

## **Discovery Communications Europe Ltd**

### **Response to Ofcom Consultation on Airtime Sales Rules**

#### **About Discovery**

Discovery Networks in the UK has 13 media brands which it sends out via 22 network feeds to more than 130 million cumulative subscribers, received in 85% of UK homes. The Discovery Channel has been the number one factual channel throughout its 20 year history in the UK. It has a 47 percent share of the pay-tv factual market and is funded by a combination of carriage fee and advertising revenue.

#### **The Consultation**

Discovery Communications Europe Ltd welcomes the opportunity to respond to this consultation, although it would like Ofcom to note that it believes a number of other changing factors in the UK television advertising market could be relevant to the debate on ASR.

Whilst Discovery Communications Europe Ltd has understood Ofcom's position that COSTA and ASR regulate different elements of the market and might therefore be reviewed separately, it is concerned that changes to each in their turn could have a significant effect on the wider market. It is also concerned at the effect recent changes by the Competition Commission to the CRR regime will have on the rest of the broadcast advertising market. Research undertaken by Discovery predicted that the addition of the +1 and HD services of ITV1 to the CRR remedy could result in a gain of 2.45% of SOCI for ITV. It is already documented in the recent research undertaken by Ofcom itself that any change to the COSTA regime could result in a significant loss of share of the advertising market by non-PSBs.

If changes to ASR are proposed without the knowledge of the effect on the wider market of these other variables, there is a chance that a number of broadcasters could be negatively affected by those changes. Discovery will elaborate in this position why it thinks changes to ASR could have an effect on the market.

#### **The Questions**

##### **Do you agree with Ofcom's description of TV market developments since 2003? Are there any trends Ofcom has missed?**

Discovery agrees with the general concept laid out by Ofcom that there are more players in the market now than there were in 2003. However it is concerned that Ofcom's analysis of this additional competition focuses too heavily on the straight split between PSB/non-PSB shares of that market, when the reality is more nuanced.

The market has become subject to more competition since 2003, something which is good for consumers and provides them with a wider range of programme choices. This is largely due to the launch of a number of non-PSB channels in the UK market. The consultation document states that the non-PSBs have taken half of the commercial PSB share of the market. However, it should be remembered that 'the non-PSBs' are not one company. They are a number of smaller broadcasters, each of whom have a

considerably smaller share of the market than broadcasters like ITV and Channel 4. It is not a simple case of PSBs competing with non-PSBs. It is a case of non-PSBs competing against each other and against the commercial PSBs for a share of the advertising market. Whilst it may be true that the commercial PSB share of the market is reduced by this competition, individual commercial PSBs still have a significantly larger market share than individual non-PSBs.

Furthermore, the role of the non-PSB offshoots of the PSB channels in taking back some of the market share for their PSB owners is underplayed in the consultation. From the data Ofcom provides, there is very little change since 2003 in the overall share of the broadcast advertising market if the non-PSB offshoots are included in the equation. Using the distribution chart of the channels which comprised the top 15 in 2003 and 2008 it becomes clear that in 2003 PSBs and their non-PSB offshoots made up only 7/15 of the top channels. In 2008 11/15 top rated channels were PSBs or their non-PSB offshoots.

ITV particularly remains very strong in the broadcast advertising market and has been considered by the Competition Commission to be powerful enough to require measures that control its activities in that market. It is not yet clear what the effect of the changes the Competition Commission has proposed on CRR will be. The Secretary of State has made it clear that he believes the remedy should be removed completely. In the next 12 months the market could look very different, depending on the final outcome of the CRR discussions. It therefore seems to be somewhat premature to be taking a decision on the removal of another rule which Discovery believes could have an effect on the broadcast advertising market.

### **Is SOCI a key determinant in contract negotiations?**

Discovery believes that SOCI is a key determinant in contract negotiations. It is how channels are traded on an aggregate basis for annual deals across the UK broadcast market.

### **Is internet display advertising likely to become more relevant to market assessments in the next few years?**

It is unclear as yet what the effect of the nascent VoD market will be on the online display advertising industry but Discovery believes that at this stage it is not yet relevant to the UK broadcast advertising market.

### **Is there any evidence Ofcom should bear in mind when coming to conclusions on the issue of withholding? Do you agree with the conclusion that PSBs have no incentive to withhold?**

Ofcom comments that its evidence shows there is little benefit to be had by the PSBs from withholding impacts. However, it is not clear whether this would continue to be the case in a market where CRR has been removed from ITV or where (depending on the COSTA review outcome) there may be fewer impacts overall in the market. Discovery therefore believes it is too early to decide on whether now is a good time to remove the rules relating to withholding at this stage.

Furthermore, there is no consideration given in the consultation document to the potential changes the removal of the withholding rule could make to the way airtime is traded.

At the moment because the commercial PSBs are obliged to sell all their airtime it is very easy to work out the Station Average Price (SAP). This has resulted in all stations selling their airtime using a SAP which is based on the ITV SAP. If the PSBs were not obliged to sell all of their airtime it would be impossible to determine the SAP. This in turn could change the way airtime is sold and could result in a move to fixed price trading, which would favour the broadcasters who have a larger share of the market. The commercial PSBs could therefore potentially benefit from the possibility of reducing the impacts they make available in the market as this could increase the price which would be paid for their airtime significantly in a market where the SAP was no longer the main trading method. Given the uncertainty surrounding CRR at the moment, Discovery does not believe now is a good time to change another of the variables which could have an effect on prices in the market without knowing what the outcome of some of the other debates on issues such as CRR will be.

**Do you agree with the lifting of conditional selling rules? If you don't what should happen instead?**

Discovery agrees with the Ofcom proposal that conditional selling rules should be lifted but with the option of reviewing any deals which could be problematic on a case by case basis.

**Conclusion**

Discovery believes that now is not necessarily the appropriate time to review rules relating to the broadcast advertising market. A number of regulatory issues, including CRR and COSTA, are likely to have an effect on the market and as some of the ASR rules are linked to how the wider market operates there is a chance that reviewing the ASR rules now, rather than in parallel with other proposed changes, could have a negative effect on the market.

Whilst there is additional competition for the commercial PSBs from the non-PSBs compared to 2003, the share of the market, if the commercial PSB offshoots are considered, is not particularly diminished for the commercial PSBs. It is therefore difficult to see how it can be argued that the rules are restricting the competitiveness of the commercial PSBs in the broadcast market.

On the issue of withholding, whilst it may be the case that based on the figures Ofcom provided as part of its COSTA research there is little incentive for commercial PSBs to withhold the number of impacts they sell, the reality is that by withholding impacts they could actually change the way airtime is traded, causing significant disruption to the market which could be used to their benefit.

Discovery believes that there should be a fuller review of the potential impact of a move to fixed price trading on broadcasters and that in any case the review of the rules relating to ASR should be postponed until there is more clarity on issues such as CRR and COSTA.