

Siobhan Walsh,
Floor 4,
Competition Group,
Ofcom,
Riverside House,
2A Southwark Bridge Road,
London SE1 9HA

7th June 2010

Dear Siobhan,

Airtime Sales Rules Review

UKTV appreciates the opportunity to respond to the above consultation. UKTV is the second largest non-terrestrial broadcaster in the UK and one of the most successful multi-channel providers in the UK. Formed in 1997, it is an independent commercial joint venture between Virgin Media and BBC Worldwide, the commercial arm of the BBC.

Attracting 36.5 million viewers each month, the network offers a broad range of quality programming across its entertainment, lifestyle and factual offerings – Watch, G.O.L.D., Dave, Alibi, Eden, Blighty, Yesterday, Home, Really and Good Food.

The consultation in our opinion deals with quite complex issues in a straightforward manner and does so in a relatively straightforward, and simplistic manner, however, our major and overriding concern is that the consultation was written prior to CRR review being concluded by Competition Commission, and is also not truly able to be separated from the upcoming COSTA review, and indeed the recent economic report published on Ofcom's behalf. We accept your position that you will continue to review in light of the CRR review – however, we remain unclear as to what Ofcom's position is in light of the conclusion.

We are of the view that this consultation cannot be concluded prior to release of the COSTA review. Further, we are of the opinion that until the econometric study has been properly analysed and debated, that no conclusions can be drawn.



from **uktv**

implications in the round when advising in relation to market practises. The report seems to be written from a non-practitioner perspective, and has little consideration for the consumer. We understand from the

report that a qualitative panel was established, but there is no detail in relation to geographic, platforms, age, demographics, gender etc. Therefore, it is impossible to determine the reasonableness of the panel established.

We have numerous queries which we would appreciate the opportunity to discuss with Ofcom, but until we understand its purpose in relation to this consultation, we cannot comment further.

Conditional Selling:

Ofcom have stated in the ASR consultation that they have not had any evidence to suggest that conditional selling has been in operation. The logic, therefore, seems to be that as there is no evidence of such practise that there is no need to retain this regulation as an ex ante restriction.

Essentially, we find this logic to be perverse – if the regulations are working effectively, why would Ofcom consider removing the obligation?

The proposed change would create a potential situation whereby a conditional selling proposal would not be considered by Ofcom until the practise had been in operation and implemented?

If Ofcom are confident that the market is working effectively without any need for intervention, then surely this is demonstrating two things:

1. That the regulations are effective
2. That the retention of these regulations would have *no* impact upon market practises

In assuming, that there are potential positive constructs for 'conditional selling' and explaining the theory behind bundling, then we cannot see any reason why Ofcom would require the need to go any further.

With a clear policy to deregulate where appropriate – surely this is evidencing that the regulatory construct is working effectively, and therefore why fix what is not broken?



We currently have an extremely volatile marketplace, and one in which consolidation appears to be a consistent theme. We appreciate that it is impossible to regulate for every potential future arrangement, however, if ITV were to become acquisitive, and there is no reason to rule out an acquisition of another PSB, then this reinforced dominant position is something that we would expect Ofcom to be able to protect against. ASR is one aspect of the current protections, and we have yet to find a logical reason to relax either of the aspects being consulted upon.

Obligation to sell out:

In our introduction we have laid out the reasons why we do not consider that we can have a reasonable debate in relation to whether the regulations should be relaxed.

We believe that the removal of the obligation to sell out cannot be properly analysed without a clear understanding of the amount of minutage that could be scheduled, and indeed therefore, the affect that this would have upon SOCI, SOB and price. In essence it is not possible to separate out the selling practise from the amount of airtime available to sell. Demand and supply have always been regarded as interlinked economically and the TV market is no different in this respect.

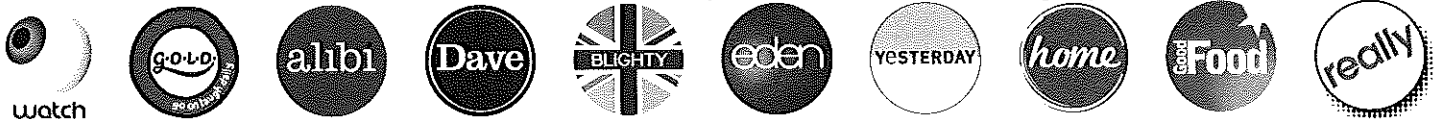
We also have been considering whether there is logic in removing the obligation to sell out, but retaining the level of minutage available. This would still allow ITV, for example, to focus upon SOCI growth, but could also afford ITV when share has increased to begin to review pricing by restricting supply.

This is not an option analysed, or proposed, and we would wish to ensure that all broadcasters have the opportunity to consider all of the options available.

Conclusion:

Whilst our response may disappoint Ofcom, we truly cannot see how Ofcom can consider that they would be making a fully informed decision.

We believe that in such a volatile market, with the likelihood of further consolidation we believe that the parameters are changing and that



to make a recommendation at this point without an holistic overview, would mean Ofcom was failing its duty to ensure that this is a meaningful and robust consultation.

These potential changes are all inter-related – they cannot and must not be considered in isolation. To do so, could be disastrous for the market overall and we would strongly urge Ofcom to pause in this process.

Regards,



Raymond G A Blaney
Head of Regulatory Affairs

CC: Julia Jordan
Joint Interim Chief Executive

