

News Broadcasting's response to Ofcom's consultation on the quantity and scheduling of television advertising on public service channels

Section 1: Executive summary

- **The differentiated COSTA rules for PSBs and non-PSBs remain a necessary and proportionate piece of regulation.** The stricter COSTA rules for PSBs are an important part of the PSB package, in which the modest impact of the COSTA obligations significantly outweigh the benefits accruing to the PSBs (e.g. protected prominence on linear and, soon, on certain digital devices). Amending the rules risks further entrenching the position of the advertising-funded PSBs.
- **Ofcom has proposed making a significant market intervention, but there is a dearth of supportive evidence.** Permitting PSBs to broadcast an extra 48 minutes of advertising per day per PSB channel would have a significant impact on the market for TV advertising. There are very few industry stakeholders calling for this change and there is a lack of supporting evidence. Ofcom has not commissioned any new econometric analysis and the consumer research gives a - at best - mixed picture of audiences' attitudes to increased PSB advertising.
- **Changing the rules would have a negative revenue impact on UK commercial broadcasters, all of which continue to rely on advertising as their core revenue stream.** Harmonising the rules will lead to a double revenue hit for commercial broadcasters, as the price of TV spot advertising is devalued and revenues are redistributed from non-PSBs to PSBs. By proceeding with its proposal to change the rules, Ofcom would be opting to benefit the few advertising-funded PSBs at the expense of the entire commercial broadcasting sector.
- **Proceeding with the proposal would lead to poorer outcomes for audiences and broadcasters.** Amending the COSTA rules would reduce the revenues available to commercial broadcasters to invest in programming, therefore materially impacting the viewer experience and potentially, over time, eroding the size of the audience that advertisers can reach. It would also put news and current affairs provision from both PSBs and commercial broadcasters at risk.

Section 2: Introduction

News Broadcasting welcomes the opportunity to respond to Ofcom's consultation on proposals for removing regulation on the quantity and scheduling of television advertising on public service channels.

News Broadcasting is the broadcasting division of News UK, home to TalkTV and radio services including talkSPORT, Times Radio and Virgin Radio. Indeed, we recently celebrated the first anniversary of TalkTV's launch, with the channel establishing itself over its first year for its big interviews, current affairs analysis and opinion on TV and online.

In the last year, we have observed the structural challenges in launching, operating and monetising a commercial TV broadcaster. While Ofcom's consultation document discusses "the commercial challenges" facing the PSB sector, with those being "rising production costs, and the increased competition from well-funded global streaming services", it fails to recognise that those challenges also face commercial broadcasters, who have access to none of the privileges of the PSBs (e.g. protected prominence on the linear EPG, and soon, on certain digital devices).¹ Non-PSBs face tough competition from well-funded global streaming services, as well as the well-established, protected PSBs.

In general, News Broadcasting supports progressive deregulation and the levelling of playing fields in the broadcasting market, and we agree with elements of Ofcom's market analysis. The TV advertising market has changed as a result of evolving audience habits and the growth of online advertising. We note, as Ofcom does, that video-on-demand (VOD) platforms have launched, or intend to launch, advertising-supported tiers; Netflix launched its advertising-supported tier in Q4 2022 and Disney+ is due to launch its advertising-supported tier in Europe at the end of this year. Meanwhile, Channel 4 is testing a new reduced advertising-load format on its streaming platform.²

Rather than stimulating competition however, the proposal to remove the stricter rules on the PSBs would exacerbate existing structural imbalances in the TV broadcasting market. Changing the rules would benefit the select few broadcasters that already enjoy significant regulatory privileges and a comparatively high, stable market share.³ It would risk further entrenching the position of the PSBs, making it even more challenging for new entrants to compete. In addition, there is so little evidence and such minimal stakeholder support to justify even a partial harmonisation of the COSTA rules.

There are alternative regulatory interventions which could be made to improve the competitive dynamics in the TV market, which would provide opportunities for a range of players across the market, rather than supporting a handful of players at the expense of the rest of the sector. One of the key recommendations of Ofcom's *Small Screen: Big Debate* review was that more could be done to support 'complementary' PSM provision from commercial broadcasters.⁴ Other advertising rules do require updating to reflect the modern media landscape and support the provision of public interest content, such as the rules governing the commercial sponsorship of current affairs programming on TV and VOD.⁵

¹ The [draft Media Bill](#) includes provisions to ensure that viewers can more easily access PSB video-on-demand services on smart TVs, set-top boxes and streaming sticks.

² The Drum, 30 March 2023, [Channel 4 tests reduced ad loads on its streaming platform](#)

³ Over the last ten years, the PSB channels' (BBC 1, BBC 2, ITV, Channel 4 and Channel 5) consolidated TV viewing share has remained stable at over 50%. See Enders Analysis, 29 March 2023, [TV set viewing trends: Spotlight on the lighter viewer](#), p. 22.

⁴ Ofcom, 15 July 2021, [Recommendations to Government on the future of Public Service Media](#), p. 6.

⁵ While the commercial sponsorship of current affairs programming has long been permitted on radio, the commercial sponsorship of current affairs programming on TV and on-demand programming services (ODPS) is prohibited under [Ofcom's Broadcasting Code](#) and [ODPS Rules and Guidance](#). This impedes broadcasters' ability to innovate and invest in current affairs programming on TV and on-demand services, which can be more challenging to monetise relative to other content genres (e.g. entertainment).

Section 3: Our response to specific consultation questions

Proposed changes to the COSTA rules [Q1-2 grouped]

Question 1: *Do you agree with our provisional view that the retention of the stricter rules that apply only to PSB channels is not justified? If not, please explain why.*

Question 2: *Do you have a preference between the proposals under Option 1 and Option 2? If you do not agree with the proposals under either option, please explain why.*

We disagree with Ofcom's provisional view that it would be disproportionate to retain the differentiated rules, and with the proposals under both Option 1 and 2. The differentiated approach remains fit for purpose. Harmonising the rules - even partially - would be a major market intervention, which there is scant evidence to support.

The evidence provided does not justify such a significant market intervention

It is concerning that Ofcom has not commissioned any new econometric analysis of the potential impact of the proposed change as part of the decision making process. While Ofcom states that "trying to quantify the impact is unlikely to produce results strong enough to fully base a decision on", as an evidence-based regulator, quantitative analysis of the potential impact should be used to support thinking on this issue as part of a range of evidence.⁶ We understand that it may be challenging to model the precise impact of harmonising the rules given the range of variables, but we are concerned that Ofcom has not made *any* new attempts to quantify the impact of a change to the rules (e.g. model a range of potential scenarios).

This is particularly concerning given that econometric analysis conducted as part of the 2011 COSTA review played an important role in informing Ofcom's decision to retain the existing rules. The analysis demonstrated that amending the rules could not be justified because it "would be likely to increase viewers' exposure to advertising whilst at the same time reducing the range and quality of content".⁷ In addition, Ofcom stated that: "Since levelling down would be a significant further intervention in the market we would need to be persuaded that there was sufficient evidence to justify such a change". It is difficult to understand how the evidence provided as part of the 2023 consultation allows Ofcom to reach such a different conclusion to that in 2011, given the outcomes would be the same as those predicted in 2011 (i.e. audiences' exposure to advertising will increase and the provision of content will be negatively impacted).

In the absence of econometric analysis, Ofcom leans heavily on a piece of qualitative consumer research. It takes a very generous interpretation of the research to conclude that it justifies a change to the rules. The research itself demonstrates that most consumers do

⁶ Ofcom, 19 April 2023, [Consultation: Quantity and scheduling of television advertising on public service channels](#), p. 29.

⁷ Ofcom, 15 December 2011, [Statement: Regulating the quantity of advertising on television](#), p. 3.

not support a change to the rules that would result in more advertising on PSB channels. It found that “...there was an initial negative and visceral reaction to how increased advertising may manifest” and that participants “were in favour of regulations that aim to protect their viewing experience”.⁸

Furthermore, throughout the deliberative process, participants “were quick to reiterate that any additional revenue must go towards the development of good-quality programming, and not solely towards broadcasters’ profits or to their shareholders. In the minds of viewers, this was felt to be a non-negotiable condition of increased advertising. This made viewers less accepting of the idea of increased advertising; if there is no proof of a tangible benefit to them (i.e. investment in good-quality programming), this is where the idea of more advertising falls down in their minds”.

This is particularly striking because Ofcom cannot guarantee that the additional revenue earned by the PSBs from the extra advertising minutage would be reinvested in programming, and therefore directly benefit viewers. It would be disingenuous to proceed with a change based on consumer research that suggests that viewers support a change, where that support is based on a false premise (i.e. that Ofcom could ensure that the additional revenue earned is reinvested in PSB programming).

The proposed change would harm the whole UK commercial broadcasting sector to benefit the few advertising-funded PSBs

The proposal to harmonise the COSTA rules comes on the back of *Ofcom’s Small Screen: Big Debate* review, which ultimately concluded that the PSB system, while requiring some modernisation, is sustainable.⁹ It also proposed a range of measures to further support the PSBs, which are being taken forward under the draft Media Bill. This includes measures to ensure PSBs’ VOD services receive privileged prominence on certain digital devices (e.g. smart TVs), on top of PSBs’ protected prominence on the linear EPG.

The COSTA rules are part of a regulatory system that treats PSBs and non-PSBs differently. As part of the PSB compact, the COSTA rules have a relatively minor impact compared to the benefits the PSBs receive. Eroding the differentiation in the COSTA rules risks further entrenching the position of the PSBs; it would unfairly favour those already in receipt of a package of preferential benefits and further tilt the playing field in favour of the PSBs. This would make it harder for smaller, independent broadcasters to compete.

We anticipate that both full and partial harmonisation of the rules would result in a two-fold hit to non-PSB channels’ revenue, both of which Ofcom recognises in its consultation.

- 1) An increase in the supply of television advertising would lead to a devaluation in the pricing of television spots across the market, reducing the revenue available to non-PSB channels. We do not agree with Ofcom that this would “help slow the decreasing competitiveness of linear advertising”, because it does not address the fundamental reasons for this trend (i.e. changes in linear TV viewing).

⁸ 2CV, April 2023, [Qualitative research: Viewers’ perceptions of the Code on the scheduling of television advertising](#)

⁹ Ofcom, 15 July 2021, [Recommendations to Government on the future of Public Service Media](#).

- 2) Given that total TV advertising revenues are unlikely to increase, any increase in PSB revenue would be the result of a redistribution of revenue from non-PSBs to PSB channels. As Ofcom itself states, there “is a reasonable probability...that some revenue may transfer from the multichannel sector to the PSB channels”.¹⁰

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It is disappointing that Ofcom’s consultation focuses primarily on the benefits for PSBs from the change, rather than on the impact a change would have on the rest of the broadcasting sector. Despite Ofcom’s duty as the sectoral regulator, it appears to be elevating the interests of a select few PSBs - some of which make a return to shareholders - at the expense of the whole commercial broadcasting sector. Ofcom’s own consultation document highlights the lack of stakeholder support across the industry for the proposed change; even one of the key potential beneficiaries (Channel 5) opposes it.¹¹

Ultimately, a decision to proceed with a change to the COSTA rules will weaken existing commercial broadcasters’ ability to invest in their content and services, as well as undermining the rationale for new investment in UK broadcasting. It would be a poor outcome for non-PSB broadcasters and audiences.

Amending the COSTA rules would leave audiences worse off

We disagree with Ofcom’s assessment that removing the differential COSTA rules would not significantly affect the range of services available to audiences or materially affect audiences’ perceptions of quality. The differential rules remain necessary to “protect the quality of the viewing environment” on the PSBs and across the wider broadcasting landscape.

The quality of the viewing environment is ultimately underpinned by a healthy broadcasting ecosystem, in which broadcasters - both PSBs and non-PSBs - can afford to invest in high-quality programming. By amending the COSTA rules as proposed, Ofcom would be knowingly reducing the revenue available to non-PSB broadcasters to invest in programming, undermining the health of the broadcasting ecosystem and the quality of audiences’ viewing experience. As Ofcom’s own market research sets out, audiences only found the concept of more advertising on PSBs palatable if any additional revenue accruing from the extra advertising minutage was invested in programming. Rather than increasing the revenue available to invest in programming across the sector, a change to the COSTA rules would reduce the available funding.

Particularly concerning for audiences and society more generally, however, is the impact such a change would have on broadcasters’ provision of news and current affairs content. In terms of PSB news provision, increasing the amount of advertising permitted during peak

¹⁰ Ofcom, 19 April 2023, [Consultation: Quantity and scheduling of television advertising on public service channels](#), p. 32.

¹¹ The change to the rules would benefit ITV, Channel 4, Channel 5, STV and S4C. We note that while Channel 5 would be permitted to increase the minutage of advertising it shows on its PSB channel, Paramount opposed a change to the COSTA rules in its response to Ofcom’s Call for Evidence. Paramount, 7 October 2022, [Response from Paramount UK](#).

hours (6-11pm) would likely lead to an erosion in news and current affairs provision in this period, as the commercial PSBs are likely to seek to maximise revenue. For example, if ITV chose to increase the duration of its advertising breaks during the *News at 10*, the minutes of news coverage broadcast would decrease. Retaining limits on the frequency of advertising breaks during news programming, as proposed by Ofcom, would not guard against this.

A change to the rules would also impact commercial broadcasters' ability to invest in news and current affairs programming by eroding the revenue available. News and current affairs are genres that are typically challenging to monetise, relative to entertainment programming for example. Changing the COSTA rules would have a negative impact on the provision of costly public interest content, such as news and current affairs, and on the plurality of provision.

One measure, however, which could support the provision of current affairs programming, would be to liberalise the approach to the commercial sponsorship of current affairs content. As we know from our experience operating current affairs radio stations, current affairs programmes on radio have long been permitted to carry commercial sponsorship. This has enabled investment and innovation in current affairs radio programming. For example, when it launched, Times Radio carried sponsors on its programmes, instead of taking any advertising breaks. This helped to attract audiences that may have otherwise found advertising breaks off-putting (e.g. listeners accustomed to BBC Radio 4 or 5 Live), while ensuring Times Radio had a stable revenue stream.

However, under the Broadcasting Code and ODPS Rules and Guidance, the commercial sponsorship of current affairs programming on TV and VOD services is prohibited. Harmonising the rules across radio, TV and VOD services to permit sponsorship would better support the sustainability of current affairs content provision, enable innovation, lower compliance burdens and better reflect the reality that media formats are converging.

It would benefit PSB and non-PSB broadcasters (by providing new revenue streams to support current affairs provision), advertisers (by providing alternative opportunities to promote brands), and audiences (by ensuring the provision of current affairs content is better supported). Amending the COSTA rules, as Ofcom proposes, would do the opposite; leaving the sector and audiences worse off.

Question 3: *In the event that we proceed with Option 1 or 2, we suggest a one-year period before implementation. Do you agree? If not, please explain why.*

As News Broadcasting disagrees with Ofcom proceeding with both Option 1 and 2, we have no comment in response to this question.

Question 4: *Is there any further information you wish to provide regarding changing the stricter rules in COSTA?*

News Broadcasting has no comment on this question.

