in terms of programme formats or the provision of news. Those stations on digital are often still observing the regulatory requirements because they are simulcasting on analogue. So, as time goes by, existing regulation would be likely to impact on a smaller and smaller portion of the commercial radio industry.

Listening to digital radio is continuing to increase in Wales. Ofcom's Communications Market Review, published in August 2017, stated that 58% of adults in Wales now have a DAB radio, a higher percentage than in Scotland or Northern Ireland. And almost two-fifths of radio listening in Wales is already through digital platforms.

So it is a question of priorities. As we head into the digital future, which aspects of regulation is it most important to preserve? Trying to regulate music formats in a digital world is almost certainly futile. But there is one local service which commercial radio provides which it is vital to maintain – and that is news and information. And that is especially vital in Wales.

The UK government's position

The DDCMS accepts the overwhelming response in its consultation process in favour of maintaining strong requirements on commercial radio stations to provide national and local news and core information such as traffic and travel information and weather. It proposes to bring forward a new legislative structure prior to the analogue licence renewals in 2022. This we strongly welcome, because the gain here is that there will be requirements for news and information on digital radio channels which would not otherwise exist. Where the Advisory Committee strongly disagrees with the DDCMS is over its refusal to consider that different provisions for news may be needed in Wales.

The provision of news in Wales

In our evidence to the DDCMS consultation submitted in May 2017, the Advisory Committee focused in particular on the provision of news in Wales. Our broad summary was as follows:

‘The provision of news is of particular importance to civic life in Wales in order to secure an informed democracy. The National Assembly for Wales and the Welsh Government have powers and functions covering key domestic policy areas including health, education, transport and economic development. It is essential to ensure there is plurality in the reporting of Welsh public life, and that this coverage is not left exclusively to the BBC. It is essential that Welsh news continues to be made in Wales’.

We also made a specific recommendation about the importance of all-Wales news on commercial radio in Wales:

‘A consequence of devolution is that, along with news that applies to the whole of UK, there is a need to report news at a pan-Wales level as well as news of relevance to specific localities and regions within Wales. For example, a story about a change in Welsh Government health policy is relevant to listeners across the whole of Wales. However, if left to the market, there is a risk that in the absence of regulation, there would be no Wales news coverage. From its own research, Ofcom

has concluded that, due to the costs of producing local news, there is a significant risk that this content would not be provided in the absence of clear regulatory requirements’.

The UK Government response to the consultation published on December 18, 2017 ignored our submission. It concluded, inter alia, that ‘there was little support for Ofcom to have powers to set different news and information requirements in the nations’. It added later: ‘A clear view was expressed that there is no need for Ofcom to have the power to set different news (national and local) or other local requirements in the nations’. The response accepted there was a more balanced argument over the need for requirements for local content on commercial stations in Wales to be produced in Wales. But again the DDCMS came out against imposing any such requirements, arguing that there would remain a strong commercial incentive to supply locally made content.

It is yet another missed opportunity to foster the limited plurality of sources of news and information we have in Wales. We should not underestimate the contribution played by local commercial radio in Wales. According to Ofcom’s Communications Market Report published in August 2017, local commercial radio services achieved a 26% share of total listening hours in Wales,

The lowest share in the UK but still more than three times the share of BBC Radio Wales and BBC Radio Cymru combined. Recent research by The Radio Centre has asserted that radio is the most trusted medium for news in the UK and that makes it all the more important that commercial radio news in Wales paints an accurate picture of the nation where their listeners live.

The concept of all-Wales news

There is one central issue at stake in this debate – the failure of UK legislation to recognise the concept of all-Wales news. Under the 1990 and 1996 Broadcasting Acts, the requirements refer only to national (i.e. pan-UK) or local news, so there is consequently no regulatory capacity to enforce a requirement for anything else. This limited concept is now long out of date, but still frames the mindset of the DDCMS. If there is to be new legislation relating to the deregulation of commercial radio, it should form an opportunity to correct this anomaly.

The DDCMS is proposing to balance its wider proposals for the deregulation of commercial radio with clearer protections for what it calls local and national news (as per the above definitions) and core information following any future switchover

to digital radio. In its December statement, it says that ‘in bringing forward legislation we will clarify Ofcom’s powers in this area to allow Ofcom to set clear guidance on how these requirements are set and to enable it to set requirements based on the size of the target audience for each nation.’ This is the opportunity to take on board the concept of all-Wales news and ensure it is taken into account in Ofcom’s requirements.

The issue of regulatory burden

The DDCMS response of December 2017 articulated the reason why the industry did not want to take on what they called ‘differential’ or ‘enhanced’ requirements for news in the nations on commercial radio. It was that the greater cost burden would be an unfortunate consequence given that transmission costs are already generally higher and digital radio expansion more challenging due to coverage issues. The DDCMS agreed that they did not want to disadvantage local stations in the nations, but that Ofcom should instead ‘have regard to the needs of all UK audiences in setting the requirements on a UK basis’.

There would be of course be little opportunity for Ofcom to consider the needs of the Welsh audience until and unless the concept of all-Wales news is included in the legislative requirements.

It is also necessary to challenge the argument about the cost burden. Most of the commercial stations currently operating in Wales currently include some all-Wales news in their bulletins in addition to UK/international and local news (is this correct?). Ofcom need only require commercial radio stations in Wales to ‘give appropriate prominence’ to all-Wales news in their bulletins (or some equivalent phrase). That is not likely to be an unreasonable requirement and, in fact, the argument about the extra regulatory burden has been grossly exaggerated.

News from nowhere

The DDCMS response of December 2017 confirms the UK government’s intention to press ahead with the relaxation of the existing local production requirements placed on commercial radio. The requirements, which determine how much of the station’s programme production has to be produced locally, are now regarded as too onerous, not least because they do not apply to stations that only broadcast on DAB.

But the DDCMS response chooses to fudge the issue of whether this removal of local production requirements should also apply to news, and this is what causes

the ACW a great deal of concern. The DDCMS document talks about ‘clearer requirements as to local news sourcing’, but that does not mean very much. It would be possible for news bulletins for local commercial radio stations around the UK to be compiled and read from a central studio in London.

Given the track record of the London media in failing to comprehend Welsh devolution, this does not bode well for the accuracy and quality of news on commercial radio in Wales in the future. This issue has been well-rehearsed, from the King report at the BBC through to the recent incident of a presenter on the BBC Today programme describing a Westminster MP, Justine Greening, as the former education secretary for England and Wales. It is vital that there is a clear legislative requirement for news about Wales to be produced in Wales.

The Availability of the BBC’s DAB and FM Radio services in Wales

DAB services are broadcast on a multiplex which can carry a number of radio services. When DAB services first developed in the UK, under the 1996 Broadcasting Act, the BBC was allocated a single UK wide multiplex to carry its main radio services (Radio 1, 1 Extra, 2, 3, 4, 4 Extra, 5 live, 6 and Asian Network). Coverage of this multiplex has steadily improved and has now reached around 92% of homes in Wales¹.

However, due to the engineering characteristics of this multiplex, the station line-up could not be varied at a local level and the legislation provided a ‘must carry’ right for the BBC’s local services in England to be carried on local commercial DAB multiplexes. In Wales, the BBC does not provide local services, but instead there are two national radio services, Radio Wales and Radio Cymru. But this pre-devolution legislation did not really recognise this ‘nation’ tier of radio so the same arrangement applied in Wales; Radio Cymru and Radio Wales were also given ‘must carry’ rights on local commercial DAB multiplexes in Wales. The problem in Wales was that initially, there were only two commercial multiplexes on air, serving Newport, Cardiff and Swansea, so the coverage of Radio Wales and Radio Cymru on DAB was restricted to around 41% of homes. By today, a number of additional local commercial multiplexes have been launched serving most of north and south Wales and coverage has significantly improved, reaching around 86% of homes².

¹ Ofcom CMR Wales 2017, p47

² Ofcom CMR Wales 2017, p47

But local commercial multiplexes still do not serve most of mid Wales due to the challenging economics of DAB roll-out.

At the end of January this year, the BBC launched Radio Cymru 2, which broadcasts an alternative breakfast service to Radio Cymru on-line and on DAB, where the existing capacity allocated to Radio Cymru and Radio Wales is shared with the new service for a few hours each morning.

Historically, Radio Wales' FM coverage was also lower than that of Radio Cymru as Radio Wales was originally launched as an AM network on the medium wave. However, additional FM frequencies have been found for Radio Wales over the years and in 2011, improvements were made at the Wenvoe transmitter enabling the service to reach 81% of the population on FM, but this was still less than Radio Cymru's 95% coverage.³

Community Radio and DAB

The 2003 Communications Act created a new tier of radio broadcasting in the UK, focused specifically on community engagement. Community Radio stations are not for profit services with the objective of delivering social gain. Licences allocated by Ofcom run for five years although they have usually been renewed. They are volunteer led with only a few full time staff. The last decade has seen rapid growth of the community radio sector across the UK and in Wales, there are currently 10 stations on air, Calon FM (Wrexham), Tudno FM (Llandudno), BRFM (Brynmawr), Radio Tircoed (Gorseinion), Bro Radio (Barry), Radio Glan Clwyd (Glan Clwyd Hospital and local area), Mon FM (Anglesey), Radio Cardiff and GTFM (Pontypridd). Ofcom has also recently awarded licences in Aberystwyth (Radio Aber), and the Rhondda Valleys (Rhondda Radio). The legislation limits the amount of commercial income that can be raised by community stations to minimise competition with commercial radio for income streams and the transmission radius of community radio is also limited to around a 5km radius on FM. Although AM transmission on the medium wave is also an option, all of the current community stations in Wales have opted to broadcast on FM, except Radio Glan Clwyd which broadcasts on AM.

Unlike commercial stations which are generally music led, community stations carry far more speech content, feature a far wider of music content and also serve communities of interest as well as geographical communities. However their

³ Source: BBC Wales, quoted in the IWA Media Audit for Wales, 2015.

transmission areas are far smaller than commercial radio which limits their reach, although most of the services are also available on-line.

Currently there is no specific upgrade route for community radio to broadcast on DAB. Community stations could negotiate carriage of their services with a multiplex operator and acquire a Digital Sound Programme Licence (DSP) from Ofcom, but carriage costs would be very high, capacity on many local commercial multiplexes is very limited or unavailable and the DSP licence would not contain any requirements for social gain or community benefit.

Technical trials conducted by Ofcom in 2016 have shown that it is viable to broadcast DAB on a small scale using open source software and low cost transmission technology. In 2017, the DDCMS supported a Private Members Bill, The Broadcasting (Radio Multiplex Services) Act 2017, to enable Ofcom to licence small scale DAB in the future and the Department is currently consulting on proposals for a suitable licensing regime to enable both community radio and small commercial stations to be carried by low power multiplexes⁴. The DDCMS suggests in the consultation that, “Ofcom should have the flexibility be able to offer a new DSP licence for community radio stations called C-DSP licences and these will be for stations that whilst broadcasting in digital, choose to operate in all other respects as a community radio station. Like existing community radio stations, these new services would need to be constituted as a not for profit entity operated for social gain and would need to be subject to the same limits on commercial fundraising as existing community radio stations (broadcasting on FM/AM frequencies).”

The consultation document proposes 12 year licenses for low power multiplexes operators, some restrictions on the ownership, service charge regulation of multiplex operators to be monitored by Ofcom, no ‘must-carry’ access for BBC local services and a 40% limit on the coverage area of low power multiplexes compared to the coverage provided by a local commercial multiplex serving the same area. The consultation closes on 28 February 2018.

⁴ <https://www.gov.uk/government/consultations/small-scale-dab-licensing-consultation>