Introduction

The paper below is response on the various consultation questions posed by Ofcom as part of the Review of the Airtime SaLes Rules. These focus around two principal rules relating to how broadcasters sell TV advertising to media buyers and advertisers, referred to as "withholding rule" and the "conditional selling rule"

Question 1: Do you agree with our description of the key developments in the TV advertising market since 2003?

In answering this question we will make references to appropriate paragraphs in the consultation document.

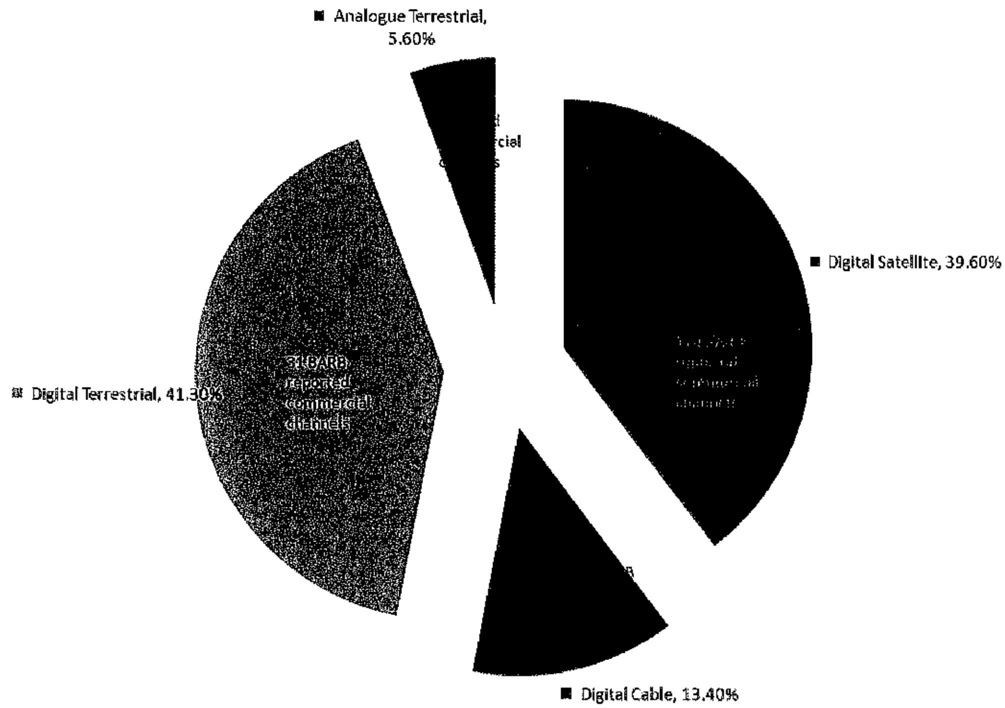
Para 4.5: *While overall TV viewing has remained broadly the same since 2003, a number of key developments have taken place since then including:*

a. A major increase in the number of (digital) TV channels available to viewers – about 200 more channels exist and there are now around 500 in total;

This is true but the majority are neither BARB reported (and therefore measureable) or deliver a commercial audience of significant size. In 2003, in addition to ITV1, C4, S4C, Five and GMTV, there were 143 BARB reported stations which increased to 254 in 2009 (see: annex 1; figure A1) In order for commercial impacts to be measured a station has to be reported by BARB. The vast majority of will not spend money on stations that are not measurable outside of Direct Response activity for auditing purposes.

Furthermore, when considering channel selection a result of the growth of multichannel stations, buyers would need to take in to account the platforms on which commercial stations are available. 47% of Digital homes have fewer than 31 BARB reported commercial stations (for the purpose of this analysis ITV1 (including STV), C4 etc is counted as one channel rather) – see figure 1 below.

Figure 1: Digital Platform Penetration and BARB Reported Channels



It is worth noting that on the Digital Terrestrial platform, (which accounts for 41% of Digital Penetration), 57% of all commercial adult viewing is on ITV1, C4 and Five. This increases to 86% when you add their respective family of digital channels, with ITV in control of over half of this. (See Table 1 below)

Table 1: Share of Viewing on Digital Terrestrial Platform (Source: March 2010)

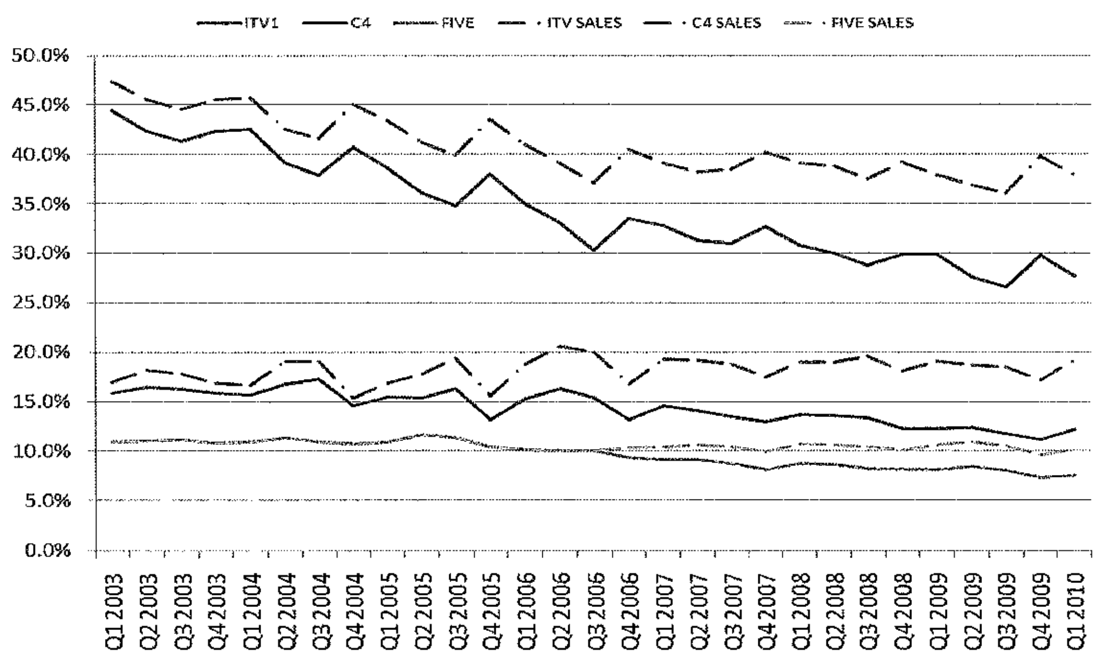
DIGITAL TERRESTRIAL PLATFROM - SHARE OF ADULT VIEWING (MARCH 2010)

CHANNEL	SHARE OF TOT TV	BARB COMMERCIAL CHANNELS ONLY	%
BBC1	23.5		
BBC2	8.4		
BBC DIG	5.4		
ITV1	18.2	18.2	31%
C4	8.5	8.5	15%
FIVE	6.3	6.3	11%
S4C	0	0	0%
SKY	3.9	3.9	7%
IDS	4.2	4.2	7%
ITV DIG	8.3	8.3	14%
C4 DIG	6.5	6.5	11%
FIVE DIG	2.4	2.4	4%
OTHER	4.4		
TOTAL	100	58.3	100%

b) A much more fragmented viewing pattern for TV, with a clear shift in viewing from the PSBs (who have lost around a fifth of their audience share) to the digital channels – although we note that some of the losses in viewing have been offset by gains to the PSBs' digital 'family' of channels;

It is true that ITV1's and Five's share of adult commercial impacts has declined by up to one third since 2003 (C4 has performed better), however when you look at this in the context of the "family" of channels (i.e. including the Digital stations) the total share of commercial impacts for ITV, C4 and Five Sales combined has fallen by only 10% and this despite the fact that non PSB channels can broadcast over 28% more in advertising minutes. Figure 2 overleaf shows the impact of family channels on SOCI.

Figure 2: Share of Adult Commercial Impacts 2003-2010



When at the share of viewing on commercial TV for PSB channels in March 2010 (rather than share of commercial impacts) there has been a decline of 22 percentage points since January 2004. However, ITV1, C4 and Five TV still accounted for 45% of total. When including their channel extensions, the decline is only 8 percentage points and represents 62% of total viewing on commercial TV (see Table 2 below)

ALL PLATFORMS SHARE OF VOICE (ADULTS)

	JANUARY 2004		MARCH 2010		
	AVERAGE PERIOD DECIMAL HOURS	SHARE OF COMMERCIAL VIEWING	AVERAGE PERIOD DECIMAL HOURS	SHARE OF COMMERCIAL VIEWING	POINTS DIFFERENCE
ITV1	34.18	40%	23.17	26%	-14%
ITV DIGITAL CHANNELS	2.22	3%	7.55	9%	6%
ITV1 PLC	36.40	43%	30.72	35%	-8%
C4	13.38	16%	10.02	11%	-5%
C4 DIGITAL CHANNELS	0.83	1%	5.98	7%	6%
C4 SALES	14.21	17%	16.00	18%	1%
FIVE TV	8.90	11%	6.73	8%	-3%
FIVE DIGITAL CHANNELS	0.00	0%	1.87	2%	2%
FIVE SALES	8.90	11%	8.60	10%	-1%
ITV1/C4/FIVE		67%		45%	-22%
ITV1/C4/FIVE SALES COMBINED		70%		62%	-8%

Table 2: Share of Viewing on Commercial TV (2010 vs 2004)

C) A narrowing of the gap between the shares of commercial impacts for the largest and smaller sales houses

This refers to paragraph 4.35 and the Figure 7 on page 22. Although the data is correct, consolidation of media suppliers (GMTV to ITV, VBS and Virgin Media TV to Sky and question marks over what will happen to the future of UKTV channels still at IDS) has rendered this point somewhat redundant. There are currently only 5 sales houses of any significant size, with the likelihood of this being 4 in the near future. When looking at the share of supply for the top 4 sales houses over the period you see that they have more, not less, control of the commercial impacts. (see Table 3 below)

Table 3: Adult Impact Share for Top 5 Saleshouses

	Total Impact share for Top 5 Saleshouses (Adults)
2003	89.0%
2009 (applying GMTV to ITV and VBS to Sky)	97.8%

The point being is that there are no "small" sales houses with significant power or growth and that the majority of commercial impacts are controlled by a few large suppliers.

Para 4.6: *These developments may have resulted in increasing levels of competition in TV advertising market.*

The Advent of more choice for television viewers has created more commercial supply in the marketplace since 2003. It is however debatable as to whether or not this has led to greater levels of competition in the marketplace. There is now more product to sell ie (Larger supply of impacts) however the number of sales points has decreased which has in turn affected the choice and options for Media Buyers.

In Addition the point made by Ofcom that there is less reliance on ITV1, C4 and Five (4.56) this is incorrect as there is still a substantial amount of brands that rely upon these stations to deliver communication objectives and this number has not fallen since 2003. Please see below example.

	% of the top 1000 advertisers in the UK spending on ITV1
2003	87.6%
2009	95.6%

In lamens terms – These broadcasters still hold a unique and highly important place on advertiser's schedules.

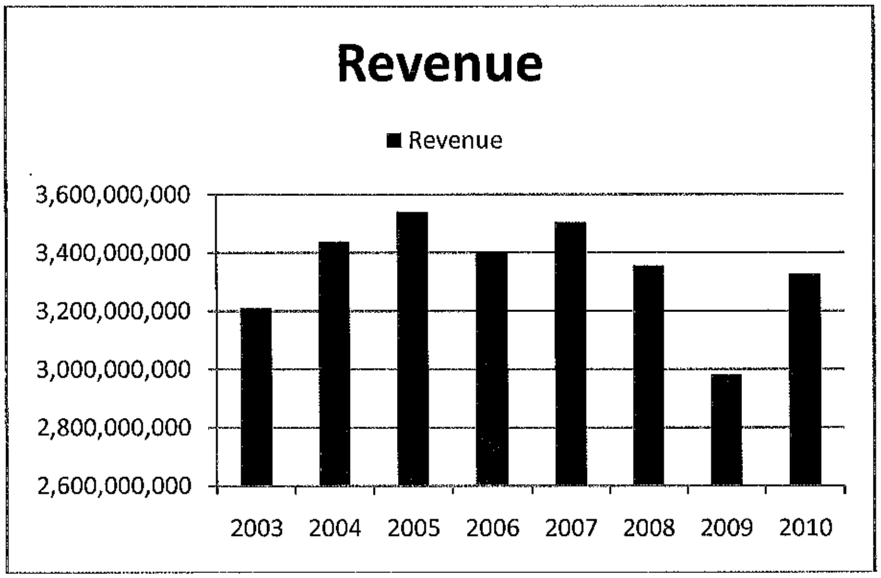
Furthermore the argument put forward by Ofcom in point 4.56 bullet 3, that lower SOCI leads to lower negotiating power is factually incorrect. The PSB broadcasters have been able to increase their negotiation power even when their SOCI levels have reduced. This has been achieved through the leveraging of digital family inventory, enabling them to grow their premium (relationship between SOCI and SOB) in the marketplace.

We would thus argue that the consolidation of media buying points has had no real affect on competition in the television airtime sales marketplace or any affect on reducing prices. There is now less choice in terms of sales points for media buyers and this has actually reduced competition. Negotiation power for media buyers allows a buyer to attempt to achieve better discounts from broadcasters and better terms and conditions. However, this has no bearing on the actual price of advertising which is set by the market under the SAP (station average price) mechanic. Lower prices in the marketplace are driven by wider macro economic variables and by significant shifts in commercial supply.

Para 4.7: Furthermore, it is anticipated that future developments may further increase competition in the sale of TV advertising. For example, we expect digital penetration to increase until the completion of Digital Switchover (DSO) in 2012 and, as a result, viewer fragmentation is likely to rise further.
As has been stated above, we do not believe that Ofcom's assumptions with regard to competition are correct – rather that competition has in fact decreased in the television market since 2003. As a result we would foresee no increase in competition in relation to any future developments.

Q2. Do you think we have missed any other recent market developments or trends relevant to competition in the advertising sector?

Economic conditions have formed the most substantial factor to affect the advertising market from 2003 to 2009. By the end of the 2009 we saw media market revenues decline for seven quarters in a row. We witnessed unprecedented declines in revenue across all stations with over £2bn coming out of the sector. Inevitably investment in product, content and infrastructure suffered, and major changes in management and company structures ensued.



TV sales has recently seen the consolidation of sales points, this is set to continue this year. A Leading factor in this consolidation has been the increasing cost of acquiring and creating new and exciting content. This figure is estimated to have increased by 19% since the beginning of 2003, along with the 5% revenue decline that has occurred since 2004, consolidation has been the only viable option for survival in the current TV marketplace.

Ofcom have not looked at the critical role PSBs play in terms of reaching large audiences and event programming and the unsubstitutional roles these channels provide in terms of coverage.

Programmes Delivering More than 5 Million Viewers June 2009 - May 2010

Britains Got Talent	ITV1
Coronation Street	ITV1
Emmerdale	ITV1
National Television Awards	ITV1
The X-Factor	ITV1
Champions League	ITV1
Dancing On Ice	ITV1
Foyles War	ITV1
Midsomer Murders	ITV1
I'm A Celebrity Get Me Out Of Here	ITV1
Piers Morgan Life Stories	ITV1
Law and Order UK	ITV1
You've Been Framed	ITV1
Celebrity Big Brother	C4
Harry Hill's TV Burp	ITV1
Slumdog Millionaire	ITV1
Poirot	C4
Take Me Out	ITV1
All Star Family Fortunes	ITV1
Elf	C4

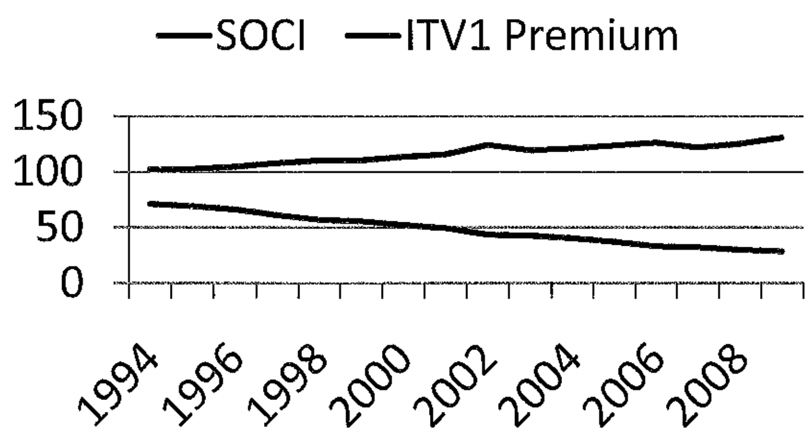
* Based on Individuals

All these PSB programmes have reached more than 5 million viewers for the period Jun 09 – May 10, the highest audience on MCH for the same period is 2.4 Million. This proves the importance of these PSB's and the role they play in delivering large audiences and instant cover

Q3. Do you agree that SOCI is a key determinant during contract negotiations – that media are more interested in committing expenditure to broadcasters which have increased their SOCI?

SOCI is little more than an opening guideline in the determination of investment into channels. A channels' SOCI position is evaluated alongside the channels' ability to drive value for agencies and advertisers and it is the latter than carries the greater weight. SOCI has a greater influence in helping to shape choice of station within a sale point than actual investment into a given salespoint per se.

Airtime negotiations have historically always involved some element of audience performance as advertisers need to find the correct target audience for their product, in sufficient volume, and at the right time of day to produce the desired response. With this in mind, SOCI is one consideration in airtime trading but not the over-riding determinant of investment in a particular channel. The amount of SOCI a broadcaster achieves, and the year on year change in that measure does not always guarantee a corresponding change in SOB. For example, even in light of the CRR mechanism (which essentially formalised this relationship giving advertisers/buyers the right automatically to reduce the proportion of their spend they give to ITV if audiences shrink) ITV has been able to grow its premium as its SOCI has decreased, as demonstrated in the chart below:



Question 4: Do you believe internet display advertising could increasingly act as a constraint on TV advertising (i.e. becomes a closer substitute) in the next 3-5 years?

Our present thinking is this will be highly unlikely. Internet advertising will continue to grow over the next 3 to 5 years and will be accelerated by better online creativity and emerging platforms. However, we have seen nothing on the horizon that would lead us

to believe that this growth will be any different to the last few years and appear in areas beyond those of search, direct response, and social media.
We believe the penetration of the Internet will be around the late 80% mark and far closer to that of TV in 5 years time. However, its ability to deliver mass audience awareness quickly will still be a core differential between the Internet and TV. This core difference is demonstrated by the fraction of spend behind actual brand communication versus response communication online and is showing no signs of change or any significant growth. The Internet marketplace would need to show substantial structural change in order to begin to prove itself as a real branding competitor to traditional media.

Question 5: Is there any other relevant evidence we should consider in order to examine the ongoing need for the withholding rule?

In terms of the minutage distribution analysis it somewhat falls short by assuming the current status is how channels would behave with the restrictions lifted. Examination of the consequences of loading the high value peak segments/programmes needs to be examined in more depth along with the possibility of less minutage and daily viewing distribution.
We don't hold with the view that less advertising minutage would lead to significant increases in viewing and a large increase in impacts for the remaining minutage. We do concur that there may be a slight uplift however; this would not offset to any significant degree the loss of impacts represented by the loss of advertising minutes. Evidence through share of viewing analysis with non commercial channels indicates that a programme attracts viewers on commercial channels irrespective of the fact it carries advertising.
An examination re the competition evidence needs to be extended to consider the very real effect of further consolidation and the percentage control of sales houses within this market.

Question 6: Do you agree with our conclusions that the commercial analogue broadcasters do not appear to have strong incentives to withhold airtime? If not, why?

We strongly disagree with a number of the assumptions Ofcom has made when analysing the mechanics of the UK TV market - and specifically the potential resultant behaviour of the broadcasters if the withholding of airtime rule were lifted.

Para 5.53 (Conclusion): *There is no incentive to withhold in the short run*
Ofcom notes that due to the complicating effect of the TV advertising model, it is likely that broadcasters would not be certain that any changes in impact levels would lead to higher revenues within the trading year. This is based on the assumption that because agencies are tied by year share deals, any increase in price driven by lowered impacts would not drive revenue, as they would only receive the same share in a fixed TV advertising budget.

This does not consider the practical reality of how advertising budgets are planned and bought. The majority of TV advertisers work to fixed (or minimum) communication targets eg reach - therefore an increase in price would force advertisers to protect these targets and increase or divert budgets to TV. Even in the instance where one broadcaster employed withholding to drive price on its own channel, the requirement to meet share deals drives money to all broadcasters fuelling price inflation across the market.

The UK market is self-fulfilling. Demand drives price and increased pricing drives further demand. In a normal inflationary market, advertisers do not maintain budgets rather increase budgets to meet targets. In a market free of restrictions, it is unlikely in the extreme that the broadcasters would not use withholding to some extent to drive inflation and thus increase TV revenues, particularly to protect a declining market.

The broadcasters are fully aware of these market dynamics with the result that we have severe doubts as to whether Ofcom's conclusion - that these broadcasters would not engage in a withholding policy, due to uncertainty that advertisers would not increase budgets - holds true.

We do accept, however, that in a market where SOCI performance is one of the measures by which share deals are traded, the pressure to protect SOCI and therefore a broadcaster's negotiation position could outweigh the revenue gains made through withholding. In a market free of the CRR/ARM mechanic, this might not be a consideration for the broadcaster. We have discussed this further under Conclusion 5.55 below.

Para 5.54 (Conclusion): There is no incentive to withhold due to increased competition

Given that we believe that Ofcom's conclusions re an increase in competition in the market are overstated, we do not believe that it follows that advertisers can therefore more easily switch-away from broadcasters.

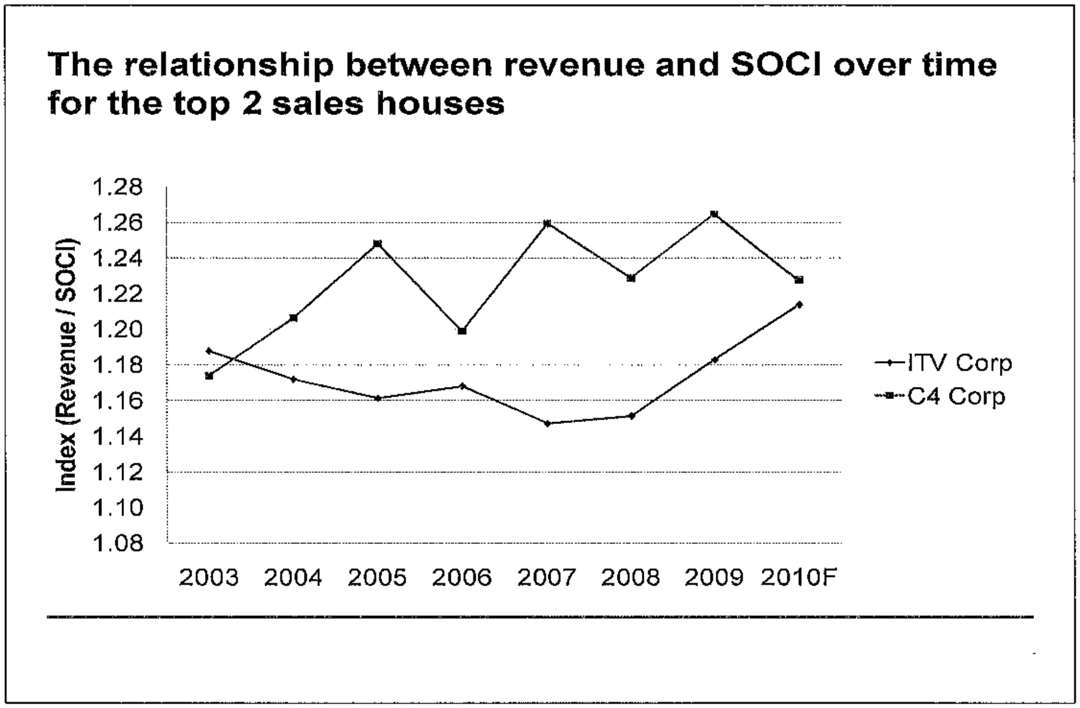
Ofcom notes that with the substantial increase in digital penetration since 2003 and the increase in the number of channels broadcasting in the UK, viewer behaviour has fragmented - suggesting greater competition on the viewing side and by definition that this should imply more competition on the advertiser side of the market too.
We have shown in a previous response that although the number of channels broadcasting in the UK has increased from 294 in 2003 to 495 in 2008, the number of sales houses selling these channels has declined from 8 to 5 over the same period with 80%+ of revenues now being controlled by 3 of these. This, we believe, argues against greater competition in the market – moreover, given the likelihood that we will face further consolidation in sales points, this situation is likely to become more acute.

While Ofcom states that a recently commissioned econometric study suggests any increase in price across all PSB's would be minimal (and that there would therefore no incentive to withhold), as mentioned earlier, this does not tie in with our practical experience and we would need to analyse this report ourselves before we could come to any firm view as to whether these conclusions are sound.

Para 5.55 (Conclusion): There is no incentive to withhold due to SOCI

Ofcom notes that media buyers will allocate share of broadcast revenue to channels or sales houses based on their ability to deliver impacts ie SOCI drives share. It concludes that broadcasters therefore will not withhold minutage to reduce impacts that would damage SOCI performance and so future revenues.

We believe that to draw this conclusion is to over-simplify the relationship between share of broadcast revenue and SOCI. Although SOCI is used as a performance indicator, negotiations in the TV market do not follow a linear relationship due to leverage exercised in the market ie a 1% decline in SOCI does not equate to a 1% loss in share of revenue, particularly in the top 3 sales houses. This is evident from the index of share or revenue to SOCI over time. Even within a CRR trading environment, ITV has managed to increase this index.



Given the above, and being aware of the probability of further consolidation in sales points, we feel there is no reason to believe that a sales point would not look to sacrifice SOCI in return for short run revenue increases through withholding and use their leverage in the market to hold revenue share in negotiations.

Moreover, Ofcom's conclusions do not consider a trading market without CRR and SOCI. SOCI has become the measure partly due to simplicity but also because of CRR and ARM. ARM uses SOCI as a measure for ITV1's share of broadcast and the relationship has effectively become an industry trading standard across all sales houses.

There is no reason to believe that other trading currencies may appear or be forced on the market by the top 3 sales houses.

If the withholding restrictions were removed, Share of Viewing (SOV) which measures viewing (rather than SOCI inventory) could become measure by which the leading broadcasters position themselves in the market. This would allow them to manipulate their inventory and therefore price through withholding without damaging their negotiation position. In this scenario, there would be high incentives for the broadcasters to withhold in the short and long run.

As a result of all the above, we believe any decision to lift the restrictions on withholding must only be made as part of a market wide review.

Question 7: Is there any other relevant evidence we should consider in order to examine the ongoing need for the conditional selling rule?

We believe there are a number of areas where Ofcom might consider more, or different, evidence.

a. Share of viewing (SOV) and advertising revenue (NAR) at a sales house level

In its review, Ofcom has mainly concentrated on the increase in the number of channels and the resulting increase in competition, but this only focuses on the effect of competition on the broadcaster/viewer side of the TV advertising market. As Ofcom notes in its consultation, the TV ad market is two-sided in nature and Ofcom has not, we believe, fully considered the seller/buyer side (at sales house rather than broadcaster level). As has been discussed elsewhere, since the last consultation on the conditional selling rule in 2003, there has been a decrease, rather than an increase, in TV ad sales competition, despite the viewer-side increase in competition driven by an increase in channels. As has already been pointed out, in 2003 there were 8 TV airtime sales points of note (Carlton, Granada, Channel 4, Five, Sky, IDS (Flextech), Viacom and GMTV); today there are just 6, or even 5 if the current ownership of GMTV is taken into consideration (ITV (inc GMTV), Channel 4, Five, Sky, IDS). In 2003, 4 sales points controlled c81% of TV ad revenues; at the end of 2009 c83% of revenues were controlled by just 3 sales points.

b. The relationship between SOCI and NAR

This relationship has not been considered in Ofcom's consultation, yet it is important because from it we can derive a 'power index', that is an understanding of the premium a broadcaster or sales house is able to command for its inventory relevant to the competition. As the evidence we give in answer to Question 8 shows, there has been an increase in the 'power index' of the major broadcasters since 2003, which runs contrary to Ofcom's conclusions in this consultation.

c. The possible impact upon, and relationship with, CRR

Ofcom has largely declared CRR outside of the scope of this consultation other than to suggest its existence would prevent conditional selling by ITV (with relation to *ITV1). However, we believe that it needs to consider the impact of removing the* conditional selling rule on CRR, and specifically ITV's ability to 'work around' CRR in that context.

d. The existence of market power

Ofcom has concluded that it does not see evidence of sufficient market power and anti-competitive conditional selling in the TV advertising sales market currently to justify the existence of the conditional selling rule. We believe the observations we have made in this paper strongly supports a different view.

Question 8: Do you agree with our view that there can be positive and negative effects from bundling (including conditional selling) which means there should not be a blanket ban on conditional selling?

We believe that bundling/conditional selling has a very positive effect for TV contractors and a very negative effect for Advertisers and media buyers – and there should be a ban on conditional selling.

We do not agree with OFCOM's view that "increased competition is likely to continue in the future " (4.70). It is not simply the number of stations or levels of impacts that creates effective competition , but the number of scalable sales points , and with the demise of IDS (and if speculation surrounding the future status of Five) at the end of this year we will be looking at just 4 or maybe even 3 very strong sales houses in 2011. As the number of TV contractors/sales houses decline, the resulting lack of competition will lead to an increase in their power in negotiating the price of their TV airtime.

Bundling offers them a practical method of administrating their airtime inventory, whilst reducing the need to "sell" the benefits of individual stations to advertisers/agencies. Pragmatism dictates that TV contractors cannot individually sell the vast majority of their spots on an individual basis, but this should not extend to the stations/channels they represent. Conditional bundling of channels may force advertisers to agree to run on inefficient/ineffective channels as an only option to securing airtime on key and irreplaceable ones.

The potential for contractors to close off minutage linked with a relaxation of a blanket ban would we believe lead to an unjustifiable increase in the price of TV for advertisers.

Naturally there is always the option of walking away from deals, but TV is still the only medium where high coverage levels can be delivered over a very short space of time, so for a number of strategies it remains irreplaceable. On a regional basis ITV holds a monopoly in some areas and there may be no real substitution, particularly unpalatable if relatively expensive TV copy has already been commissioned.

Tying, as OFCOM describes it , is the main barrier to an advertisers effective optimisation on a channel within sales house trade .

We believe that any weakening of current rules and a move to a case by case assessment as OFCOM recommends would be detrimental to the interests of Advertisers as a whole, giving excessive power to the media owners. We would resist any ruling changes that lead to increased prices for our advertisers or a reduction in our ability to negotiate the best channel mixes to deliver their marketing objectives. A case by case rule would lead to unwarranted extra resource and expense to challenge the TV contractors view on OFCOM bundling rules.

Question 9: Do you agree with our proposals to lift both the withholding rule and the conditional selling rule?

strongly believe that both rules should remain in place. Through the course of this submission we feel we have provided substantiated evidence to prove that both rules deliver critical protection for both advertisers and agencies.

Question 10: Alternatively, if you think the ASRs should be retained in their current or an amended form, what is your reasoning for this view and, if relevant, how should be amended

It is our opinion, as detailed in responding to the previous questions that both ASRs should at the very least remain in their current form.
In our responses to all questions we have provided what we believe is ample evidence for the maintenance of both ASRs, especially given the <u>decreased</u> competition in the airtime sales market. The only change that we would consider would be a tightening of the rules regarding conditional selling, as not only does this occur on a regular basis, but with a dramatic reduction in sales representation, conditional selling is likely to be increasingly prevalent. Additionally, we feel that given the drive towards a total digital multi-channel market their ought to be minutage consistency across all commercial channels. We acknowledge the impact that such a scenario would have on CRR and the subsequent requirement to adjust the remedy to ensure consistency of calculation, but nonetheless we feel that this is the most appropriate solution for all commercial channels.