



Satellite & Cable
Broadcasters' Group

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Dear Siobhan

SCBG response to Ofcom's Airtime Sales Rules Review Consultation

Thank you very much for your letter dated 10 June, explaining why Ofcom believes it is right to continue with the timetable for the ASR review as planned. While we understand the points you have made, we continue to have serious concerns about the appropriateness of proceeding with this review at this time. We believe that changes made following this review could prejudice other reviews relating to the operation of the television advertising market, in particular COSTA. Further, without knowledge of Ofcom's planned proposals for COSTA and with insufficient time to consider the implications of the recently published econometric report on the demand for television advertising, we are unable to come to a clear view about its proposals for ASR. For these reasons we are unable to engage in the detailed questions set out in the consultation. Our contribution to the review therefore comprises the general points made below, which reiterate why we believe that the ASR review should be deferred.

We note your view that the ASRs sit within a distinct regulatory framework, with a clearly defined scope and purpose – leading to your conclusion that it is possible to review them separately. However, in the reality of the marketplace ASRs are just one of a set of interconnected rules that govern how airtime is traded and how broadcasting revenues are derived. Our principal concern throughout our discussions about television advertising regulation has been to ensure that crucial regulatory decisions, such as on ASR, are not taken without full acknowledgement of their connection to wider questions about public service content funding and competition in the marketplace. We do not think that conducting this review now allows Ofcom to take sufficient account of those connections.

COSTA and ASR

We note your argument that there are differences in the origin and stated purpose of the COSTA and ASR regulations. However, the history of the rules is not as relevant as the way they practically influence the functioning of the market, and how changes to those rules will impact it. Regardless of their provenance, the fact is that these rules work in tandem. We do not believe, as you have stated, that "how" airtime is sold is a separate issue to "how much" airtime each broadcaster can sell. For example, while it may not be in PSBs' interest to withhold airtime now, this may not be the case should they have additional minutage if COSTA rules were to be changed. The amount of minutage available may well impact PSBs' incentives to withhold airtime and therefore maximise revenue.

In particular we note your view that the origins of the COSTA rules lie in consumer protection, and that ASRs have traditionally focused on fair competitive practice. However, we do not see these as mutually exclusive. Changes in minutage would have a significant effect on different channels' ability to generate revenue and therefore on their competitiveness – a more significant impact than on consumers in fact. Likewise, changes to the ASRs may impact PSBs' incentives to withhold airtime, the amount of advertising that consumers are exposed to and therefore also their welfare.

In sum, we do not believe that the reasons Ofcom has given for undertaking these two reviews separately are justified.

Econometric report

While we appreciate that the deadline for this consultation was extended to 21 June to allow for the delayed publication of the econometric report, we still consider less than 4 weeks to be an insufficient amount of time for stakeholders to fully comprehend a new and complex econometric study – a study to which Ofcom has clearly had access to for some months and which has evidently played an important role in the conclusions it has reached on ASR. We understand that in a letter to SCBG member Sky that Ofcom argued that it did not rely heavily on the econometric report to formulate its views on the ASRs, the implication being that the delayed publication is immaterial. However, Ofcom's preference for removing the withholding rule appears to have been informed by elasticities derived from the report, and so we would argue that proper time for reviewing the econometric report is in fact essential and good consultative practice.

CRR

As acknowledged in your letter, the Competition Commission's review has now concluded. Under normal circumstances this would give all stakeholders certainty. However, we believe that CRR remains a pertinent factor in the ASR debate for two reasons:

- The CC did not recommend CRR's removal, but it did extend the definition of ITV1 to include ITV +1 and ITV HD, which some third parties have predicted will result in a £17m - £93.5m per annum revenue uplift for ITV¹. The effects of this change are not therefore, as you stated in your letter, "minor" and they have not had time to impact the market.
- CRR, and the wider issue of the regulation of television advertising, has been the subject of intense scrutiny in political and regulatory debate, in particular in the run up to the recent general election. We have yet to see how the new Coalition government will follow through the Conservatives' very vocal intentions to make radical changes to the TV advertising regulation, and we therefore believe the issue of CRR remains highly relevant.

Withholding airtime

We agree with your assessment that "under current circumstances, the trading mechanism incentivises broadcasters to sell all their airtime". However, the relevant phrase here is "current circumstances", which as we have outlined above are the subject of considerable market, regulatory and political discussion. Should the CRR mechanism be removed or significantly altered there would be nothing preventing or disincentivising ITV from withholding minutes, and using their market power to further enhance their dominant position in the market to the detriment of competition. Further, should Ofcom decide to alter the ad minutage caps following its planned COSTA review,

¹ http://www.competition-commission.org.uk/inquiries/ref2009/itv/pdf/provisional_decision_remedy_appendices.pdf

PSBs' incentives may also change. It therefore seems premature to remove a rule which while currently unnecessary, has not been shown to be actively detrimental to any party, and may become necessary if circumstances were to change.

In conclusion, while we understand Ofcom's intention to continue with the review, we hope that it takes the points we have made into account in reaching a conclusion about the regulatory actions to take.

Yours sincerely

A handwritten signature in black ink, appearing to read 'V. Read', written in a cursive style.

Victoria Read
Executive Director, Satellite and Cable Broadcasters' Group

SCBG members are: Bloomberg, BSkyB, Chinese Channel, Discovery Networks, Fox International/National Geographic, NBC Universal, QVC, SBS, Teachers TV, Turner Broadcasting, UKTV, Viacom (MTV, Comedy Central, Nickelodeon), Virgin Media TV.