

News Broadcasting response to Ofcom consultation: *Regulating the quantity and scheduling of television advertising on public service channels*

News Broadcasting welcomes the opportunity to respond to Ofcom's consultation on *Regulating the quantity and scheduling of television advertising on public service channels*.

News Broadcasting is the broadcasting division of News UK and is home to the recently launched TalkTV, as well as radio services including talkSPORT, Times Radio and Virgin Radio.

TalkTV launched in April 2022 and is making a significant contribution to digital news provision, plurality and viewer choice in UK television. We operate across both linear and streaming platforms with an engaging mix of original journalism, comment and opinion. The channel's line-up of respected journalists and broadcasters includes Piers Morgan, Sharon Osbourne, Vanessa Feltz, Tom Newton-Dunn, Jeremy Kyle and Kate McCann.

News Broadcasting views on the proposals to amend the COSTA rules

News Broadcasting does not support the removal of the additional COSTA rules that apply to PSB channels. This is on account of the resulting negative supply-side effects that this would have for the wider market. Based on our knowledge of the advertising market and dialogue with relevant organisations, we anticipate that an increase in PSB ad minutage would likely lead to an oversupply in television impacts resulting in a devaluation of television spots and reduced income for non-PSB channels.

A potentially unforeseen knock-on effect of this redistribution in television advertising could be to further undermine the ability of non-PSBs to invest in high quality news and current affairs provision, which is a public good. Existing factors such as costs of production, restricted access to pooled UK news material, varying advertiser sentiment towards news related content and restrictions on sponsorship of current affairs already present barriers to new investment. The challenging economics for commercial news and current affairs broadcasting are also evidenced in the commitment made by Comcast in 2018 to underwrite the operating expenses for Sky News for a period of ten years.

News UK has undertaken specific modelling of the potential impact of these proposals to its own TV channel, TalkTV. We focused this analysis on the distribution of commercial impacts represented for advertising sales by Sky Media, who also represent Channel 5. We assumed for the purposes of the analysis that Sky Media's total share of TV advertising was left unchanged. (It is plausible that it would diminish, due to increased inventory supply for both ITV Media and Channel 4 Sales.)

[REDACTED]

The proposals are also poorly timed, given economic headwinds that are likely to constrain growth in TV advertising demand over the next 12-24 months, and confirmed plans from Netflix and Disney+ to start offering advertising. An injection of additional inventory supply in conjunction with this market entry by global streaming platforms, and coupled with

projections of low or limited overall growth in the market, heightens the likelihood of a devaluation of TV advertising.

A separate potential implication of this market entry by streaming platforms is reduced audience tolerance for higher ad loads on PSB channels. Netflix is expected to limit ad minutage to below the levels typically operated by linear television services, in order to optimise the viewer experience. In turn this may inform expectations of commercial minutage on other channels and services.

Significantly, the proposal fails to consider properly the existing preferential regulatory support afforded to these channels by virtue of their PSB status. This support confers a sizeable financial advantage to PSBs which is denied to other market participants. These benefits comfortably outweigh the more modest impact of being subject to stricter COSTA requirements.

Rather than gifting further regulatory benefits to PSB channels, and so further skewing the market in the favour of incumbents, broadcasting policy should pivot towards acknowledging the contribution to PSB-equivalent content made by non-PSB media operators. In its '*Small Screen, Big Debate*' review, Ofcom did include a welcome recommendation that the Government consider how to encourage new providers outside of the current set of PSBs, to invest in public service content and to embrace different distribution channels. Yet to date, concrete proposals for such incentives have been lacking and the government did not develop Ofcom's recommendation in the Broadcasting White Paper.

Our experience in launching TalkTV has highlighted the structural challenges in the market which prevent us from competing on a level playing field. In particular, the public service broadcasters that are the focus of this consultation benefit from established prominence arrangements on EPGs, which is set to be extended to smart TVs, apps and streaming platforms. Conversely as a start-up operator, and despite evidence of strong viewer interest in our content on social media and other non-traditional TV platforms, we face significant challenges in achieving awareness and consideration amongst core TV audiences.

For instance, there has been significant focus on extending the prominence arrangements on linear EPGs to a broader range of TV platforms, and for the concept of "Public Service" to be afforded to all PSB content, including where it is disaggregated. Given the democratic and societal importance of news and current affairs programming, consideration should be given to extending these benefits to other non-PSB providers, who provide public interest programming.

We believe that urgent policy efforts should be directed towards securing the viability of high quality content across all outlets in the face of digital disruption, rather than unfairly favouring those already in receipt of preferential benefits.

Proposal to liberalised commercial sponsorship of current affairs

The lines between different categories of broadcast and digital media continue to converge, and yet the regulatory framework for audio-visual advertising and sponsorship has not kept pace with these developments, applying different rules depending on the distribution format in which a programme appears.

Currently a media operator like News Broadcasting has to deal with a patchwork of different rules for the same content depending on whether it appears on:-

- Live broadcast radio (Ofcom Broadcasting Code radio rules and BCAP Code)
- Live internet radio (CAP Code)
- Live linear TV (Ofcom Broadcasting Code TV rules and BCAP Code)
- Video On-Demand platforms (Ofcom ODPS rules and CAP Code)
- On social media (platform operator's own community guidelines and CAP Code)
- Podcast (platform operator's own community guidelines and CAP Code)

This is not a hypothetical scenario; TalkTV's factual current affairs, opinion and entertainment programme Piers Morgan Uncensored appears in each of these formats within the UK, and is also separately distributed into the US and Australia where the regulatory regimes offer further differences from those applicable in the UK.

With our background in commercial radio, News Broadcasting has a particular insight on the restrictions placed on monetisation of current affairs programming on television. Sponsorship of such programming is currently prohibited for all linear TV and Video On Demand services. However, under Section 10 of the Ofcom Broadcasting Code, commercial communications in radio are permissible - including within current affairs output.

The liberalisation of radio sponsorship rules in 2010 has directly supported greater investment in news broadcasting. Notably, Times Radio launched with an 'ad break free' model, carrying commercial sponsorship messaging within live current affairs programmes. However, as a consequence of the revised AVMS Directive (which was transposed into UK law in 2020) once this Times Radio audio is made available on demand - accompanied by video footage - this content is then regulated as an On Demand Programme Service and the carriage of sponsorship messaging is prohibited.

Similarly, TalkTV is unable to replicate a similar model on linear television, with the Broadcasting Code prohibiting commercial funded references to products and services within programming and prohibiting any form of sponsorship of news or current affairs programming.

Whilst News UK recognises the importance of safeguarding the commercial integrity of news reports, we view restrictions on sponsorship of topical TV current affairs programmes as reflecting an outdated understanding of consumer comprehension of commercial messaging, and perpetuating an unequal playing field with other forms of media.

On social platforms such as TikTok (and indeed within the broadcasting environment of Times Radio), presenters and influencers are able to provide truthful paid endorsement, calls to action and price information for products, provided that they are transparent about their commercial relationship. Yet on television, the current regulatory framework prevents any sponsorship whatsoever of current affairs programmes - the implication being that such activity carries a risk of consumer harm. Notably, this restriction affects both PSB and non-PSB channels - despite the latter not benefiting from the prominence and licensing advantages conferred on PSB providers in exchange for their news and current affairs contribution.

The UK benefits from sophisticated levels of media literacy and consumer savviness concerning the role of commercial brands in media. Moreover there are clear and compelling arguments to avoid inconsistencies in cross-media regulation. This all contributes towards a rationale for reforming the broadcasting regulatory framework to allow commercial sponsorship within current affairs ODPS and TV programming. This would of course be subject to guidance.

A relaxation of this type would encourage innovation and investment in the sector. It would also help the regulatory regime to keep up with pace of change. Crucially, reform would support the important contribution that broadcasters make to democracy and civil society by acting as bulwarks against disinformation. Effective performance of this role requires broadcasters not to be over-burdened with regulation which constrains their commercial viability and perpetuates an unequal playing field.

In preparing this response, News Broadcasting has reviewed the legal background to the current prohibition on news and current affairs sponsorship on UK television and Video On-Demand services (the "Sponsorship Prohibition")¹. Specifically, we have sought to understand the origins of the Sponsorship Prohibition, the underlying legislation which is responsible for it and what legislative changes (or otherwise) would need to occur to remove it.

We have concluded that there are two main routes by which the framework for commercial sponsorship of current affairs programming could be liberalised:-

1. Government amending the Communications Act 2003 ("CA 2003"), to remove current affairs programming broadcast on UK TV channels and ODPS from the scope of the Sponsorship Prohibition
2. Ofcom updating its guidance on which programmes fall within the scope of the Sponsorship Prohibition, to amend its definition of "*current affairs programme*" so it is clear that it excludes factual programmes whose output includes entertainment and opinion alongside current affairs discussion.

The historic rationale for not permitting sponsorship of news or current affairs programmes has been to ensure that media service providers maintain editorial independence; both European and UK legislation are aligned on this point. Yet notably, this principle does not

¹ Whilst the Sponsorship Prohibition in the non-linear environment applies to either news "or" current affairs programmes, in the linear environment, the two types of programming are seemingly coupled to describe one genre. News UK's specific proposal for relaxation relates to current affairs programming.

present a barrier to sponsorship of other forms of programming (such as entertainment, sports, drama or factual entertainment); nor is there any suggestion that non-TV media services such as Times Radio that feature commercial sponsorship of current affairs programming have compromised their editorial integrity in doing so.

Under the CA 2003, Ofcom is obliged to ensure that news programmes are presented with due impartiality, to ensure compliance with the EU directives in respect of television advertising, to ensure that the UK's international obligations with respect to television advertising are complied with and to prevent the unsuitable sponsorship of television programmes.

The legislative origins of the Sponsorship Prohibition, specifically, are found in both: (i) the European Convention on Transfrontier Television (ECTT); and (ii) the Television Without Frontiers Directive (TWFD) - subsequently replaced by the Audiovisual Media Services Directive (AVMSD).

The ECTT does not apply to non-broadcast services (i.e. online or mobile) nor to on-demand services. There is also no obligation for the UK to apply ECTT rules to channels which broadcast within the UK only (as is the case with TalkTV).

The AVMSD extended the Sponsorship Prohibition to both broadcast and on-demand services on television. Radio is not in scope for the AVMSD (and was not in scope for the TWFD), which explains the difference in the sponsorship rules that apply to radio programmes. The UK's departure from the European Union provides an ability for the UK to implement a targeted variation to its legislative framework to reflect domestic policy requirements.

News Broadcasting believes that there is clear consumer and market justification for government to use the upcoming Media Bill to amend the CA 2003 to de-couple current affairs programming from the scope of the Sponsorship Prohibition, whilst continuing to affirm the editorial independence of news programming. Ofcom would then vary the Broadcasting Code and ODPS rules to reflect those changes.

Ahead of these legislative changes, and in light of the clear rationale outlined above, we would encourage Ofcom to review the application of the Sponsorship Prohibition as it relates to non-PSB current affairs programming via a review of its Section 9 guidance and ODPS rules. We understand that consultation with or the approval of the Secretary of State may be required to amend these rules, but there are compelling arguments for this approval to be provided.

An interesting aspect of the current Sponsorship Prohibition is the absence of a formal statutory definition of 'current affairs' (as separate to and distinct from 'news'). It is only Ofcom in its Broadcasting Code that defines a "current affairs programme" as *"one that contains explanation and/or analysis of current events and issues, including material dealing with political or industrial controversy or with current public policy"*.

This is an imprecise definition. (We also believe this makes the Sponsorship Prohibition more restrictive than in other European countries.) As an interim measure, it would be within

Ofcom's gift to limit the definition of 'current affairs' programmes to those whose "predominant focus" is issues of political or industrial controversy or current public policy. In turn this could enable the exclusion of factual programmes where such issues are not the predominant focus, including those that blend topical discussion with other factual and entertainment content.

Summary

News Broadcasting does not support the removal of the additional COSTA rules that apply to PSB channels. This is on account of the negative supply-side effects that this would have for the wider television advertising market. Rather than skewing the television market in the favour of incumbents, we believe that broadcasting policy should pivot towards acknowledging the contribution to PSB-equivalent content made by non-PSB media operators and to support increased high quality provision for UK audiences.

News Broadcasting advocates a streamlining in cross-media regulation to provide incentives for investment in digital news and current affairs content, a progressive policy approach which updates the traditional PSB regime for the requirements of the streaming age. Alongside extending regulatory incentives such as protected prominence to other PSB-equivalent content providers, an important step in supporting this goal would be to allow commercial sponsorship of current affairs programming and blended programming on linear and on-demand TV platforms. We have set out policy options that government and Ofcom could utilise in achieving this reform.