



**Ofcom's call for evidence on 'regulating
the quantity and scheduling of
television advertising on public service
channels'**

Comments on responses from ITV and Channel 4

March 2023

Introduction

In December 2022 Ofcom published responses to its call for evidence in connection with the regulation of the quantity and scheduling of television advertising on PSB channels. Sky disagrees with several assertions made by ITV and Channel 4 in their published responses, namely:

- ITV's and Channel 4's assertion that the changes to the Code on the Scheduling of Television Advertising (COSTA) being considered by Ofcom will not have an adverse impact on audiences;¹
- ITV's assertion that the changes to COSTA will lead to increased investment in original UK TV content;² and
- ITV's and Channel 4's assertion that the changes would benefit TV advertising in general.

These assertions are not valid for the reasons set out below, and they should not be relied upon by Ofcom when considering any potential changes to COSTA.

Ofcom prides itself on being an evidence-based regulator and, indeed, the document published by Ofcom was a call for evidence. One of the most notable features of many of the responses to Ofcom's publication, however, is the paucity of *evidence* they provide. Many consist primarily of unsupported assertions. Ofcom should not place weight on such assertions.

A notable exception is the detailed analysis undertaken by Frontier Economics, submitted by ITV. This analysis, however, supports the points made by Sky in its response to the call for evidence and undermines those made by ITV in its submission.

Rather than providing evidence on the issues set out in Ofcom's call for evidence several responses, including parts of ITV's, put forward alternative proposals for changing the COSTA rules. Again, these submissions should be disregarded by Ofcom.

ITV's and Channel 4's assertion that the changes to COSTA will not have an adverse impact on audiences

ITV and Channel 4 assert that audiences will not be harmed by an increase in advertising minutage on PSB channels because viewers already experience ad loads of 12 minutes per hour in some peak time slots on ITV and Channel 4 main channels, and throughout the day on non-PSB services.

This is a non-sequitur. The fact that viewers bear the costs associated with a given level of advertising today plainly does not mean that they would not be adversely impacted by *increasing* that level in future.

Sky's response explains why increasing the amount of advertising on the main PSB channels would harm viewers, as borne out by Ofcom's own 2020 research into

¹ Page 3 of ITV's response (https://www.ofcom.org.uk/__data/assets/pdf_file/0028/248617/ITV.pdf) and pages 6-7 of Channel 4's response (https://www.ofcom.org.uk/__data/assets/pdf_file/0024/248613/Channel-4.pdf).

² Pages 3-5 of ITV's response.

audience attitudes to programme standards, which revealed that more than 80% of audiences would consider an increased amount of advertising as detrimental.³

Sky understands that Ofcom has been undertaking audience research to assess the likely impact of a relaxation of COSTA rules for PSB channels. We assume that this research will specifically examine attitudes across a range of demographics to adverts (i) inside peak (ii) outside peak (iii) around news and current affairs programmes, as well as the potential shift of news programming to non-peak hours, and the impact this will have on viewers and viewing behaviours. This research will be a critical input to evaluating the impact on UK viewers of proposals to increase the amount of advertising on commercial PSB channels.

Further, the above arguments from ITV and Channel 4 fail to take account of the most vulnerable audiences, including the elderly, who particularly rely on linear PSB services and who will therefore be less used to the higher volume of adverts on non-PSB channels and some VOD services. As noted in Sky's response, such viewers will be disproportionately harmed by an increase in advertising minutage on the commercial PSB channels, both inside and outside of peak.⁴

ITV's assertion that the changes to COSTA will enhance investment in original PSB content

ITV asserts that a relaxation of the COSTA rules for commercial PSBs will enhance investment in original PSB content. Asserting that regulatory change that increases PSBs' revenue will be beneficial because it will result in greater investment in original content appears to be regarded as something of a trump card by PSBs. It should not be. It is self-evident that there will always be multiple calls on increases in revenue earned by privately owned commercial PSBs, including increased profits and returns to shareholders.

Sky's response explained that for the commercial PSBs there is a high likelihood that additional revenue would be transferred to shareholders – in the case of ITV this is driven by its Board's commitment to shareholders to increase dividends over time.⁵

Moreover, Channel 4's response indicates clearly that increasing advertising limits on PSB channels would in fact reduce the amount of programming offered to viewers on those channels. Channel 4 states:

"PSBs will need time to adjust production and commercial contracts to take into account increased advertising minutage".⁶

Such a reduction would not only result in reduced value for viewers in general but would also have particularly worrying consequences should this lead to a reduction in minutage of news and other public service programming – especially during peak hours.

³ Pages 49 and 51, 'Audience attitudes to programme standards, Cross Platform Media Tracker 2020', Ofcom. (https://www.ofcom.org.uk/_data/assets/pdf_file/0026/227087/audience-attitudes-towards-broadcasting-standards-2020-data-cross-media-tracker.pdf).

⁴ Page 2-3 of Sky's response.

⁵ ITV's 'Investor Proposition'. (<https://www.itvplc.com/investors/investor-proposition>).

⁶ Page 8 of Channel 4's response.

ITV's assertion also ignores the significant investment by other broadcasters, such as Sky, in high quality original UK programming. The multichannel sector has seen far greater increases in programming spend in recent years than the PSBs.⁷ Any gains in revenue to the commercial PSB main channels are likely to come at the expense of revenues earned in relation to other TV channels (including the non-public service channels broadcast by Channel 4 and Channel 5). Accordingly, any negative impact on programming from non-PSB channels would impact the only part of the sector that is growing materially.⁸ As a result, it is unclear that there will be any net gain to viewers in terms of more or better quality content across the sector as a whole.

We consider that any proposition that increased revenues earned by commercial PSBs would result in more original content being made available to UK viewers must be supported by robust, credible evidence if it is to be relied upon by Ofcom.

ITV's and Channel 4's assertion that the changes would benefit TV advertising in general

A large proportion of ITV's response is dedicated to demonstrating that advertiser spend would not shift from non-PSB to PSB channels. We do not believe that this is credible. As set out in Sky's response, the effects of any changes to the COSTA rules are complex to evaluate and it is extremely difficult to predict the likely impacts on advertiser spend and, consequently, on advertising revenues. However, Sky's preliminary modelling indicates that, given its position of strength in the market and the scale of inventory growth, ITV would gain significantly from a relaxation of COSTA at the expense of Channel 4, Channel 5 and other UK TV broadcasters.

ITV and Channel 4 also assert that increasing the volume of advertising impacts on commercial PSB channels would lead to an increase in the supply of commercial impacts in the TV advertising market, which should in turn lead to a deflation in TV advertising pricing to the benefit of TV advertising, making it overall more competitive compared to other advertising platforms.

ITV's and Channel 4's assertion that increasing the supply of commercial impacts would attract *additional* money into TV advertising is unsupported by robust, credible evidence. In principle, given the alternative means of advertising available to advertisers today (notably digital advertising), such an effect is *possible*. However, it would depend on advertising budget re-allocation decisions by advertisers and their agents, which cannot be presumed.

We note that if, in fact, advertisers are reluctant to shift additional money into TV advertising any increase in supply of commercial impacts will essentially benefit TV advertisers (by delivering more impacts for the same budgets or enabling them to withdraw spend and achieve the same level of impacts) at the expense of viewers of the main commercial PSB channels. We consider that it would be difficult to justify such a distributional effect of changing the COSTA rules.

⁷ According to PACT's 2022 Census, "multichannel spend increased by the highest percentage, 99% on 2020, with increased commissions from Sky largely driving this" (<https://www.pact.co.uk/static/00da7757-3bd0-4baa-ba3ff0288e822126/Pact-Census-2022.pdf>).

⁸ We do not believe that these revenue transfers are likely to affect incentives to invest in programming. However, it cannot reasonably be asserted that additional revenues earned by the PSBs would be invested in more or better programming without also believing that those transfers would have a negative effect on programming spend on other channels.

ITV's and Channel 4's alternative proposals

Like several the responses to Ofcom's call for evidence, ITV's and Channel 4's submissions present alternatives to the proposals put forward by Ofcom.

ITV proposes that reform of COSTA should initially focus on (i) removal of the "40-minute" rule in peak hours (6pm-11pm) so that public service channels can broadcast up to 12 minutes of advertising in each clock hour during peak and (ii) the alignment of rules around the frequency and length of advertising breaks between PSBs and non-PSBs.

The "40-minute rule" minimises the amount of advertising to which viewers are exposed during peak hours by stipulating that the time devoted to television advertising and teleshopping spots on public service channels must not exceed an average of 8 minutes per hour between 18:00 and 23:00. The removal of the "40-minute rule" would result in viewers seeing far more advertising on the commercial public service channels during peak hours. Viewers would see up to 20 minutes more advertising during peak, amounting to a 50% increase.

It is self-evident that removal of 40-minute rule in peak will have a much greater impact on audiences than changes outside peak since this is the period during which most viewing takes place. It is irrelevant that the overall amount of advertising on the channel would initially remain the same (as ITV proposes); if advertising is reduced during slots where fewer viewers are watching and reallocated to peak slots where much larger numbers are watching, empirically, more viewers will be harmed.

ITV also claims that even after its proposed changes to the rules, the number of advertising impacts seen by a typical viewer will remain well below historical levels for a range of reasons including the increased potential for 'ad-skipping' and viewer switching from broadcast TV to SVOD services.

ITV's proposals would see more advertising during peak-time news

Sky's consultation response highlighted the fact that it was likely that a relaxation of the COSTA rules applying to PSBs would lead to PSBs increasing the amount of advertising carried during news.⁹ This view now appears to be confirmed by ITV's response which states that: "*A knock-on effect of [the current restrictions] is that ITV currently schedules little or no advertising alongside its national, international and regional news programmes*".¹⁰

Further, the analysis by Frontier Economics, which accompanies ITV's response, indicates that if the rules were relaxed ITV would place all of the additional advertising minutage in the 6-7pm and 10-11pm slots during weekdays, and the bulk of additional advertising in such slots at weekends. The analysis also shows that during weekdays and on Sundays these slots typically feature ITV's local and national news, as well as current affairs programming such as 'Peston'.¹¹

⁹ Page 3 of Sky's response.

¹⁰ Page 5 of ITV's response.

¹¹ Pages 8 and 38-30, 'Ofcom Call for Evidence: Regulating the quantity and scheduling of television advertising on public service channels', Frontier Economics.
(https://www.ofcom.org.uk/__data/assets/pdf_file/0028/248617/ITV.pdf).

An increase in advertising during news programming risks driving viewers away from watching such content. Audience research conducted by Oliver and Ohlbaum for COBA demonstrates that 69% of respondents indicated that an increase in advertising on the commercial PSB channels would lead them to watching less of these channels.¹² Accordingly, increasing the amount of advertising anywhere on ITV would likely reduce the audience for ITV's news programming. Increasing advertising specifically around ITV's news programming risks further reducing those audiences (for example, by increasing the proportion of viewers that will watch the channels less because of the additional commercial messaging around content that previously had little advertising).

Frontier Economics also suggest that, rather than placing additional adverts around peak-time news content, ITV may instead replace news programming at 6pm and 10pm with more popular content. Frontier Economics state:

"Since ITV is unable to fully monetise the shows it broadcasts in peak hours in the same way as a non-PSB channel, ITV is currently less incentivised to schedule new advertiser-funded content in the 1800-1900 and 2200-2300 clock hours - these incentives would change if the COSTA rules were amended".¹³

As noted in Sky's response, moving news content outside of peak would in turn result in reduced views to such content.

Accordingly, there is a clear risk that one of the effects of enabling greater levels of advertising on the main commercial PSB channels would be to reduce viewing of important television news.

Channel 4's alternative proposal highlights the impact on viewers of increased advertising on the main commercial PSB channels

Channel 4's submission seeks to minimise the impact of the proposed changes on audiences by limiting the additional minutage in peak hours. Channel 4's Response does not suggest that reform initially focuses on the 40-minute rule. Channel 4 instead indicates that, for its main channel "the majority of extra minutage would be placed in programming outside of peak-hours", an approach which Channel 4 claim would "further minimise [...] the impact on viewers" - thereby acknowledging that placing additional advertisements in peak would adversely impact viewers.¹⁴

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¹² Page 3, 'Assessing the Impact of potential changes to TV advertising minutage regulation', Oliver and Ohlbaum (https://www.ofcom.org.uk/_data/assets/pdf_file/0025/248614/COBA.pdf).

¹³ Page 15, Frontier Economics report.

¹⁴ Page 7 of Channel 4's response.