

Reference: 01492020

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05 September 2022

Freedom of Information: Right to know request

Thank you for your request for information on the decision process for our conclusions on the market position of BBC Sounds. We received this request on 5 August 2022 and have considered it under the Freedom of Information Act 2000 (the "FOI Act").

Your request

You asked:

Our information request relates to the decision-making process (the "Decision Process") which was followed by Ofcom in arriving at its conclusions on the market position of BBC Sounds (the "Market Position"), as published on 25 November 2021. We are aware that you initially published a call for evidence on 14 October 2020, and then opened a public consultation between 4 May 2021 and 29 June 2021. However, despite our efforts to find information about the Decision Process on the Ofcom website, we have been unable to find information which explains which person, persons or body of persons considered the evidence, who else might have contributed, who was present when decisions were taken or how the Decision Process was documented.

Information sought

Please would you provide us with the following information:

- 1. All information held on how the Market Position ordinarily and properly should have been decided. We would expect this to include information on the general decision-making process within Ofcom, including the relevant scheme of delegation, or schedule of delegated authorities, as well as the names of and terms of reference of any boards, sub-boards, committees, sub-committees, panels or similar.*
- 2. All information held on how the Market Position actually was decided. We would expect this to include information consisting of records, recordings, minutes, notes or similar of relevant meetings, as well as names and job roles of those who attended or who otherwise contributed to the Decision Process (including providing us with a copy of any "For decision" or similar paper), and any emails approving publication of the document/its final contents, or any emails from Ofcom's Senior Management Team giving direction on the decision.*

Our response

In respect of your first question, I can confirm that there is no standard procedure for deciding the market position of BBC Sounds. In accordance with Ofcom's corporate governance framework approved by the Ofcom Board, Directors in the Broadcasting and Online Content Group have the ability to exercise delegated authority, having regard to appropriate governance arrangements, in relation to the performance of Ofcom's functions under section 198 of the Communications Act 2003 (functions of Ofcom in relation to the BBC). The question of whether a particular decision will be taken by a particular Director, as opposed to being taken by another person with delegated authority (such as the CEO or Group Director), is a matter settled through discussion in relevant governance fora. In the case of the BBC Sounds decision, as can be seen below, governance involved discussion at the Broadcast Competition Steering Group, the Senior Management Team ("SMT"), the Content Board, and the Policy Management Board (PMB).

In respect of your second question, please find below a timeline explaining the process of how the market position of BBC Sounds was considered and decided, including details of the relevant boards and teams involved, and key milestones:

Date	Action
16 September 2020	Ofcom's Broadcast Competition Steering Group ('BCSG') held a meeting to decide on the potential for some work on the market impact of BBC Sounds.
23 September 2020	Ofcom published and sent a letter to the BBC, copying Radiocentre Ltd, setting out our intention to consider the market position of BBC Sounds.
14 October 2020	Call for evidence published (closed 11 November 2020).
4 February 2021	An SMT meeting was held to consider the market position of BBC Sounds; whether we should undertake a BBC Competition Review ('BCR'); whether the next stage should be a consultation or statement; and also our approach to policy issues such as our expectations on the BBC's approach to transparency.
30 March 2021	Ofcom's Content Board were asked to note that the project team were not minded to carry out a BCR and asked in particular for their views on the market context.
15 April 2021	PMB were asked to approve a provisional view not to undertake a BCR and to approve provisional policy views on issues such as transparency.
4 May 2021	Consultation published (closed 29 June 2021).
20 October 2021	BCSG were asked to provide a view on: <ul style="list-style-type: none">• Our view that we should not launch a BCR;

	<ul style="list-style-type: none"> • Our view on when future changes to BBC Sounds might require detailed regulatory scrutiny; • Our view on transparency and engagement by the BBC; and • Our view on collaboration between the BBC and commercial radio.
16 November 2021	Ofcom's Director of Broadcasting Competition agrees on the final decision on the BCR.
25 November 2021	Statement on the Market Position of BBC Sounds is published.

In relation to the above meetings, the relevant boards and groups were presented with information on the background of the BBC's proposals, information on the market context in which BBC Sounds had developed, and responses from stakeholders. This information, as well as the considerations made in the above meetings, are set out in detail in the [Statement on the Market Position of BBC Sounds](#), as well as in the [Call for Evidence](#) and [Consultation](#). Further information about responses received from stakeholders in relation to the Consultation can be found on our [website](#).

As most of the information requested under your second request is publicly available via these documents, we have not included copies of documents related to these meetings with this response. In addition, where this information is not reflected in these documents, we consider the remaining information contained in these documents to fall outside of the scope of this request, or to be exempt under section 44 of the FOI Act. In particular, section 44(1)(a) of the FOI Act exempts disclosure of information if its disclosure is prohibited by or under any enactment. Section 393 of the Communications Act 2003 prohibits the disclosure of information about a particular business which has been obtained in exercise of a power conferred by, among other legislation, the Communications Act, so long as that business continues to be carried on, unless we have the consent of that business or one of the statutory gateways under section 393(2) of the Communications Act is met, neither of which applies here. Section 44 of the FOI Act is an absolute exemption and therefore is not subject to a public interest test.

While we have provided details of the relevant Ofcom teams, we consider that the names of the Ofcom attendees and the roles/names of the external attendees is personal information exempt from disclosure under Section 40(2) of the FOI Act. This provision provides that personal information about persons other than the requester is exempt where its disclosure would contravene any of the data protection principles in the UK General Data Protection Regulation and the Data Protection Act 2018. Those principles include that personal data must be processed fairly and lawfully. Section 40 is an absolute exemption under the Act and does not require a public interest test.

If you have any queries, then please contact information.requests@ofcom.org.uk. Please remember to quote the reference number above in any future communications.

Yours sincerely,

Katherine Childs

If you are unhappy with the response you have received in relation to your request for information and/or consider that your request was refused without a reason valid under the law you may ask for an internal review. If you ask us for an internal review of our decision, it will be subject to an independent review within Ofcom.

The following outcomes are possible:

- the original decision is upheld; or
- the original decision is reversed or modified.

Timing

If you wish to exercise your right to an internal review **you should contact us within two months of the date of this letter**. There is no statutory deadline for responding to internal reviews and it will depend upon the complexity of the case. However, we aim to conclude all such reviews within 20 working days, and up to 40 working days in exceptional cases. We will keep you informed of the progress of any such review. If you wish to request an internal review, you should contact information.requests@ofcom.org.uk.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. Further information about this, and the internal review process can be found on the Information Commissioner's Office [here](#).

Alternatively, the Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire

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