



# **CHANGING ROLES?: A LOOK AT WHETHER OFCOM SHOULD HAVE A GREATER ROLE IN BBC REGULATION**

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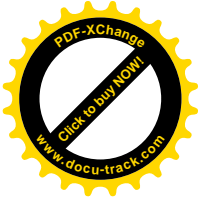
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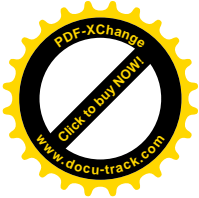
## ABSTRACT

The BBC is a unique institution of which no one would deny the importance. Although the BBC is considered a force for good, this perspective may cause an underestimation of the negative impact of its new services on the market place. Accordingly, there are safe guards in place to minimize these impacts. One of the key safe guards in place is the Market Impact Assessment (MIA). Once conducted by independent reviewers, the duty to conduct this is now given to Ofcom, and is taken into consideration by the BBC Trust when conducting its Public Value Test (PVT). This paper looks at the old regime to gain perspective of its flaws, namely with respect to inaccuracies and inefficiencies, and then moves to the new regime to see if it ameliorates some of these concerns. It then considers concerns that arise under the new regime as to whether a positive difference by separating powers between the BBC and the BBC Trust will be realized. To date, it appears that the shift of conducting MIAs to Ofcom will ameliorate some of the concerns that were present in the former regime. It is less clear to date whether the concerns raised with respect to the BBC Trust when conducting PVTs will be dispelled. However, no definitive conclusion can be drawn regarding the ultimate value of the regime change because its recency does not permit a conclusion to how these organizations will operate in conducting these evaluations once they are more established in their roles.



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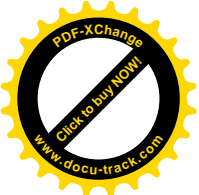
## CHAPTER 1 – INTRODUCTION

### 1.1 Background of the BBC Reviewal Process

One would not deny the importance of the British Broadcasting Corporation (BBC) or its unique ability to supply services that may not succeed in the commercial sector. However, along with the benefits of the BBC, it is necessary to constantly remember the potential distortions that a publically funded organization can create in the market place.

In order to minimize these distortions, a Public Value Test is conducted. (DCMS and BBC 2006). The goal of the Public Value Test (PVT) is to ensure that any impacts that the BBC's services have on the market place are justified by its contribution to society. (DCMS and BBC 2006). This is comprised of two components, a Market Impact Assessment (MIA) and a Public Value Assessment (PVA). (DCMS and BBC 2006). This means of assessing new services is relatively new and the result of numerous changes in the regulatory regime over the BBC in recent years.

The key change that has occurred in this regulatory regime concerning the BBC is with respect to who is responsible for the determination of the impact of the BBC's new services. Originally, MIAs were conducted by independent reviewers. However, this responsibility has shifted more and more in the direction of Ofcom, a converged regulator independent of the British Government with the remit of overseeing all aspects of the media. Ofcom was established by the Communications Act of 2002 and its duties are set forth in the Communications Act of 2003. (Ofcom). Its role is expansive, but of particular importance with respect to the BBC and the market place are its objectives of ensuring plurality in the market place, of effecting a public policy goal where it cannot be achieved if left to the market, of constantly researching markets in an attempt to remain at the forefront of technological understanding, and of consulting with relevant stakeholders and assessing the impact of a potential course of action before imposing it on the market place. (Ofcom).

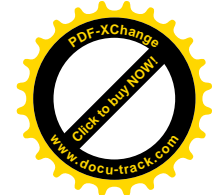
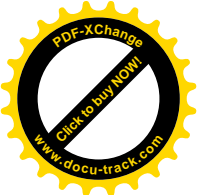


These objectives are of particular importance because they relate to the values underlying the MIA. Ofcom's knowledge as set forth in the objectives along with its ability to remain a constant evaluator, becoming knowledgeable in the area of BBC reviewal, gives it an advantage over the independent reviewers who changed from service to service, thereby offering no consistency.

The main objective of this paper is to consider this evolution of the mechanism for conducting MIAs and to a lesser extent the ramifications of it upon the PVT. It will then be able to consider whether the changes were warranted and, if they were, whether they are sufficient changes or whether they should be more dramatic. In particular, was it beneficial to move from independent reviewal to Ofcom's MIAs and how the power should be relegated between Ofcom and the BBC Trust.

Another dramatic change that has occurred in the reviewal process of the BBC came into effect in 2007. After 77 years of service of the BBC's Board of Governors, it was abolished in favor of the BBC Trust. (This is London 2006). The BBC Trust brings about numerous benefits because it increases transparency – it explains its decisions and publishes the evidence used to form them – and it is independent of BBC management, which enables it to make its decisions in favor of license fee payers without persuasion. (BBC Trust 2007a). The objectives of the BBC Trust are numerous, but include ensuring that the BBC remains independent, that it delivers high quality services throughout the UK, and that it contributes to UK culture. (BBC Trust 2007b).

Both of these organizations, the BBC Trust and Ofcom, present objectives that sound ideal. The issue remains as to who is to decide whether new services offered by the BBC adequately fulfill its remit or go far beyond it leading to unjustifiable market distortions. Currently the BBC Trust is in the primary role of making such decisions, but it may be a



better course of action to shift some of this responsibility to Ofcom. This is not due to purposeful misconduct on the part of the BBC, but rather the concern that they may fail to recognize the potential market distortions that they may create. Under the prior regime, an independent reviewer of the BBC's Digital Radio Services noticed:

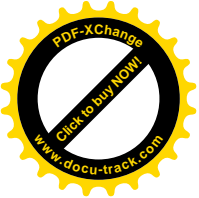
Yet, in my conversations with the BBC, it became clear that the BBC has had a tendency to overlook the impact of its actions on the commercial market where competitors have to make money to survive. The BBC, Governors and Management alike, has given little thought to the potential discouragement to commercial services from delivering similar services to the BBC because of the BBC's competitive deployment of resources that no business plan could ever justify. (Gardam 2004a, p. 14).

If this evaluation of the prior regime was accurate, then this would indicate that Ofcom could potentially be better equipped to make these evaluations in lieu of the BBC Trust because Ofcom has a much more expansive view as a result of its inherent nature as a regulator. In this case, one would hope that this shift is effective in removing these risks.

## **1.2 Current Role of the BBC Trust**

The BBC Trust is established by Royal Charter, which is reviewed about every ten years. (BBC Trust 2007a). The most recent Charter went into effect on 1 January 2007. (BBC Trust 2007a). The BBC Trust is an independent component instated to ensure greater transparency in how the BBC conducts business. (BBC Trust 2007a). The roles of the BBC and the BBC Trust are enumerated in the Charter (DCMS 2006) and expanded upon in greater detail in *An Agreement Between Her Majesty's Secretary of State for Culture, Media and Sport, and the British Broadcasting Corporation* (DCMS and BBC 2006).

The Charter begins by specifying the public nature of the BBC as well as its objectives. These purposes consist of (a) sustaining citizenship and civil society; (b) promoting education and learning; (c) stimulating creativity and cultural excellence; (d)

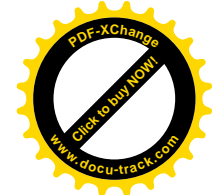
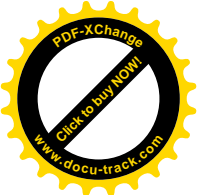


representing the UK, its nation, regions and communities; (e) bringing the UK to the world and the world to the UK; and (f) in promoting its other purposes, helping to deliver to the public the benefit of emerging communications technologies and services and in addition, taking a leading role in the switchover to digital television. (DCMS 2006). These main activities can be promoted by traditional media as well as through similar technologies that currently exist or may exist in the future. (DCMS 2006).

The specific duties of the BBC Trust as presented in the Charter are to (a) represent the interest of licence fee payers; (b) secure that the independence of the BBC is maintained; (c) carefully and appropriately assess the views of license fee payers; (d) exercise rigorous stewardship of public money; (e) have regard to the competitive impact of the BBC's activities on the wider market; and (f) ensure that the BBC observes high standards of openness and transparency. (DCMS 2006).

The role of the BBC Trust that is of particular interest with respect to offering new services is the role of considering their potential market impact. The process for evaluating the possible effects on competitors is presented in the Agreement. There are two components that are taken into consideration when deciding on whether to introduce or discontinue use of a new service, which in combination form the PVT. (DCMS and BBC 2006). The first component is the PVA, which should consider how this will affect license fee payers, the value that will be delivered to society as a whole, and the value for the money. (DCMS and BBC 2006). The second component is the MIA, which is to be conducted or outsourced by Ofcom, a regulator that will be discussed in greater detail in the following section. (DCMS and BBC 2006). The MIA considers the possible effects that the BBC's proposed change will have in the wider market place. Once both of these components are completed, the BBC Trust utilizes them to determine the potential ramifications of the BBC's proposed





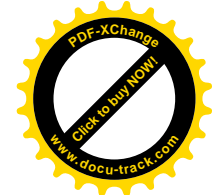
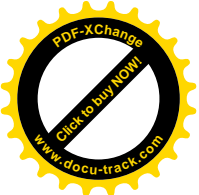
service change, which guide it in deciding whether or not the change should be made. (BBC Trust 2007c).

### **1.3 Current Role of Ofcom**

Ofcom is a relatively young regulator that was established merely five years ago by the Office of Communications Act 2002. Its predominant duties set forth in the Communications Act 2003 are “(a) to further the interests of citizens in relations to communications matters; and (b) to further the interests of consumers in relevant markets, where appropriate by promoting competition.” (Ofcom). Ofcom has numerous specific duties, two of which are of particular importance with respect to how it may interact with the BBC: “[e]nsuring a wide range of TV and radio services of high quality and wide appeal [and] [m]aintaining plurality in the provision of broadcasting.” (Ofcom).

In order to effectuate its remit logically and without being overly intrusive in the market place, Ofcom’s principles indicate that Ofcom will seek to ensure that it has sufficient evidence when making assessments and recommendations regarding the market place and will act in a proportionate and consistent manner. (Ofcom). In order to achieve this, Ofcom needs to be knowledgeable about the potential impacts of imposing regulatory action on stakeholders before taking action and it needs to always be knowledgeable about new technologies that have been developed. (Ofcom). Accordingly, Ofcom must conduct market impact assessments.

Ofcom considers these impact assessments to be of the utmost importance and to be conducted from the very beginning for fear that they may otherwise be relegated to a side role. (Ofcom 2005). In conducting its overarching duties to the market as a whole, Ofcom starts with the bias of no intervention because it has recognized that a free market has the potential to provide the greatest benefit to consumers as it encourages investment and



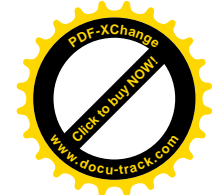
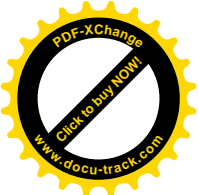
innovation. (Ofcom 2005). Accordingly, there must be convincing evidence of a market failure before Ofcom would consider it appropriate to intervene. When deciding whether or not it is appropriate to intervene, one must weigh what will happen with no intervention against what will happen with a particular intervention. (Ofcom 2005). This is the role that the Impact Assessments fulfill.

It is a distinct role of Ofcom to regulate the market and to ensure that competition and innovation can flourish. Since a critical component in fulfilling this role is with conducting market impact assessments, it may be considered that Ofcom is in a unique role with special knowledge about the entire market place that would best position them to consider potential impacts in the market place, including impacts caused as a result of new innovations of the BBC.

#### **1.4 Current Relationship Between the BBC Trust and Ofcom**

The duties and powers of Ofcom in relation to the BBC are set forth in the Communications Act 2003, the Broadcasting Act 1996, the Charter and the Agreement. (Ofcom and BBC Trust 2007). This interaction between the BBC Trust and Ofcom is outlined in greater detail in the non-legally binding *Memorandum of Understanding Between the Office of Communications (Ofcom) and the BBC Trust* (MOU). (Ofcom and BBC Trust 2007). The MOU identifies their respective roles and sets forth procedures to facilitate interaction in areas of common responsibility and of mutual interest. (Ofcom and BBC Trust 2007).

With respect to the BBC's effects on the wider market, it indicates that the BBC Trust has a duty to regard this impact. (Ofcom and BBC Trust 2007). This impact is assessed via the Public Value Test, which is required to be conducted before making any significant changes to the BBC's public services. The Trust conducts the first component, the PVA, and



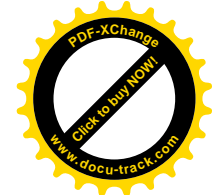
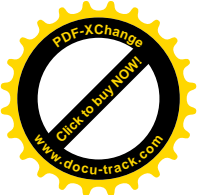
Ofcom conducts the second component, the MIA. The Trust is then to make a decision in light of these assessments. (Ofcom and BBC Trust 2007). Ultimately, whether or not to make the service change is at the complete discretion of the Trust.

Accordingly, although Ofcom plays a role in the decisions of the BBC Trust, it plays a minor role in relation to the Trust. The BBC Trust considers Ofcom's input from MIA, but that is only one of the considerations in conducting the PVT, which is the ultimate decider of whether or not to offer a service. (BBC Trust 2007c). Returning to the assessment made by one of the independent reviewers, if the BBC underestimates the impact that it may have on the competitive market then this paradigm shift will hopefully alleviate this problem.

### **1.5 Methodology**

This paper will look at MIAs made by independent reviews under the previous system as well as market impact assessments made by Ofcom. It will analyze the results of these two different approaches and evaluate which may be the most promising, both in efficiency and accuracy. In order to add to this objective, this paper will consider certain statements made by both the independent reviewers and Ofcom that the author has noticed during the research process. This will add opinions of those internally involved in the process and can therefore, add additional insight.

Following this, the paper will assess the current relationship of Ofcom and the BBC Trust. It will consider whether moving from the Board of Governors to the BBC Trust was sufficient for ensuring that the BBC does not underestimate its potential impact on the market or whether there needs to be further power shifted to Ofcom in order to ensure this objective. In particular, it will consider whether this current power balance is adequate or if there are continuing concerns that may prompt further regime changes in the future. However, it must



be remembered that this new regime is young and accordingly it is a bit early to make strong conclusions regarding its future.



## CHAPTER 2 – WEAKNESSES OF THE FORMER REGIME

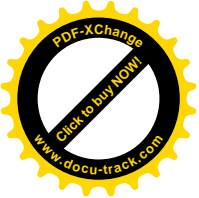
### 2.1 Introduction

Although the regime of independent MIA reviews has become defunct in favor of Ofcom conducting these assessments, it is useful to reflect upon the old regime in order to thoroughly understand these concerns and if the changes have successfully resolved them. This section will first consider discuss two examples of independent reviews that will give the best insight into this old regime and the changes. The first will be the independent review of the BBC Three, which is useful because it was evaluated at a later point, thereby providing the accuracy of the independent reviewers' predictions. The second one discussed will be the BBC's Digital Radio Services, which is meaningful because Ofcom conducted a review of this service as well. Thus, a comparison can be made in the next chapter following a discussion of Ofcom's review of this service. At the end of this chapter, there will be a discussion about the inherent weaknesses that lead to the change of this regime to the current one.

### 2.2 Case Study of the BBC Three

#### 2.2.1 Background of the BBC Three

In 2003, when the BBC proposed the launching of the BBC Three, they indicated that the reason for this was to fulfil a niche market that has not been catered to by other channels currently available in the UK. (BBC 2003). In conducting research in the market place, it was concluded that there was no available channel that included a full range of genres for the 25-34 age group. (BBC 2003). The primary goal of the BBC Three was to provide a new array of intelligent entertainment and drama, but approximately 15 percent of airtime would also be devoted to news, current affairs, education, music and the arts. Approximately 90 percent of this programming would be made in the UK as opposed to many other channels that show predominantly American programming. (BBC 2003). It was determined that 74



percent of the population approved this proposed launch. This number was 85 percent amongst the 25 to 34 year old target audience. (BBC 2003).

### **2.2.2 Market Impact Assessment of the BBC Three**

In 2001, an independent assessment was conducted by Oliver and Ohlbaum Associates Ltd of the likely impact that this proposal would have on the UK television market. (Oliver and Ohlbaum 2001). The assessment began by providing an overview of the current TV market in the UK. It found that the UK market, similar to developed markets throughout the globe, consisted of four segments: network television, premium pay television, basic pay TV package thematic channels, and à la carte and home shopping channels. According to the assessment, although each of these channels must compete with one another, each is fundamentally different with respect to its structure and economics. (Oliver and Ohlbaum 2001).

The assessment explored many of these channels in depth and came to the conclusion that the BBC Three would be supplying a niche that has not been adequately filled by the market itself. (Oliver and Ohlbaum 2001). Although the 25 to 34 age group is highly valued by advertisers, they tend to have interests that do not significantly correlate with audiences of other age groups. This, in addition to the high cost of producing programming for them, has resulted in very little available for this group. (Oliver and Ohlbaum 2001).

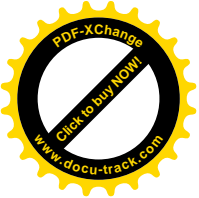
The assessment identified that the BBC Three is not a typical niche channel. (Oliver and Ohlbaum 2001). A typical niche channel offers programming aimed at a narrow demographic group or genre interest group. The BBC Three, rather, is more similar to a mixed schedule network, that would cover a broad range of areas with the specific target being the 25 to 34 age group. It would further, supply this group with programs made in the UK, rather than other programs currently available that are aimed at this age group, which are



principally US programs. (Oliver and Ohlbaum 2001). This was also thought to be beneficial in accelerating the switch to digital. Many of the viewers aged 25 to 34 find the current pay TV offerings disappointing, which hinders this switch over. This new channel, however, may help encourage this switch. (Oliver and Ohlbaum 2001).

It was found that the likely impact on competitors would be rather small. (Oliver and Ohlbaum 2001). The BBC Three would be replacing BBC Choice, which had a market share of approximately 1.5 percent. Much of the new audience share was expected to come from Channel 4, BBC 2, and Channel 5 during the times at which their programming caters to an older or younger audience. (Oliver and Ohlbaum 2001). The impact on Sky One was expected to be minimal if the BBC Three succeeded in attracting its target audience. The largest impact was expected to be on the Paramount Channel, which predominantly carried US comedies that have a target audience most similar to that which the BBC Three intends to target. (Oliver and Ohlbaum 2001). E4 was also expected to lose audience share to the BBC Three. It was estimated that both Paramount and E4 would suffer the greatest proportionate losses at approximately 15 percent. Additionally, with the BBC Three on a free to air basis, subscriptions may decrease unless subscription providers are able to provide strong channels that appeal to the BBC Three's target age group. (Oliver and Ohlbaum 2001).

Overall, the market impact assessment found that the BBC Three would be beneficial for the market in the UK. (Oliver and Ohlbaum 2001). It determined that even with the negative impacts, the BBC Three would be a net benefit to viewers in the target age group. The assessment indicated that the negative affects that may be felt by Channel 4 and E4 might limit their purchasing of US programs. (Oliver and Ohlbaum 2001). Hence, the US program providers would be the ones who would be likely to suffer the greatest loss. On the other hand, this new channel would lead to a 30 percent increase in spending on the production of UK programming, thereby solving many of the problems in the UK market to



deliver such programming. Accordingly, an induction of the BBC Three would be an asset to the UK market. (Oliver and Ohlbaum 2001).

### **2.2.3 Review of the Performance of the BBC Three**

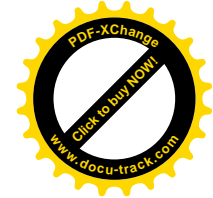
In 2004, a year after the BBC Three was launched, a review was conducted of its performance. (Gardam 2004b). Although the review found that it was meeting its remit in terms of genre mix, it has failed to attract its target age group. Accordingly, the review found that it has had limited value for the money. Gardam 2004b). One of the problems noted by the review was the BBC's strong emphasis on audience segmentation, which goes against the evidence that "the adult television audience is only weakly segmented, whether by programme-type preference, channel preference, or demographics." (Gardam 2004b, p.26). By focusing so heavily on the target age group of 25-34, it has alienated other adult viewers and possibly stereotyped this age group to the extent of reducing its appeal to them as well. In conclusion, the review recommended that the BBC Three should loosen its strong focus on topics specific to its target age group in favor of providing good programs with broad appeal that will be attractive to this age group. (Gardam 2004b).

## **2.3 Case Study of the BBC's Digital Radio Services**

### **2.3.1 Background of the BBC's Digital Radio Services**

In September of 2001, the Secretary of State for Culture, Media and Sport, Tessa Jowell approved proposals from the BBC to offer five new digital radio stations. (Gardam 2004a). These five stations consisted of 1Xtra, BBC 6 Music, BBC 7, BBC Asian Network and Five Live Sports Extra. Since digital radio is a relatively new niche with no guarantee of success, the BBC can play an instrumental role in driving digital take-up. (Gardam 2004a). By starting these five stations, the BBC is able to offer a product at a quality that could not yet be realized in this market by commercial services. (Gardam 2004a). Nonetheless, it is





important that the BBC be prudent in ensuring that its services offer a value different from what commercial competitors can offer. (Gardam 2004a).

Each of the new five stations have a particular niche, but it is important to continually assure that these five stations maintain their own unique niche. (Gardam 2004a). 1Xtra focuses on a black audience and provides them with news and documentaries which distinguish it from the commercial sector. The BBC Asian Network has defined its niche by attracting an audience base that is not satisfied by the commercial sector, thus making its distinguishing mark. 6 Music is noted for its distinctiveness, imagination and knowledge. Five Live Sports Extra provides additional hours of sports coverage for which the BBC owns rights. Lastly, BBC 7 has made a significant contribution to children's programming. (Gardam 2004a).

### **2.3.2 Market Impact Assessment of the BBC's Digital Radio Services**

In 2004, an independent reviewer of the BBC's Digital Radio Services, Tim Gardam, published a report about the potential market impact of its services. In this report he noted that the BBC Governors have made numerous reviews of these services, yet fall short in their ability to assess the distinctiveness of them, an essential element in conducting an MIA. Nonetheless, as a result of the early stage of development of this sector, he noted his caution in drawing definitive conclusions. (Gardam 2004a).

Gardam consulted the approaches taken by others when determining how to conduct the review.

Rather than try to quantify market impact in terms of lost revenue to the commercial sector, both the Graf report on BBC Online and the Ofcom report propose a competition-focused approach to assessing market impact. This looks at impact on the process of competition in the relevant segment. (Gardam 2004a, p.33).



Gardam opted to utilize this proposed approach for the purposes of his review. In answering the question of impact on competition, it is necessary to remember that this is not an absolute, as the BBC will inevitably impact the commercial market to some extent. Concern arises when this may reach the level of leading “to a reduction in the competitive pressure which drives innovation and improvement.” (Gardam 2004a, p.33). Accordingly, the BBC needs to offer distinct programming, typically defined as appealing to narrow audiences. The Secretary of State has given a definition of distinctiveness, that is useful in understanding it with respect to this review:

The Secretary of State has concluded that each approved service is distinctive and that its likely impact on the market is proportionate to its public value. This does not mean that the subject matter must necessarily be different to what the market will provide...In some cases it is clear that there will be other services with which the BBC may be in competition...The factors considered by the Secretary of State include the amount of new programming and how far it will specifically reflect the UK’s cultural interests and diversity, adding to the choice for license fee payers. (Gardam 2004a, p.37).

In order to make his assessment, Gardam looked to the BBC’s own assessment of its performance, feedback from listeners and the views of its competitors. (Gardam 2004a).

Following this process, Gardam indicates the extent to which the BBC’s services have an impact on the market. (Gardam 2004a). With the Asian Network, it appeared that it has brought about diversity and choice to its target audience and has not prevented commercial stations from becoming established as at least six new stations targeted at Asian audiences have been launched since its creation. (Gardam 2004a).

1Xtra, however, appeared to have had a significant impact on the market. (Gardam 2004a). Its launch was one of the reasons that its closest commercial competitor chose to sell



itself and has in the aggregate made this niche market less attractive to investors. This may be a result of its music base rather than its editorial base, which made it difficult for audiences to differentiate it from other stations. (Gardam 2004a). This may require some modifications if this market impact is to be justified. (Gardam 2004a).

According to Gardam, 6 Music was at the greatest risk of having a significant market impact because of its appeal to the 25 to 44 demographic. Nonetheless, its “active pursuit of editorial distinctiveness and eclecticism has limited its impact on the commercial sector.” (Gardam 2004a, p.76).

BBC 7, on the other hand, has been the most controversial because of its impact on its closest commercial competitor Oneword. (Gardam 2004a). The BBC has indicated that it has made clear attempts to differentiate its service from that of Oneword. Assessing this impact, however, is a bit difficult because it is unclear that Oneword would have succeeded in the market place had BBC 7 not entered due to its decision to enter the market too early with a proposition that could not be sustained at that point in time. (Gardam 2004a).

Lastly, Gardam reviewed the potential market impact of Five Live Sports Extra. He concluded that there was no significant market impact regarding Five Live Sports Extra because it was an occasional service offered as a part of Five Live and would be unlikely to have a noticeable impact on commercial competitors. (Gardam 2004a).

### ***2.3 Inherent Weaknesses of this Former Regime***

One inherent weakness of the former regime may already be apparent: each reviewer has his or her own methodology, which may lead to inconsistent results from proposed program to proposed program. This makes it difficult to compare the viability of different programs amongst one another and it makes it difficult to determine from later reviews how to alter the procedure in order to decrease bias when conducting future evaluations. This, of



its own accord, may prompt one to consider making a change such as the one made to Ofcom in order to create a consistent process. In addition to this concern, there were other concerns or questions addressed in the BBC Charter Review (DCMS 2005) for why this regime change was made.

The prominent concern was a recognition of the need to separate the role of setting the aims of the BBC and monitoring the performance and achievements of them. (DCMS 2005). This resulted in the idea of creating the BBC Trust, but with that arose three principle questions about (1) how the bodies would interrelate, highlighting their respective roles and how to monitor the BBC Trust, (2) the cost implications of making this change, and (3) the motives prompting this change. (DCMS 2005).

Lastly, there was a concern raised by an independent reviewer when making an assessment of BBC Online:

[the] process of independent review is not, in my opinion, a very efficient one. By the nature of the process – it only happens at a single point in time – there is a steep learning curve for the reviewer and considerable one-off disruption of the BBC. The Charter review should seek to find a better regime for regulating services such as BBC Online. (Graf 2004).

All of these concerns have prompted the change to the new regime. The functioning of this new regime with respect to MIAs will be addressed in the following chapter. Then, in chapter four, the effects of the change will be analyzed.



## CHAPTER 3 – THE NEW REGIME AND OFCOM’S MIAS

### 3.1 Introduction

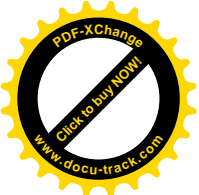
This chapter looks at the functioning of Market Impact Assessments under the new regime, in which Ofcom is responsible for conducting them. In this section, the utility of this change will be brought to the forefront with several concerns that arose under the previous regime. Namely, it will discuss the methodology that Ofcom has published regarding its process. It will then discuss two Market Impact Assessments that Ofcom has made. This will provide the necessary background for understanding the analysis in the following chapter.

### 3.2 Ofcom’s Methodology for Market Impact Assessments

Ofcom (2007a) has published a document that sets forth its methodology for conducting MIAs within the specific context of the BBC. This documents sets the goal of Ofcom to identify all ways in which a BBC proposal may affect the market, including consumers, competitors, and others likely to be affected such as suppliers, buyers and advertisers. (Ofcom 2007a). In addition, Ofcom seeks to determine how these impacts will affect consumers and citizens. This assessment seeks to determine both negative (substitution) and positive (market creation) effects. (Ofcom 2007a). Nonetheless, Ofcom considers the substitution effects to be more significant and thus tends to focus its assessments accordingly:

[i]n general, the substitution effects are likely to be more significant and, as a result, MIAs may often propose modifications or conditions designed to limit the negative impacts which have been identified. (Ofcom 2007a, p.3).

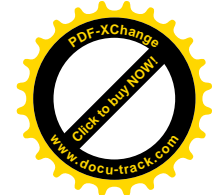
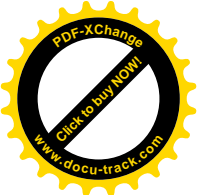
In conducting these assessments, Ofcom is concerned about how consumers and citizens will be impacted. (Ofcom 2007a). Although the BBC offers valuable programs, the possible harms to competitors may hinder competition and investment, ultimately affecting



innovation, which will in the long run harm consumers and citizens. As a result, Ofcom's MIAs seek to analyze both the static and dynamic effects on services and on the market. Static effects are concerned with the immediate, direct impacts that the BBC service has on other providers without consideration of ways in which the other providers may respond. Dynamic effects are concerned with how the BBC's proposals may deter innovation and investment in the commercial sector. Deterring commercial providers may ultimately reduce options for listeners and viewers, which would result in a detriment to the public interest. (Ofcom 2007a).

In order to conduct such an assessment, Ofcom must have sufficient information regarding the proposed service. (Ofcom 2007a). Such information is normally obtained from the BBC's proposal for the service. The minimal amount of information required by Ofcom to commence an MIA is a detailed description of the service and "indications of how significant the service is likely to be in terms of its size and budget." (Ofcom 2007a, p.5). During the process of conducting the MIA, Ofcom request written submissions from stakeholders, meet with stakeholders, and undertake research and analysis. (Ofcom 2007a).

Additionally, it is important that Ofcom work together with the BBC and the BBC Trust. This coordination of efforts is set forth in the MOU and the BBC Trust, which was previously discussed. (Ofcom and BBC Trust 2007). In order to comply with the MOU, Ofcom officials meet on a regular basis with BBC Trust officials while in the process of conducting an MIA. Generally, Ofcom is to provide the BBC Trust with its materials for conducting the MIA in order to allow the BBC Trust to use them in conducting its PVT. (Ofcom and BBC Trust 2007).



### **3.3 Ofcom's MIA of BBC's Digital Radio Services**

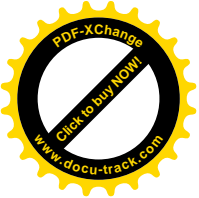
In 2004, in addition to the independent review conducted by Gardam (2004a) of the BBC's Digital Radio Services, Ofcom was requested to assist in assessing the market impact of these new services. (Ofcom 2004). The digital radio services comprised the radio stations 1Xtra, BBC 6, BBC 7, BBC Asian Network, and Five Live Sports Extra, all of which were presented in the previous section. (Ofcom 2004).

In assessing impact of these services, Ofcom looks to the effect it may have on new services in the overall market and takes a closer look at specific areas where it may hinder competition or innovation. (Ofcom 2004). This coincides with Ofcom's declared methodology for conducting market impact assessments. They also presented both the positive and negative effects of these services. (Ofcom 2004).

Ofcom found that the BBC's Digital Radio Services have made a positive contribution in effectuating digital uptake, although they hint that the BBC may have given itself greater credit than its contribution merited. (Ofcom 2004). In particular, Ofcom noted that the BBC has contributed by promoting digital audio broadcasting and aiding its growth by working closely with the commercial sector, namely with the Digital Radio Development Bureau. (Ofcom 2004).

Nonetheless, Ofcom has found that the BBC's activities may cause some significant costs:

There is a real risk that the BBC's involvement in some market segments may leave insufficient revenues for commercial operators wishing to supply those segments now or in future. Also, uncertainty about the future strategy of the BBC's new services may exacerbate the risks associated with new market entry or content innovation, by extending the range of services over which commercial operators may face competition from the BBC in future. Combined with the BBC's large budgets



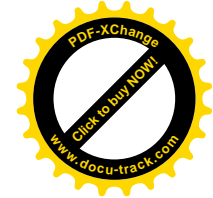
and relatively loose remits this may, in time, diminish overall levels of competition, investment and innovation. (Ofcom 2004, p.5).

In conducting its assessments, Ofcom gave an overview of the radio industry in the UK. It is interesting to note that “[u]ntil five years ago the BBC spent more money on radio than was received in revenue by all of the commercial stations combined.” (Ofcom 2005, p.14). However, it is also interesting to note the climb of commercial stations since their launch: by the end of June 2004 there were 211 local FM commercial radio stations, 59 local AM licences, one national FM commercial station, and two national AM commercial stations. (Ofcom 2004). This background is useful in understanding the BBC’s relationship to the commercial sector with respect to radio broadcasting.

Ofcom then proceeded to assess the BBC’s assessed impact of its services as well as the independent reviews of these services. They presented the estimated monetary effects of these services as stated by the independent review, which claimed an economic benefit of £9 million with a negative impact of £1.6 million. (Ofcom 2004). They stated that the independent review considered these services to not be a key determinant of commercial success or failure and that the BBC’s contribution has outweighed any negative impacts. (Ofcom 2004).

Ofcom was skeptical of the conclusions made by the independent review. (Ofcom 2004). When assessing the approach used in making these determinations, Ofcom came to the conclusion that they were largely based on assumptions and many of these assumptions were not verifiable. Their assessment also found that where there were resulting ambiguities that the independent review tended to favor the BBC. (Ofcom 2004).

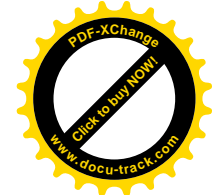
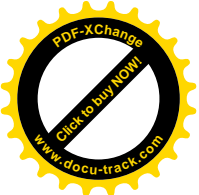




Additionally, Ofcom analyzed concerns raised in response to the independent reviews of these services. (Ofcom 2004). Although the response in general was positive with remarks that the BBC was improving the industry through its promotion of digital take-up, a few concerns were raised. In particular, there were concerns that the new stations were not adequately distinct from the commercial sector and many respondents called for clearer conditions to be placed on the BBC regarding its format to guard against potential drifting into the commercial sector. (Ofcom 2004).

After reviewing these opinions, Ofcom gave their own assessment of the market impact of the BBC's digital radio services. (Ofcom 2004). They did this by anticipating possible effects on the competitive process and how this may affect the process of innovation. As part of this assessment they analyzed the financial impact, but left clear that this sole number cannot encompass all of the nuances. (Ofcom 2004).

According to Ofcom, the BBC's digital radio services may undermine investment in radio stations targeting similar audiences. (Ofcom 2004). However, "[o]nly marginal services competing with the BBC's new digital radio services are likely to be affected." (Ofcom 2004, p.43). For these specific niches, the BBC's services may "leave insufficient audience for marginal rivals to remain viable. This might also prevent otherwise viable services from starting up." (Ofcom 2004, p.43). This can especially be problematic where the BBC's budget is vastly larger than the funds available to commercial rivals. (Ofcom 2004). This is particularly the case with the budget for these services: BBC 6 Music had a budget of £4.2 million per annum, BBC Asian network had a budget of £4.3 million per annum, 1Xtra had a budget of £6.1 million per annum, Five Live Sports Extra had a budget of £1.7 million per annum and BBC 7 had a budget of £4.5 million per annum while the average annual budget for rivals was approximately £100,000. (Ofcom 2004).



Despite this budgetary discrepancy, those who submitted reports regarding the issue were generally supportive of these services. These submissions included statements such as:

In general, our views of the BBC's digital radio services are positive. The stations have for the most part been of high quality and distinctive... and we suspect they have had little impact on our ability to sustain our services. (Chrysalis Radio, cited Ofcom 2004, p.43).

After considering this, Ofcom determined that the main issues of concern pertain to the radio speech segment and the Asian radio segment. Accordingly, Ofcom shifted its focus to BBC 7 and the BBC Asian Network. (Ofcom 2004).

With respect to BBC 7, Ofcom found that its "mix of same week repeats and archive broadcasts is broadly similar to Oneword's narrative speech programming of both drama and comedy." (Ofcom 2004, p.44). This has had a marked impact on Oneword in 2004, when USI Holdings announced the sale of its 50 percent stake, a decision partially prompted by the BBC acquiring Chivers Press, one of Oneword's two 50 percent shareholders. Accordingly, there are indications that Oneword's ability to survive has been jeopardized by the BBC's service. Ofcom also noted that if BBC 7 were to grow that it may leave an insufficient market for other commercial suppliers to start up a viable business in the speech segment.

The BBC Asian Network targets the UK's Asian population with a combination of speech, music, sports and news. (Ofcom 2004). Its competitors include Yarr Radio, Sunrise, Sabras XL, and Asian Sound. Each of these competitors broadcast in major Asian communities; none of them broadcast nationally. (Ofcom 2004). The BBC's services have had an impact on these competitors

[s]ince BBC Asian Network offers sponsorship and event services for free, commercial rivals' ability to win revenues from these services has arguably been eroded. Sunrise



indicated that sponsorship and events are an important source of income for Asian radio stations.” (Ofcom 2004, p.46).

Although well established commercial services will likely be able to survive, there is a threat to smaller stations and possible disincentives to invest. As BBC Asian Network has been by far the most successful BBC digital radio station, it will likely have a significant impact in the future, which “may dampen prospects for innovation and new entry into the Asian radio segment.” (Ofcom 2004, p.46).

In conclusion, Ofcom asserted that these services may impact certain niche markets and may hinder investment and innovation. (Ofcom 2004). A possible way of ameliorating this problem is to ensure that the BBC’s remit is narrowly and clearly defined. (Ofcom 2004). They also note that the BBC had a tendency to understate its impact on the commercial sector. (Ofcom 2004).

### **3.4 The Interactive Media Player**

#### **3.4.1 Background of the Interactive Media Player**

In August of 2006, the BBC proposed to offer four new services: catch-up TV over cable, catch-up TV over the internet, simulcast TV over the internet, and non-DRM audio downloads. (Ofcom 2007b). Before offering these services, the BBC Trust must conduct a PVT. This includes a PVT conducted by the BBC Trust as well as an MIA conducted by Ofcom as was outlined in the BBC Royal Charter and Agreement. (DCMS 2006). Accordingly, each of the four new services must be analyzed.

The first proposed new service is the catch-up TV over cable. (Ofcom 2007b). This would be a service available to customers of ntl: Telewest and Homechoice and would enable them to view the program within seven days after its being broadcasted. This would include



a service called series stacking: a service that would enable a viewer to view all episodes of a series if done within seven days of the broadcasting of the final episode. However, this would be streamed, not downloaded. All of the BBC's broadcasted programs would theoretically be available for this service. (Ofcom 2007b).

The second proposed new service is catch-up TV over the internet. (Ofcom 2007b). This service would be similar to the previous service, providing a seven day catch-up service over a large range of the BBC's programming. This service would include series stacking as the catch-up TV over cable would, but it has some additional features as well. It would permit the consumer to download and store the programming for a period of 13 weeks. If the programming is not viewed during this time period, the digital right management software would render it unplayable. Should the content be accessed, it would remain available for seven days from that point in time. This would also include VCR type functions such as the ability to pause, rewind, and fast forward. (Ofcom 2007b).

The third proposed new service is simulcast TV over the internet. (Ofcom 2007b). This service provides real time streaming of BBC programming over the internet at the same time that the BBC is broadcasting it on television. This service would be available by accessing the BBC's website and would use a multicast technology. At present, most internet service providers only provide a unicast technology, but the BBC expects them to upgrade their services over time. (Ofcom 2007b).

The final proposed new service is non-DRM audio downloads. (Ofcom 2007b). This service would enable consumers to download audio content from BBC radio broadcasts without the protection of digital rights management (DRM) technology. Thus, this would allow consumers to download this content to mobile devices such as iPods and MP3 players. This would not allow consumers to download full track commercial music, but it would



permit them to download live session music and music recorded for the BBC. This service would compliment the seven day catch-up service Radio Player, which is an already existing service. (Ofcom 2007b).

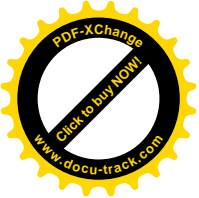
### **3.4.2 Ofcom's Market Impact Assessment of the Interactive Media Player**

In assessing the market impact of the Interactive Media Player, Ofcom gathered evidence from an array of sources that may be impacted in some way by these proposed new services. (Ofcom 2007b). First, they received a vast amount of information from the BBC about how these new services will work and its insights into how they may affect the market. Second, Ofcom conducted a consumer survey in order to clearly define the market that would be impacted by these services. Ofcom further took information from stakeholders by conducting a stakeholder seminar, conducting stakeholder interviews, and taking written submissions from stakeholders. Lastly, Ofcom conducted desk research that included compiling information from numerous sources such as brokers, economists, and market researchers. This information was used in their assessment of the market impact of these new services. (Ofcom 2007b).

Ofcom's role was to then assess how the BBC's proposals may impact the supply and demand for competing services. (Ofcom 2007b). In doing this, Ofcom assessed the potential impact of these proposals in the following markets:

- broadcast services on various delivery platforms, including related advertising services:
- on-demand services, including those offered on various delivery platforms; and
- home recording and viewing services and products. (Ofcom 2007b, p.23).

Ofcom additionally indicated that they were



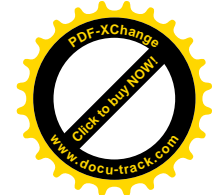
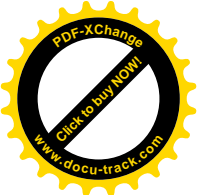
mindful of the overall purpose of the market impact assessment. In general, entry into a new market is likely to enhance competition and therefore be welfare-enhancing. (Ofcom 2007b, p.23).

While remembering that the BBC provides services that are beneficial to consumers and citizens, Ofcom must consider the possible negative ramifications that they may ultimately have on the market and on consumers and citizens. (Ofcom 2007b). Within this background, Ofcom presented their two main purposes in conducting this assessment:

first, the MIA needs to identify the ways in which the BBC's proposals will impact on the demand for and supply of competing services, and second, it needs to assess the extent to which they may distort competition. (Ofcom 2007b, p.23).

In order to assess the impacts of these services, Ofcom envisioned a counterfactual in which the BBC would not introduce these services. (Ofcom 2007b). Although not entirely realistic and leaving potential gaps, it provides a framework from which Ofcom can assess these services. They searched for direct effects both quantitatively and qualitatively. (Ofcom 2007b) There were three components to the quantitative analysis: the extent of the demand, substitution effects, and an estimation of the consumer and producer surplus, which included who is affected and to what extent. The qualitative analysis evaluated the possible impact on supplier incentives and investment levels. (Ofcom 2007b).

First Ofcom assessed the possible impact of cable catch-up TV. (Ofcom 2007b). Ofcom had three cases in which it assessed the usage of this service: the BBC projected that total usage by 2011 would be 850 million hours per year, Ofcom's central case assumed a total usage of approximately 640 million hours per year by 2011, and their low case assumed

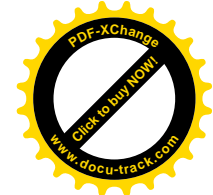
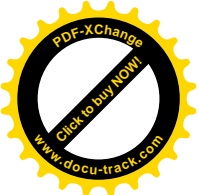


a total usage of 510 million hours per year by 2011. (Ofcom 2007b). Ofcom then identified the stakeholders to be

“non-premium content delivered as cable catch-up TV and VOD, linear TV on cable and using PVRs and DVD recorders (on cable), with a somewhat lesser impact on DVD sales and rentals.” (Ofcom 2007b, p.48).

For cable catch-up TV and VOD services Ofcom quantitatively found that there would be a medium diversion from other services, for linear TV on cable and new services Ofcom found that there would be a high diversion, and for the other services Ofcom found that there would be low or minimal diversion. (Ofcom 2007b). Ofcom determined the consumer surplus to range from £37 to 60 million while there would be a loss in producer surplus of £54 to 68 million. Qualitative concerns set forth included that this service would restrict possible business models that would otherwise be available to VOD providers and the possible ramifications on TV platforms should they be denied access to BBC catch-up content. (Ofcom 2007b).

Second, Ofcom assessed the market impact of internet catch-up TV. (Ofcom 2007b). Once again, Ofcom gave three scenarios of usage of internet catch-up: the high projection of 1400 million hours by 2011, their central case of 1100 million hours by 2011, and their low scenario of 900 million hours by 2011. (Ofcom 2007b). The stakeholders most likely to be affected were catch-up and VOD services, linear TV and recorded content such as DVDs. (Ofcom 2007b). The argument regarding catch-up and VOD services relates to the early stage of development of these services and the impact of their availability free of charge on those trying to market the service. Ofcom therefore deduced that there would be an impact on these services. Ofcom further deduced that simulcast TV is likely to be impacted because it uses the same platform and provides the same content. Other linear TV was determined to



be possibly affected. For DVD and VHS tapes, there is already an expected decline of these services, but nonetheless this service may increase the rate of this decline. (Ofcom 2007b). For consumer surplus, Ofcom determined a value of £74 to 125 million and for producer surplus, Ofcom found a decrease of £39 to 66 million. As for qualitative concerns, Ofcom assessed that this service may alter consumer expectations, causing commercial providers to become increasingly reliant on advertising funds resulting on a greater impact upon them than previously indicated. (Ofcom 2007b).

The third service into which Ofcom looked was simulcast TV. (Ofcom 2007b). Ofcom followed the same rubric of the aforementioned services making a high, central and low take-up projection. The high projection matched the BBC's projection at 860 million viewing hours by 2011, the central projection had an estimate of 640 million viewing hours by 2011, and the low projection estimated 500 million viewing hours by 2011. (Ofcom 2007b). Possible identified affected services were internet simulcast TV, internet VOD of non-premium content and linear TV, DVDs, and PVRs. It is expected that there would be an impact on internet simulcast due to the similar nature of these services to simulcast TV with respect to content, platform, and functionality. Internet VOD of non-premium content may be somewhat affected by this service. (Ofcom 2007b). Although none of the stakeholders highlighted a potential impact, consumer research found that the accessed content is similar. (Ofcom 2007b). With respect to linear TV, DVDs, and PVRs, Ofcom determined that these services are not likely to be impacted by this new service because the platform barrier, moving from TV to internet, is quite substantial. This may, however, create new markets by making wi-fi connections more popular. (Ofcom 2007b). The consumer surplus for this is estimated to be £22 to 37 million while the producer surplus is expected to lose £17 to 29 million. Qualitatively, Ofcom assessed that this type of service was not likely to cause any greater diversion to normal linear TV markets than already exists from the BBC's linear TV





service that already exists. Furthermore, Ofcom noted that stakeholders did not raise any significant objections to the offering of such a service. Accordingly, Ofcom deduced that the BBC should be permitted to offer it. (Ofcom 2007b).

Lastly, Ofcom assessed the impact of non-DRM audio downloads. (Ofcom 2007b). Once again, Ofcom gave three take-up cases. The high case was 960 million hours per year by 2011, the central case matched the BBC projection of 770 million hours per year by 2011, and the low case was 580 million hours per year by 2011. (Ofcom 2007b). The services that were likely to be impacted were existing internet radio catch-up and audio downloads on any platform, linear radio on any platform, and CDs. For internet catch-up and audio downloads on any platform, the services have similar features making substitution likely. With respect to linear radio on any platform, it was found that listeners would likely substitute from linear radio to audio downloads and that this proposal will undermine simulcast radio services. There was also evidence that consumers would substitute this service for buying CDs and therefore, once again there would be substitution. (Ofcom 2007b). Consumer surplus was estimated at £9 to 15 million and producer surplus was estimated to lose £14 to 25 million. The main qualitative concerns included impact on market development for commercial speech download services and access to the iPlayer platform. (Ofcom 2007b).



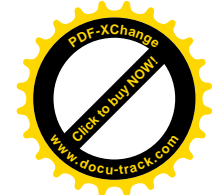
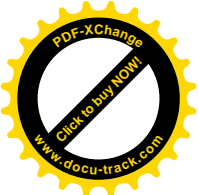
## CHAPTER 4 – COMPARISONS AND ASSESSMENTS

### 4.1 Introduction

The changes moving towards the development of the BBC Trust and the creation of Ofcom constituted a major overhaul of the former regime. These changes arose due to concerns about the former regime. The issue that remains is whether these changes have adequately addressed the raised concerns or whether additional changes are necessary. This chapter seeks to tackle this question first by setting forth the major concerns one attempts to ameliorate with these changes, then comparing the results of the former and current regime in order to determine whether these changes have been effectuated. Lastly, this chapter will delve into the potential shortcomings of the current regime, whether they have effectively eliminated the major concerns or whether more reform is necessary to effectuate the desired changes.

### 4.2 Concerns Prompting Change to the Current Regime

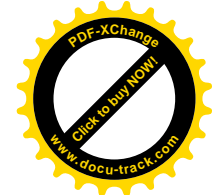
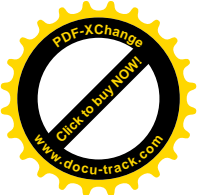
The concerns that have prompted the recent overhaul of the system were briefly set out at the conclusion of chapter two. A couple of the concerns were evident from a brief glance at the former regime. The first concern reflects upon deficiencies in the methodology. Namely, although each independent reviewer presents a methodology, many of which may appear well thought out, there will be inconsistencies from reviewer to reviewer, which may cause unnecessary deviations in the outcomes. A second evident concern was set forth by an independent reviewer of one of the BBC's new services. In his evaluation he noted the inefficiencies of the process of independent review. (Graf 2004). In highlighting this concern he focused upon the single occurrence of the review and the steep learning curve required in order to conduct this single review. (Graf 2004). This led him to conclude that there was a need to change the system. (Graf 2004). In the comparison between Ofcom's



and the independent reviewers' MIAs, this paper will address whether this change to the current regime has satisfactorily ameliorated these concerns.

Another concern that has appeared is a tendency to be partial to the BBC. Therefore, there will be a comparison between the independent reviewers and Ofcom and then between Ofcom and the BBC Trust with respect to favouring the BBC. Although one may seek to evaluate the BBC objectively, there may be a tendency to be partial to the BBC, which may hinder the ability to accurately evaluate the newly proposed service. During an evaluation of the potential changes to the BBC, it was found that in general participants were favourably disposed towards the BBC. (DCMS 2005). Even though the reviewers may be a bit more sophisticated in this area, they may share these biases with the general population. One independent reviewer upon conducting an evaluation specifically noted that he noticed, when dealing with the BBC, that there was a tendency on its part to overlook its impact on commercial competitors. (Gardam 2004a). In particular he noticed that the Governors and Management of the BBC gave little thought to the possibility of discouraging commercial providers from developing similar services due to their inability to compete with the BBC's available resources. (Gardam 2004a). Thus, in order to evaluate the impact of the regime change and whether further changes are needed, it is necessary to tackle this question.

Next, there were concerns regarding the accountability of the BBC under the former regime and the BBC Trust under the current one. With respect to the former regime, there were concerns raised about the need for separating the role of setting the goals of the BBC and monitoring the achievement of those aims. (DCMS 2005). This brought about the decision to create the BBC Trust to act as a 'watchdog' and 'auditor' of the BBC. (DCMS 2005). Nonetheless, this brought about new concerns regarding how the BBC and the BBC Trust would interact, cost implications, and the motives behind the re-organization. (DCMS 2005). Many consumers expressed a lack of confidence in the BBC Trust and its competence



in conducting the PVT. In the evaluation of consumer opinions, some were concerned that the creation of the BBC Trust was going to result in increased costs with little to no benefit. Scepticism of there being any effects from this change were apparent by consumer comments:

I can see what the idea is of what they're trying to do, but I just wonder if, to me, sitting watching these programmes, whether I would see the difference once they did this. It all sounds sort of laudable, good reasoning behind it, but I don't know if I would see a difference really. (DCMS 2005, p. 20).

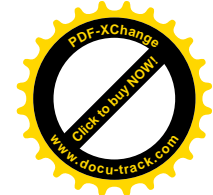
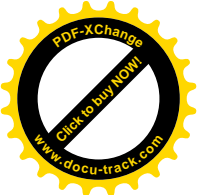
I don't think it will make any difference at all. Everything will just go according to the way it's been done in the past [...] they're all in each other's pockets. (DCMS 2005, p. 20).

These opinions were speculative and with the recency of this change it is not possible to reach concrete conclusions about the effectiveness of the changes. Nonetheless by evaluating the few market impact assessments conducted by Ofcom and the response of the BBC, it may be possible to see a trend as to whether the changes are adequately effective or whether additional changes will likely be needed to achieve the goals of reform.

These concerns provide the framework of evaluation for the effect of the changes from the former to the current regime and give insight as to whether or not additional changes are needed.

#### ***4.3 Evaluation of the Changes from the Former to Current Regimes***

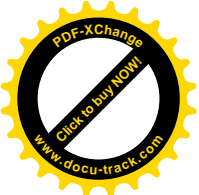
This section will assess the utility of the transformation from the former to the current regimes, while incorporating the relevant aforementioned concerns. Namely, this transformation should ideally alleviate indiscrepancies caused by inconsistent methodologies. Although each independent review set forth a well thought out methodology, the methodologies will vary from reviewer to reviewer. One must note that regardless of the good intention or the thoroughness and desire to eliminate bias when creating a methodology,



there will be a lack of precision that may be biased in favor of one side or the other. In this instance, the greatest concern for bias is in favor of the BBC, a trend that the author could observe across the independent reviews.

The effects of the trend for a bias in favor of the BBC, is enumerated in the independent review conducted of the BBC Three. The independent reviewer conducted a thorough assessment and followed a well defined methodology of these programs and found in the aggregate that the BBC had a good service that it should offer. However, the year following the launch of the BBC Three a follow up assessment was conducted. In this assessment, it was found that although the BBC was fulfilling its remit, it was failing to attract its target audience, resulting in limited value for the money. These failures not only undermine the public value, but may also impact consumer opinion of the BBC, an organization traditionally held in high esteem among its viewers.

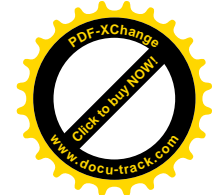
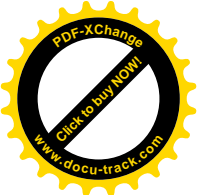
The second independent reviewer that this paper focused upon was that of the BBC's Digital Radio Services. This proposed service was evaluated by both an independent reviewer and by Ofcom. In his methodology, the independent reviewer addressed the need for the BBC to be prudent in ensuring that its services offer a value different from what competitors can offer. He coupled this with reminding the reader that one must be cautious with drawing definitive conclusions when conducting an assessment of a speculative manner. Following a very well defined methodology, the independent reviewer thoroughly assessed the potential market impacts. He noted certain modifications that may be necessary to justify certain services, but nonetheless disregarded concerns about the most controversial service, BBC 7, noting that it is unclear that the commercial competitor Oneword would have been able to succeed even had the BBC not entered this market. This is a bit contradictory to the initial statement he made that the BBC needs to be prudent in ensuring that it will not impact competitors. Although it may ultimately have been that Oneword could not compete, it



nonetheless should have caused greater pause the assessment rather than a brief attempt to justify.

The review of the BBC's Digital Radio Services may be compared to the review that Ofcom made. Ofcom has published its official methodology that it uses for all of its market impact assessments. Its methodology is extremely detailed and oriented towards a thorough assessment of the potential market impacts. Following its methodology, Ofcom reached conclusions that differed in many respects from the independent review. Ofcom's approach could be seen more skeptical of the BBC's benefits than the independent reviews. In its approach it looks more substantially at the market as a whole and then to the BBC's role in that market rather than the more common independent reviewer process of assessing the BBC's new service and then applying it to the market as a whole. This may shift the underlying bias of the assessment. However, if one is concerned about the historical favoritism of the BBC and the need to be prudent, meaning that the bias should be against the BBC, then this paradigm shift may be a much needed change. In particular, Ofcom noted concern that the independent review come to conclusions based largely on unverifiable assumptions that tended to favor the BBC in cases of ambiguity. (Ofcom 2004). This goes against the thought that there should be bias against the BBC in cases of ambiguity or at least that a prudent approach must be taken by the BBC when there is lack of clarity.

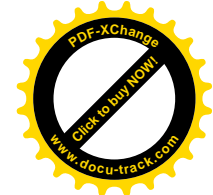
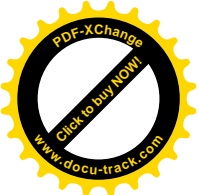
With respect to the first concern regarding consistencies of approach, it would seem that Ofcom is the better candidate. It has published a methodology, which will remain consistent from review to review, unlike with independent reviewers where each sets forth a methodology. Secondly, this enables it to learn from its methodological mistakes. With the review of the BBC Three, it became apparent that the market impact assessment had many shortcomings. Ofcom further noted shortcomings in the independent review of the BBC's Digital Radio Services, notably with respect to biases in favor of the BBC. This BBC



avored bias was also the problem that led to the failures of the evaluation of the independent review of the BBC Three. Ofcom has noted these problems and incorporated mechanisms to handle this into its methodology. Furthermore, by being the sole organization with the task of conducting market impact assessments, it can learn from its own failures and modify its methodology over time to achieve better results, something that cannot exist when there is a new reviewer for each service. Accordingly, Ofcom is the better choice with respect to this concern.

The other concern to be addressed when making this change is with respect to efficiency, or lack thereof when conducting market impact assessments. This concern was presented in an independent review of the BBC, where the reviewer discussed dissatisfaction with the former, then current, regime of conducting market impact assessments. In particular, it was noted that the process of independent review is not very efficient because it only happens at one point in time and there is a steep learning curve. By moving to the current regime, Ofcom could potentially assess a service before its onset and conduct later follow up reviews in order to ensure that the objectives are being met. This coincides to a large extent with Ofcom's ability to learn from its mistakes and fine tune the methodology. Additionally, a select group of experts can be assigned the role of reviewing the BBC's services. This enables certain people to become familiar with this process rather than assigning a new person each time. This would minimize the learning curve. Accordingly, it appears that the change from the former to the current regime ameliorates this concern as well.

In conclusion, the concerns raised about the former regime are ameliorated with the transition to the new regime. This does not mean that all of the concerns in these areas have dissipated, but it appears that the transition has achieved a marked improvement in these areas. Accordingly, one would be inclined to conclude that with respect to these concerns, the transition has been overly positive. However, the MIA is just one brick stone in the PVT



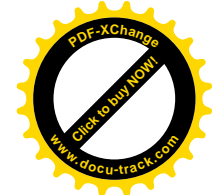
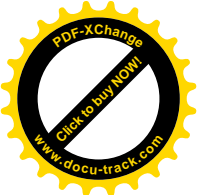
and it remains to be discussed whether Ofcom's MIA has a lasting effect on the overall outcome of the PVT.

#### **4.4 Evaluation and Concerns of the New Regime**

In order to thoroughly evaluate the new regime, it is necessary to consider the relationship between Ofcom, the BBC Trust and the BBC. The BBC Trust is supposedly a body independent of the BBC and the government. Ideally, this would enable it to be less biased than if it were under the BBC. This would in theory result in it being less bias in favor of the BBC. In one independent review of the BBC, the reviewer found that although the BBC is certainly a force for good, there was frequent oversight by the Governors and Management regarding the extent to which it may hinder the growth of commercial competitors. (Gardam 2004a p. 14). This separation of the BBC and BBC Trust may or may not ameliorate this concern. The increase in transparency may result in it becoming more accountable, which would result in a benefit. However, if the bias is a result of personal appreciation of the BBC and a lack of understanding how it may impact the competitive market, this change may be on little benefit. This couples with concerns about how the BBC and the BBC Trust should interact and cost implications of having this new 'watch dog'. (DCMS 2005). This reflects consumer concerns regarding the situation.

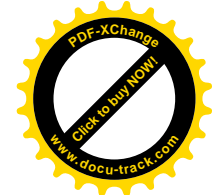
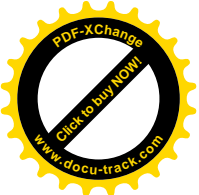
The new regime has been in effect for only a short time, which makes it difficult to form concrete opinions about its future. However, some insight may be gained by considering the BBC Trust's response to Ofcom's market impact assessment of the Interactive Media Player when it conducted its first Public Value Test, which was published in April of 2007, a mere three months after its coming into being. (BBC Trust 2007d). In making its conclusions the BBC Trust only lightly touched upon the comments made by Ofcom. It noted that Ofcom had some concerns about impacts on the market place and acknowledged that there would be some modifications of these services, but its overview of





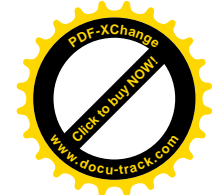
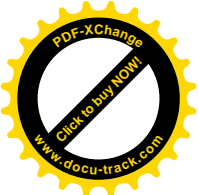
Ofcom's assessments seemed inclined to dismiss these concerns. (BBC Trust 2007d). After making a few modifications such as the addition of an annual quota of 15 percent of all offered on-demand television content, it determined that the public value in offering these services was greater than the possible market impacts. (BBC Trust 2007d). It must be noted that the BBC Trust did make some changes as a result of the market impact assessment presented by Ofcom. However, the end result was more BBC favored than Ofcom's position.

Although a reflective organization, the BBC Trust may be guilty of the same BBC favored tendencies of which the independent reviewers were guilty. Additionally, concerns have arisen with respect to whom should be appointed members of the BBC Trust. Most consumers in the survey thought that the members should know "the' ins and outs' of the BBC because they believed that this knowledge and expertise was vital to performing the job of the BBC Trust." (DCMS 2005 p. 23). Nonetheless, they additionally recognized that the reason for the BBC Trust is its independence from the BBC and therefore a need to have an independent staff. (DCMS 2005). Ultimately, when asked to consider possible members to the BBC Trust, some consumers suggested people who either currently or formerly worked for the BBC Trust. (DCMS 2005). When put into combination, there is a real risk of bias in favor of the BBC. This type of favoritism led to the unfortunate outcome that was seen in the follow up the BBC Three. Should this be the case, the end result of this regime change may not be as great an initially envisioned with the transition to Ofcom making more prudent MIAs. This would result in at least a minimal realization of the concerns expressed by consumers where they indicated that they feared that there would be little change, while increased costs incurred as a result of funding a new organization. Whereas the movement from independent reviews to Ofcom can increase efficiency by lowering the learning curve, thereby lowering expenses, if the BBC Trust cannot fulfill its merits, it may be deemed to be little more than a financial burden on license fee payers.



Additionally, concerns have arisen regarding how the BBC Trust should interact with the other institutions. (DCMS 2005) Ofcom and the BBC Trust have created the MOU, which is a non-legally binding agreement setting forth their respective roles. (Ofcom and BBC Trust 2007). Although a detailed agreement, it has been in effect for a brief period of time so few definitive conclusions can be drawn. The counterpart discussing the roles between the BBC and the BBC Trust is presented in the Charter (DCMS 2006) and *An Agreement Between Her Majesty's Secretary of State for Culture, Media and Sport, and the British Broadcasting Corporation* (DCMS and BBC 2006). This explains the new role of the BBC Trust, but it is unclear precisely how this will function in practice with relation to the BBC. The main objective is for the BBC Trust to act as 'watch dog.' This, however, leads to a circular problem as indicated by one consumer when the survey was conducted: "It goes on forever this, yeah and who are they responsible to?" (DCMS 2005 p. 20).

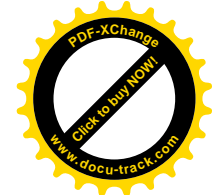
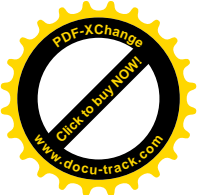
In general, the consumer opinion was in favor of the new regime. (DCMS 2005). However, it is necessary to take the presented concerns very seriously. In order to overcome the skepticism, the BBC Trust will need to act carefully and not be biased in favor of the BBC. This outcome is questionable in light of their first PVT. If consumers see little effect of creating this new entity, it may undermine the value of its existence. In light of the concerns, it appears that the move towards Ofcom conducting the MIAs is a positive, but its ability to influence the BBC Trust when making its PVT is less clear to date. Ultimately, it may be necessary to shift greater power to Ofcom to effectuate the ideals of this regime change. However, one must approach this prudently. Since the new regime is very recent, it will require additional time to thoroughly assess the inner workings and value of the change. Nonetheless, it is beneficial to note the initial tendencies and bear them in mind when considering this new regime and its future.



## CHAPTER 5 – CONCLUSIONS

It is quite evident that either under the former or the current regime, the review system for newly proposed BBC services is complex. It requires a facilitation between either numerous people or organization and a deep understanding of not only the workings of the BBC, but the marketplace as a whole. All of these considerations make evaluating this regime change difficult. This is coupled with the youth of the new system. Although some initial conclusions may be drawn, one should at no time forget that the new regime is an infant and that the BBC Trust's Public Value Test of the Interactive Media Player was one of its first attempts at performing this function.

With these issues in mind, one may make some initial conclusions regarding the transition to the current regime. This transition appears at first glance to be a positive. It ameliorates numerous concerns regarding efficiency because it permits a small group of experts under the Ofcom heading to become familiar with the BBC and its market impact. This will lower the learning curve issues because a new person will not have to learn this each time a new market impact assessment needs to be conducted. Additionally, when undertaking an activity that is highly speculative there will always be inaccuracies. The former regime resulted in each market impact assessor to create a methodology and regardless of the thoroughness of these methodologies this is not a precise science and the differences between methodologies can lead to further inconsistencies. Ofcom has already created a thorough methodology that provides consistency among its reviews. This consistency enables Ofcom to at a later point assess the accuracy of its predictions and may then be able to fine tune its methodology to give ever more precision. This is an additional benefit that arises from having one person or organization responsible for all of the market impact assessments. In total, the transition from the former to the current regime with respect



to the transition from independent reviewers to Ofcom appears to be a positive transformation to date.

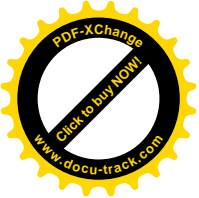
Whether the BBC Trust will be able to maintain sufficient impartiality from the BBC is less clear to date. It appears that some of the concerns raised by consumers such as lack of noticeable difference are being realized. Because the BBC Trust creates an entire new entity, which consumers fear will increase their fees, it is necessary that it justify its necessity to these consumers. At first glance, it appears to have failed to meet this high threshold. However, the BBC Trust is very young and it would be hasty to make a determination this early into the regime change. Therefore, the reader suggests that one look at this change with caution and reflect upon these concerns with not solely the information to date, but also with future Public Value Test performed by the BBC Trust. Only after a certain amount of time has passed and the BBC Trust has been able to establish itself would it be possible to make decisions regarding the validity of its existence. Nonetheless, to date the author of this paper remains skeptical of the benefits of this change.

With very little time to see the effects of the new regime a couple of initial conclusions have been made, but they cannot be deemed conclusive. There appear to be some overwhelming benefits of the change to the current system with respect to Ofcom, but this is less clear with the BBC Trust. Nonetheless, only time will tell if this transition will meet everyone's expectations.



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