IPA
Incorporated by Royal Charter

7 October, 2022

IPA Response to Ofcom call for evidence: Regulating the quantity and scheduling of television advertising on public service channels

About The IPA

The IPA is the professional body representing advertising, media and marketing communications agencies based in the United Kingdom. We have approximately 270 agency brands within our membership. Our member agencies include those planning and buying the vast majority of UK TV advertising spend on behalf of their advertiser clients (over 90% in 2021[1]).

As a membership body incorporated by Royal Charter, the IPA's role is two-fold: (i) to provide essential core support services to our corporate members who are key players in the industry; and (ii) to act as our members' spokesperson.

Advertising is fundamental to the UK economy. Every pound spent on advertising returns £6 to GDP[2]. It plays a crucial role in brand competition, drives innovation and fuels economic growth. It also helps fund our media and employs thousands of people throughout the UK.

Introduction

Ofcom "*have identified three possible reasons why the stricter COSTA rules that apply to PSB channels should perhaps be removed*":

• *given the significant change in viewing habits since the early 1990s, the stricter COSTA rules that apply to PSB channels might no longer be justified on the basis that they are needed to protect the quality of the viewing experience;*

• *removal of the stricter COSTA rules that apply to the PSB channels might help the financial sustainability of the PSBs; and*

• *the relevant COSTA rules might be operating as a distortion of competition, particularly given that non-PSB channels are long established in the UK.*

The IPA Submission

In this concise submission, we will take each of these three possible reasons in turn before summarising the resultant IPA View:

[1] Nielsen Ad Intel
[2] Deloitte's Advertising Pays 2 Report, 2016

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Are the stricter COSTA rules that apply to PSB channels still justified to protect the quality of the viewing experience?

As this consultation recognises there have been significant changes in how television is distributed and watched during the period since the differential rules for commercial Public Service Broadcast channels (PSBs) were introduced over 30 years ago.

These include a dramatic increase in the number of channels available in the UK and the rise of on-demand and streaming services. Most pertinent to this consultation is the decline from majority to minority share of commercial television viewing via PSB channels. For example, in 2002 PSB channels accounted for ~70% of commercial television viewing. By 2021 this figure had dropped to ~40%[3].

Clearly, in part this is due to the sheer growth in numbers of non-PSB channels available to UK viewers. There are considerably more non-PSB commercial channels available with the current number being 480+, not least the successful non-PSB channels of PSB broadcasters. Whilst it is the case that PSB channels remain the individually most popular in the market[4], it appears increasingly difficult to support stricter rules for PSB channels on the basis of protecting viewing experience when a significant majority of total commercial channel viewing now takes place outside of this regime.

As we note below with regard to distortion of competition, the TV marketplace is a complex one and there are unique properties with regard to PSB channels, notably their commercial attractiveness in light of relatively large audiences. As PSBs already maximise ad minutage in peak time for their key programming, it is likely that any additional minutage would be disproportionately allocated in pre-peak. A possible consequence of this is that the overall audience profile of the PSBs could become more downmarket and older, and therefore less attractive to advertisers. Before any loosening of rules to bring PSB rules in line with non-PSB, further analysis of this possible consequence is advised.

Does the removal of the stricter COSTA rules that apply to the PSB channels help the financial sustainability of the PSBs?

PSB financial stability is influenced by a myriad of factors beyond stricter COSTA rules for PSB channels. Changes in TV distribution and viewing (as referenced in this call for evidence itself) fundamentally underpin these. As do how each PSB is reacting strategically to this in terms of their non-PSB channel proliferation, BVOD services, sales house operations and production. We are not in a position to model the relative impact on PSB financial stability by the removal of stricter COSTA rules. However, we would note that such a removal is unlikely to have any detrimental effect to their financial stability.

[3] BARB audience data via TechEdge
[4] ITV1 (23.33%), Channel 4 (8.07%), and Channel 5 (6.96%) share of All Adult 30" equivalent commercial impacts across 2022: BARB audience data via TechEdge (data to 27th September)

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Do the relevant COSTA rules operate as a distortion of competition?

In principle, we consider the most obvious means to minimise distortion of competition is to start with a level playing field in restrictions between all broadcast channels, both PSB and non-PSB.

TV media inflation, especially on PSB channels where it is running at +19% vs 2021 (All Adults)[5], is a current issue in the market. On first inspection, the removal of stricter COSTA rules for PSB channels should go some way to ameliorate this via increased supply of commercial airtime.

However, the TV marketplace is a complex one that has facets beyond pure supply and demand.

Most notable of these is the unique properties that PSB ITV1 has in reaching large audiences and enabling mass cover build over a very short period of time. This was the thrust of the case for introducing the Contract Rights Renewal (CRR[6]) mechanism. Whilst the TV marketplace has changed significantly since this remedy was introduced in 2003, it is worth noting evidence suggests ITV is still unique in its ability to deliver fast cover build and that it is still extremely difficult to replace ITV on TV schedules. 89 of the 100 largest commercial programme audiences (89%) were delivered by ITV in 2021[7]. The figures would be 93.2%, if you extend to the top 1000 programmes.

The CRR remedy gives advertisers and media buyers the right to renew their contracts with no increase in the share of their spend that they commit to PSB channel ITV1 and no reduction in the discounts they receive. Further analysis is required to ensure any changes to COSTA rules do not inadvertently damage the protections afforded to advertisers and media buyers by the CRR mechanism.

The IPA View

Given the above considerations and with the noted caveats, we are supportive of the following changes to COSTA:

• **Removing Rule 4**, which applies only to PSB channels, and **amending Rule 3** to apply to all PSB and non-PSB channels equally. This would mean that all PSB and non-PSB channels would be subject to the same limit of showing no more than an average of 12 minutes of television advertising and teleshopping spots for every hour of transmission across the broadcasting day, of which no more than 9 minutes may be television advertising.

• **Removing Rule 5** so that advertising breaks broadcast during programmes on PSB channels are no longer subject to a maximum duration.

[5] IPA media agencies' media investment estimate
[6] https://www.ofcom.org.uk/__data/assets/pdf_file/0016/27610/crr_summary_pdf.pdf
[7] GroupM Media Investment

• **Amending Rule 16** so that PSB channels are subject to the same restrictions as non-PSB channels on the number of internal breaks permitted in programmes.

Further, we are supportive of **removing Rule 7** which requires that on PSB channels, teleshopping windows may be scheduled only between 00:00 and 06:00.