



# Review of television advertising and teleshopping regulation

Proposals on advertising distribution, and options for  
the amount of advertising and teleshopping

Issues paper

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## Section 1

# Summary

## Introduction

- 1.1 This document:
- a) explains the present rules on when advertising breaks can be taken, and when advertising should be banned from particular types of programme, and asks for your views on our suggestions for change. We will consider all the views expressed, and make decisions on whether the rules should be changed, and if so how, later this year;
  - b) explains the present rules on how much advertising and teleshopping there can be on different kinds of channel, what would be the possible effects if we changed the rules in different ways, and asks for your views on whether the rules should be changed. We will consider all the views expressed, and make suggestions later this year if we think that the rule should be changed. We shall ask for views on the proposed changes from anyone who is interested then; and
  - c) explains the matters we believe Ofcom should consider when deciding on any changes to the rules, and how these matters should be balanced.
- 1.2 We are asking interested people to tell us by 28 May 2008 what they think about these issues.
- 1.3 This summary explains:
- a) why Ofcom thinks that advertising is important to TV viewers;
  - b) what the rules on TV advertising are now;
  - c) why we are thinking about changing the rules; and
  - d) what the new rules might say.
- 1.4 Our consultation principles (Annex 1) say that summaries intended for the general public should be no longer than two pages. However, given the complexity of the issues we are consulting on, we decided that it would be better to provide more information than could be provided within two pages.

## The importance of advertising to TV viewers

- 1.5 Television viewers in the UK now have more choice than ever before, whether they watch free-to-air television channels such as ITV1, Channel 4 and Virgin1, or pay TV channels such as Sky One, Nickelodeon and UKTV Gold. When digital switchover is complete in 2012, most households will be able to receive at least 20-40 channels, with many more available from pay TV providers.
- 1.6 The main reason why viewers have this choice is that television channels can earn money by showing advertising. Advertisers pay broadcasters to show adverts on their television channels. Most channels get some or all of their income from advertising. The exceptions are the BBC channels, which are funded through the

licence fee, and some pay TV channels (e.g. Disney's channels), which are wholly funded by subscriptions.

- 1.7 Advertising is also important to the quality of television programmes. Those channels that earn most advertising revenue can afford to invest in higher quality programmes, with more of them made in the UK, and fewer repeats. By contrast, channels that don't earn much advertising revenue must rely more heavily on imported programmes, or cheaply-made local programmes, and repeat their programmes more often.
- 1.8 But viewers have made clear that advertising is important to them in other ways. We sometimes get complaints that there is too much advertising on TV, or that programmes are interrupted by advertising too often, or both. Most of this concerns advertising on the commercial channels that have most viewers – ITV1, Channel 4 and Five. In particular, viewers notice changes in advertising patterns. When advertising patterns change, some viewers have complained that there is too much advertising on television (even if the amount has stayed the same), or that it interrupts programmes too often (even if there is no change to the number of advertising breaks). Usually these complaints die down, as people adjust to the new patterns. But regulators (and broadcasters) are well aware that advertising can be irritating to viewers.
- 1.9 Regulators take viewers' interests seriously – Ofcom's main job is to further the interests of consumers and citizens. For many years, there have been limits on both the amount of advertising, and how often there can advertising breaks during programmes. Some of the rules have been decided by the European Union, and others by Ofcom and its predecessors.
- 1.10 In making these rules, regulators have to balance the interests of viewers. On the one hand, viewers want the choice and quality of programmes paid for by advertising. On the other hand, viewers may be irritated if they think there is too much advertising, or that programmes are interrupted too often. Regulators also have to think about whether particular rules might be unfair or too expensive for broadcasters and advertisers.

### **What the rules are now**

- 1.11 The current European rules are set out in a law called the Television without Frontiers Directive, known for short as the TWF Directive. This limits the daily amount of advertising on television channels to an average of 9 minutes an hour (plus up to 3 minutes of teleshopping spots<sup>1</sup>), but no more than 12 minutes in any one hour. This means that a channel broadcasting for 24 hours a day could show up to 216 minutes of advertising spots (9 minutes x 24 hours), and up to 72 minutes of teleshopping spots, a combined total of 288 minutes.
- 1.12 In addition, there must be a break of 20 minutes between advertising within a programme. The effect of this rule is to allow two breaks within a half hour programme. This does not affect the advertising shown between programmes, however short the programme may be. Except in special cases, advertising must be taken during a 'natural break' in programming (e.g. at the end of a comedy sketch, rather than half way through).

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<sup>1</sup> Teleshopping means television advertising which includes direct offers to the public to supply goods or services, in return for payment. Teleshopping may appear in teleshopping features no less than 15 minutes, or in teleshopping spots alongside normal advertising.

- 1.13 Ofcom applies these rules to most TV channels licensed in the UK. But, like its predecessor, the Independent Television Commission (ITC), Ofcom applies stricter rules to the public service channels (ITV1, GMTV1, Channel 4, Five, S4C). The daily amount of advertising on these channels is limited to an hourly average of 7 minutes (with no additional amount allowed for teleshopping spots), subject to a cap of 12 minutes in any one hour. During peak viewing times, there are further restrictions on the amount of advertising. From 7am to 9am, and from 6pm to 11pm, broadcasters may only show an average of 8 minutes an hour of advertising. PSB channels also have stricter rules on advertising breaks, which means that they can only have one break in a half-hour programme.
- 1.14 There are some more detailed rules (explained in detail in section 6 ) that:
- a) limit advertising in particular kinds of programme. There are restrictions on advertising in programmes with a religious theme, news and current affairs programmes, children's programmes and others; and
  - b) explain what is meant by 'natural breaks' and 'special cases' in different kinds of programming.
- 1.15 All the rules are set out in an Ofcom code called the 'Rules on the Amount and Distribution of Advertising', or RADA for short. The 'Amount' refers to the number of minutes of advertising allowed in any one day or in any one hour on a television channel. The 'Distribution' refers to the rules on when advertising breaks can be taken, and what restrictions apply to advertising in particular kinds of programmes. Annex 3 sets out all the current rules in full.

### **Why we are considering changing the rules**

- 1.16 When Ofcom took over regulating advertising on television from the ITC, we did not make many changes to RADA. One reason for this was that we knew there could be changes to the European Union rules. We thought that it would make sense to find out what changes might be made before we looked again at RADA.
- 1.17 The new European rules were published in December 2007. The rules set out in the TWF Directive have been changed, and the Directive is now called the Audiovisual Media Services Directive, or the AVMS Directive for short. The relevant parts of both Directives are shown in Annex 2.
- 1.18 The changes made to the European rules are explained in detail in section 6. In brief, they would allow Ofcom:
- a) to let any TV channel show up to 12 minutes an hour of advertising (including up to 3 minutes teleshopping) across the day (288 minutes a day for a 24 hour channel, or 4 hours 48 minutes); and
  - b) to get rid of or relax many of the detailed rules banning or limiting advertising in certain types of programme.
- 1.19 Ofcom can make stricter rules if it believes that these would be better for viewers. But we could not make less strict rules. For example, we could carry on limiting TV channels to a daily average of 9 minutes of advertising an hour, but we could not allow them to increase their advertising to a daily average of 15 minutes an hour. The Communications Act also says that whatever rules we do make, we must strike the best balance we can between the different considerations set out in the law. We

explain more about what these different considerations are, and how we plan to balance them under 'What happens next' below.

- 1.20 Since Ofcom was formed in 2003, there have been other changes that make it sensible to look at RADA again:
- a) over the past few years, the cost of advertising time on television has fallen. That means that some TV channels have less money than they used to, which could affect the range, quality and repeat rate of the programmes they can afford to show. Advertisers and broadcasters have told us that they do not expect the total amount of money earned from TV advertising to grow much in the next few years, as other ways of advertising (such as using websites) are becoming more popular; and
  - b) PSB channels now face much more competition, as most people can now receive many other channels, via Freeview or pay TV. By 2012, virtually all households will be able to receive at least 20-40 channels. As a result, PSB channels have lost viewers to other channels. For some PSB channels, this means that they have less advertising revenue. We think that this is particularly important for viewers; as their name suggests, the law expects PSB channels to do more than other channels to provide viewers with a wide range of original high quality programming, including national and regional news.
- 1.21 It is also clear that the rules that Ofcom inherited from the ITC:
- a) have not stopped most PSB channels from showing almost as much advertising in the most popular viewing hours (7pm to 10pm) as other channels – that is, nearly 12 minutes an hour. They do this by concentrating their peak-time allowance (40 minutes between 6pm and 11pm) in the hours when most people are watching; and
  - b) have not stopped the more popular non-PSB channels that are able to sell all their advertising allowance<sup>2</sup> from showing 12 minutes of advertising an hour at most times of the day. They do this by not showing adverts very late at night or in the early morning, when very few people are watching.
- 1.22 Despite this, given the number of people watching TV in the UK, and the time they spend watching TV, there have been relatively few complaints about the amount of peak-time advertising on PSB channels, or about advertising on non-PSB channels. Over the last three years (from 2005 to 2007), most of the complaints from viewers about the amount of TV advertising, or the frequency of TV advertising breaks have been about single programmes that have breached the rules on advertising, or which have adopted new break patterns. This may suggest that most viewers are prepared to tolerate 12 minutes an hour of advertising. However, Ofcom's research also seems to suggest that most people would not like to see any more advertising. Some viewers may have switched their viewing to BBC channels, which carry no paid-for advertising.
- 1.23 We also think that many of the more detailed rules are no longer necessary, for the following main reasons:
- a) many of the restrictions on advertising in particular kinds of programme (e.g. documentaries with a religious theme) reflect the social attitudes prevailing more

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<sup>2</sup> Many of the channels with small audiences are not able to sell all their advertising time.

than 60 years ago. Because these rules make it less profitable to show these programmes, particularly during peak viewing hours, they may even discourage broadcasters from making or acquiring such programmes; and

- b) the prescriptive rules on what is meant by ‘natural breaks’ and ‘special cases’ in different kinds of programming may have been appropriate in the early days of broadcasting, when experience was lacking, and when there were very few channels. But we see no reason why broadcasters should not be permitted to use their own judgement to decide on such issues today.

### **The changes we are suggesting**

- 1.24 We explain below (‘Rules on how much advertising there can be’) how we will deal with the rules on how much advertising and teleshopping should be allowed on PSB and non-PSB channels.
- 1.25 In this document, we are only making firm suggestions about changes to the rules on:
  - a) when advertising breaks can be taken; and
  - b) when advertising should be banned from particular types of programmes.
- 1.26 We explain in more detail in section 6 why we think changes should be made, and what they are. The new rules we propose are set out in Annex 5. They deal with four main areas.
- 1.27 First, we suggest that the rule requiring a 20 minute interval between breaks should be scrapped. The current rule means that programmes must be made to fit an artificial break pattern. It is unlikely that this break pattern will always be the best for each programme, especially for programmes acquired from overseas, where different break patterns are normal. We think that allowing flexibility on the timing of breaks is likely to be better for viewers.
- 1.28 Second, we suggest there should be some limits on the frequency of advertising breaks. If there were no limits, it seems likely that the desire of advertisers to have shorter more frequent breaks would lead to an increase in the number of breaks over time, to the irritation of viewers. For the time being, we are proposing to have rules that would limit broadcasters to the same number of breaks that they would be allowed at present.
- 1.29 However, we have also set out a number of other possible approaches:
  - i) keeping things as they are – that is, for example, allowing up to two breaks per half-hour programme on non-PSB channels, and one break per half-hour programme on PSB channels (Option 1);
  - ii) increasing the number of breaks on PSB channels to the same as those allowed on non-PSB channels, that is two breaks in a half-hour programme, three in a 60-minute programme, and five in a 90-minute programme (Option 2);
  - iii) limiting the number of breaks on non-PSB channels to the same as those allowed on PSB channels, that is one break in a half-hour programme,



three in a 60-minute programme, and four in a 90-minute programme (Option 3);

- iv) having rules that would limit the number of breaks on PSB channels, but allow non-PSB channels to decide for themselves how often they should have breaks (Option 4); and
- v) letting all channels decide for themselves how often to have advertising breaks (Option 5).

1.30 We would like to know whether viewers and broadcasters think we have identified the right options. We would also like to know what issues stakeholders believe we should consider in preparing proposals for consultation. Having thought about what stakeholders say, and considered other relevant matters, we may then propose changes on which we will invite views. However, for the time being, we propose to keep the existing limits on the number of breaks in programmes shown on PSB channels, and put in place limits on non-PSB channels that maintain the same frequency as under the 20 minute rule.

1.31 Third, we think that the rules on natural breaks should be simplified, with the aim of allowing broadcasters to exercise their best judgement about how to meet the European rules. These rules say that advertising breaks should not harm the integrity of programmes.

1.32 Fourth, we think that the restrictions on advertising in particular types of programming should be removed or relaxed so far as the new European rules allow. For example, this would mean that films could be interrupted by advertising once every 30 minutes, rather than once every 45 minutes. It would also mean that the restrictions on advertising breaks during current affairs and religious programmes would be removed, but that there would continue to be a ban on interrupting programmes of religious services with advertising.

### **Rules on how much advertising there can be**

1.33 We are also asking people what their views would be on:

- a) possible changes to how much advertising and teleshopping is allowed on television; and
- b) whether we should carry on applying stricter rules on the amount of advertising on PSB channels, and if so, what those rules should be.

1.34 However, we are not making any firm proposals now. We will consider what people say before making suggestions later in the year. In particular, we would like to hear more about what members of the public, broadcasters and advertisers think about these issues. To help those who are interested to think about different ideas, we have set out several possible approaches in section 7. In that section, we explain what we believe would be the effects of each approach on viewers and broadcasters in particular.

1.35 There is no one approach that would benefit everyone. Broadly speaking:

- a) keeping the rules as they are is likely to mean that the way advertising income is divided amongst broadcasters would remain much the same as now;

- b) cutting the amount of advertising might also cut the total amount of advertising revenue, though not by much. But the effects on broadcasters would be different. PSB channels (particularly ITV1) would get a little more money from advertising, but other channels would lose advertising money;
- c) letting PSB channels show more advertising (especially in peak time) would benefit them, but cost other channels about the same amount of money. The more the rules were relaxed, the more advertising revenue PSB channels would gain, and the more other channels would lose. Allowing PSB channels to benefit from the same rules that apply to other channels would cost these other channels tens of millions of pounds each year.

1.36 We explain our reasoning in section 7 and in the Impact Assessment at Annex 4.

### What happens next

1.37 We shall consider what people say about the ideas in this paper. We shall also take account of the matters that the law says we must consider. These are set out in more detail in section 3 (Legal Considerations). In brief, the law says that:

- a) Ofcom's main aim must be to do what is best for consumers (in this case, TV viewers) and citizens (all members of the public in the UK). In this connection, we should listen to what consumers say;
- b) in particular, we must make sure that there is a wide range of television channels provided by a range of different companies, and that these channels should, overall, provide a good choice of different types of high quality programming appealing to different people;
- c) we should do our best to make sure that the PSB channels can meet the tasks set out for them in the law, including making and showing good quality programmes that deal with the different interests of viewers; and
- d) in doing the things set out in (a) (b) and (c) above, we should make sure that we understand how the changes would affect viewers, broadcasters, advertisers and other interested parties. So far as possible, we should avoid changes that would be very costly or disruptive for any of them. We should also try to scrap or simplify the rules on broadcasters, so long as this would not stop us doing the things described in (a), (b) and (c).

1.38 We must strike the best balance we can between the different tasks set out in the law. We propose to balance these tasks by considering how much each possible change would:

- further the interests of citizens and consumers, in particular, in relation to:
  - the range, quality and appeal of television services available throughout the UK and in different parts of the UK, and, in particular, public service channels;
  - the importance of securing a sufficient degree of plurality of providers of television services; and
  - such other matters as appear, having regard to the opinions expressed by consumers, important to them.

- in furthering the interests of citizens and consumers, so far as possible:
  - be evidence-based, transparent, proportionate, consistent, and limited to the measures needed to achieve the first objective;
  - avoid the imposition or maintenance of regulation that is unnecessary; and
  - take account of the desirability of promoting competition, and the nature and interests of different consumers in relevant markets.

1.39 In other words, we shall consider whether each idea could be shown to benefit people in the UK, in ways that would avoid unnecessary or harmful regulation, and which would comply with the law. We would welcome your views on whether these are the right aims for Ofcom in considering the rules on TV advertising. However, we would not be able to change the aims just because a lot of people disagreed with them. We would need to be sure that any changes to the aims would fit the duties given to Ofcom by law.

1.40 When we have finished considering what people have told us, we shall:

- a) decide what to do about the rules on the distribution of advertising. We hope to publish our decision in the summer. We expect that the rules would come into force straight away; and
- b) make suggestions about the rules on the amount of advertising. We expect to do this in the Autumn of 2008. We expect that any changes to the rules would happen from the beginning of 2010.

### **Other parts of this document**

1.41 There are several other parts to this document:

- a) section 3 sets out the things that the law says Ofcom must think about when deciding what to do about rules on advertising;
- b) section 4 explains how the TV advertising market works;
- c) section 5 describes the changes to TV advertising rules since commercial TV started, and what the rules are now;
- d) section 6 suggests how the rules on the distribution of TV advertising should be changed; and
- e) section 7 explains what would be the effect of different possible changes to the rules on how much TV advertising is allowed.

1.42 Amongst the Annexes:

- a) Annex 1 explains how to comment on our proposals and ideas. It also lists all the questions we are asking people to think about;
- b) Annex 3 sets out the current Rules on the Amount and Distribution of Advertising;

- c) Annex 4 sets out in an Impact Assessment our understanding of what the effects would be on viewers, broadcasters and advertisers of the changes we suggest to the rules on the distribution of TV advertising; and
  - d) Annex 5 sets out the proposed Code on the Amount and Distribution of Advertising.
- 1.43 Ofcom would like to know your views on our suggestions for changes to rules on the distribution of advertising. In other parts of the document, we explain in more detail how things are the moment, and what we are suggesting. After each suggestion, we ask what you think. A list of all the questions is set out in Annex 1. The main things we would like your views on are:
- a) when advertising breaks can be taken; and
  - b) when advertising should be banned from particular types of programmes.
- 1.44 We should also like to know your views about whether the rules on how much advertising is allowed on television should be changed, and if so how.
- 1.45 In line with Ofcom's consultation principles (Annex 1), we are allowing ten weeks for people to comment. Please let us have any views you would like us to consider by 28 May 2008. If you can, please use the form at <http://www.ofcom.org.uk/consult/condocs/rada/howtorespond/form> to let us have your views, as this makes it easier for us to see what people think about the questions we are asking. If not, you can let us have your views by textphone at 020 7981 3043 or 0300 123 2024, or by writing to this address:
- Ofcom  
Riverside House  
2a Southwark Bridge Road  
London  
SE1 9HA
- 1.46 We shall consider everything that people tell us which we think is relevant, both on the proposals we have made about changes to the rules on the distribution of advertising, and on the possible changes that could be made to the rules on the amount of TV advertising.

## Section 2

# Background

### Context of the review

- 2.1 Television advertising in the UK has been regulated since commercial television began with the launch of ITV in the middle of the last century. From the mid-1950s until the end of the 1980s, the rules reflected domestic policy, but from the implementation of the 'Television without Frontiers' (TWF) Directive, they were set within the context of a European framework<sup>3</sup>.
- 2.2 Nevertheless, the rules have remained basically unchanged since 1991, and many are substantially the same as when they were first made in the earliest days of commercial television regulation. In essence, they seek to balance the commercial imperative for free-to-air broadcasters to show advertising in order to fund programming, with a view that unrestrained television advertising would spoil viewers' enjoyment of television programmes.
- 2.3 Some of the older rules reflect the view prevailing in the middle of the last century that it was not appropriate for advertising to appear within or adjacent to certain types of programming, such as documentaries, programmes with a religious theme, or broadcasts of Royal ceremonies and occasions. More detail on how TV advertising regulation has evolved is given in section 5.
- 2.4 The last review of these rules was conducted in 1997 by Ofcom's predecessor, the Independent Television Commission (ITC), under the broadcasting legislation applicable at the time. The main purpose of the review was to give effect to amendments to the TWF Directive. Since then, new legislation – the Communications Act 2003 – has imposed different duties on the regulator – Ofcom. In addition, the TWF Directive has now been amended to become the Audiovisual Media Services (AVMS) Directive<sup>4</sup>. During discussions in Europe at about the AVMS Directive, Ofcom supported efforts by the UK Government to maximise the scope for Member States to exercise discretion in regulating TV advertising. These efforts were largely successful. As a result, there are very few areas where the AVMS Directive requires the UK to change its advertising regulation regime. Ofcom could therefore retain, relax or scrap many of the rules set out in the Rules on the Amount and Distribution of Advertising (RADA).
- 2.5 Ofcom has therefore initiated a comprehensive review of the advertising rules. In deciding on whether and, if so, what changes to make to RADA, Ofcom must take account of its statutory duties and other relevant considerations. These are summarised in section 3. Importantly, the approach to regulation must reflect the fact that advertising is the main source of funding for the UK's commercial PSB channels (ITV1, Channel 4, Five and GMTV) and for many non-PSB channels. Accordingly, changes that might adversely affect the revenue that channels can earn from advertising are likely to have a significant impact on the quality and choice of programming that they can provide. Ofcom also needs to consider how the impact of changes to regulation could vary across different channels.

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<sup>3</sup> Relevant extracts from the TWF Directive, and links to the complete document, are given in Annex 2.

<sup>4</sup> Relevant extracts from the AVMS Directive, and links to the complete document, are given in Annex 2.

## Key issues

- 2.6 Although Ofcom is proposing significant changes to RADA, many of these involve the removal of detailed guidance that Ofcom considers (for the reasons given later) will have little or no impact on consumers. The key issues, for both consumers and broadcasters, are:
- a) possible changes to the rules that may affect the frequency of advertising breaks and / or the intervals between them; and
  - b) alternatives to the current rules on the amount of advertising on television, particularly on PSB channels that are funded by advertising.
- 2.7 All the options for change that may affect the frequency of advertising breaks and / or the intervals between them involve trade-offs. Allowing (but not prescribing) more frequent breaks would mean that they could be scheduled more sympathetically, particularly in imported programmes that are pre-edited for more frequent breaks. It could also mean that the breaks could be shorter, which might appeal to some viewers, but might also benefit broadcasters and advertisers. On the other hand, some viewers might find more frequent interruptions to programming irritating. The options are discussed in section 6. Pending the outcome of proposals later this year on whether there should be changes to the amount of advertising, we are proposing interim rules that would prevent broadcasters from scheduling advertising breaks more often than they are currently permitted to do.
- 2.8 Alternatives to the current rules on the amount of advertising on television could have significant effects, both on viewers and broadcasters. Non-PSB channels see no advantage and some drawbacks in being allowed to increase the amount of advertising they can show. Those that are able to sell all their advertising already manage to schedule close to the maximum amount of advertising they would be allowed to, at the times when most people are watching. They worry that an increase would simply drive down the price of advertising minutage in the short term, and would not deliver real increases even in the longer term. They are also concerned that any relaxation of the peak-time rules applying to PSB channels (particularly those with the larger audiences) would lead to them gaining substantial revenues at the expense of channels with smaller audiences (particularly the non-PSB channels). These implications of different approaches are discussed in more detail in section 7.

## Review process

- 2.9 Ofcom's review will look both at the rules on the frequency of advertising, and how much advertising can be scheduled across the day and in any one hour.
- 2.10 In terms of the rules on the distribution of advertising (when and where it may be scheduled), Ofcom's aim is to reach decisions on the rules in time to allow any changes to come into effect as soon as possible, and in any case on or before 1 January 2009. To this end, we have already:
- a) talked to stakeholders<sup>5</sup>, including broadcasters, and advertisers, to gain a deeper understanding of how the television advertising market works, and what perspectives key stakeholders are likely to have on possible changes to regulation; and

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<sup>5</sup> We were not able to identify consumer organisations with a specific interest in the issues set out in this paper.

- b) reviewed research and information on consumer attitudes to advertising, and on advertising regulation practices elsewhere (including the US, where there is no regulation)<sup>6</sup>.
- 2.11 We are now consulting on the proposed changes to the rules on the distribution of advertising set out in section 6. In the light of responses and further consideration, Ofcom expects to publish its decisions on changes to the rules later this year.
- 2.12 As regards the rules on the amount of advertising, Ofcom will be examining the implications for consumers, broadcasters and advertisers of possible changes to the rules on how much television advertising should be allowed. As part of this, Ofcom expects to assess how the impact of different options would vary across the broadcasting sector. It will also need to take account of the OFT's review of the Contracts Rights Renewal remedy, which started at the beginning of 2008.
- 2.13 Ofcom aims to conclude this process in time to allow any changes to the rules on the amount of television advertising to be implemented with effect from 1 January 2010. To this end, we are inviting views on possible options (see section 7) and on the modelling approach described in the impact assessment (Annex 4). Views expressed will help to inform proposals we plan to publish for consultation in late 2008.

### Structure of this document

- 2.14 There are several other parts to this document:
- a) section 3 sets out the legal matters Ofcom must take into consideration, particularly its statutory duties and other relevant considerations. It explains how Ofcom proposes to balance these matters, and invites views on this approach;
  - b) section 4 explains how the TV advertising market works;
  - c) section 5 describes the changes to TV advertising regulation since commercial TV started, and what the rules are now;
  - d) section 6 comprises a consultation on proposed changes to the rules on the distribution of TV advertising, including the simplification or removal of detailed genre-specific guidance, the removal or relaxation of genre-specific restrictions on advertising, to the extent permitted by the AVMS Directive; and options for changes to rules that affect the frequency and / or intervals between advertising; and
  - e) section 7 invites views on different possible approaches to the rules on how much TV advertising is allowed, prior to a formal consultation later this year.
- 2.15 Amongst the Annexes:
- a) Annex 1 explains how to respond to this document and lists all the questions we are asking stakeholders to think about;
  - b) Annex 3 sets out the current Rules on the Amount and Distribution of Advertising;

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<sup>6</sup> See sections 6 and 7 for more detail.

- c) Annex 4 is an impact assessment which sets out our understanding of what the effects would be on viewers, broadcasters and advertisers of the changes we suggest to the rules on the distribution of TV advertising; and
- d) Annex 5 sets out the proposed Code on the Amount and Distribution of Advertising, reflecting proposed changes to the rules on distribution, and the status quo in relation to the amount of advertising.



## Section 3

# Legal considerations

## Introduction

- 3.1 As part of its duties in relation to broadcasting under the Communications Act 2003 ('the Act'), Ofcom is responsible for setting regulation for advertising on television. This section explains the statutory duties and other relevant considerations that Ofcom must take into account in carrying out that regulatory function. It includes those considerations set out in the Act, other UK legislation, and European legislation.
- 3.2 Ofcom must balance all these considerations when deciding to carry out its advertising regulation functions. The section concludes with our proposals for balancing these considerations in a statement of regulatory objectives, and invites comments on these.

## Communications Act 2003

### Ofcom's duties

- 3.3 Section 3(1) of the Act says that Ofcom's principal duty in carrying out its functions shall be to further the interests of:
  - a) citizens in relation to communications matters, and
  - b) consumers in relevant markets, where appropriate by promoting competition.
- 3.4 Section 3(2) specifies matters which Ofcom must secure in carrying out its functions:
  - a) the availability throughout the UK of a wide range of television and radio services which (taken as a whole) are both of high quality and designed to appeal to a variety of tastes and interests; and
  - b) the maintenance of a sufficient plurality of providers of different television and radio services.
- 3.5 Section 3(3) and section 3(4) say that in performing the duties set out in section 3(1), Ofcom must have regard to a variety of other factors, including:
  - a) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed;
  - b) any other principles appearing to Ofcom to represent best practice;
  - c) the desirability of promoting the fulfilment of the purposes of public service television broadcasting in the United Kingdom;
  - d) the desirability of promoting competition in relevant markets;
  - e) the opinions of consumers in relevant markets, and of members of the public generally; and

- f) the different interests of persons living in the different parts of the United Kingdom.
- 3.6 In connection with the requirement to have regard to the desirability of promoting the fulfilment of the purposes of public service television broadcasting, section 264(6) describes, amongst other things, the way in which this is done by ensuring these as securing that the relevant television services, taken together:
- a) deal with a wide range of subject matters;
  - b) satisfy the interests of as many different audiences as possible, so far as their nature and subject matter and the days on which they are shown are concerned; and
  - c) maintain high general standards, in particular as regards the content and quality of the programmes, and the professional skill and integrity applied to making them.
- 3.7 For these purposes, the relevant television services are the BBC's channels, S4C, ITV1 and GMTV, Channel 4, and Five (section 264(11)).
- 3.8 Where it appears to Ofcom that any of its general duties conflict with one another, it must secure that the conflict is resolved in the manner it thinks best in the circumstances (section 3(7)).
- 3.9 In performing the duties under section 3(1)(b) [furthering the interests of consumers], Ofcom must also have regard to the interests of those consumers in respect of choice, price, quality of service and value for money. Ofcom must also have regard, amongst other things, to the needs of persons on low incomes (section 3(4)(i)). Both of these considerations are relevant to the range of free-to-air advertising-funded television services available.
- 3.10 Ofcom has both a general responsibility with respect to advertisements and methods of advertising and sponsorship, as well as a related power to include conditions in any licence granted by Ofcom that go beyond the provisions of Ofcom's standards code (section 321(4)).
- 3.11 Ofcom also has duties that relate to how to carry out our work, including requirements:
- a) to carry out an assessment of the impact of a change in the way Ofcom carries out its activities where this would have a significant impact on persons carrying on businesses in markets regulated by Ofcom (section 7); and
  - b) to secure that regulation by Ofcom does not involve the imposition of burdens that are unnecessary, or the maintenance of burdens which have become unnecessary (section 6(1)).
- 3.12 Related to this is the duty to have regard to the extent to which matters which Ofcom are required to further or secure under section 3 (see above) are already furthered or secured, or are likely to be furthered or secured by effective self-regulation, and in the light of that, to consider to what extent it would be appropriate to remove or reduce regulatory burdens imposed by Ofcom (section 6(2)).

## Best practice

- 3.13 In the light of the requirements on Ofcom under section 3(3) (see paragraph 3.5(a) and (b) above), Ofcom has published a set of regulatory principles by which it seeks to abide<sup>7</sup>. Those of particular relevance to the advertising regulation issues discussed in this document are as follows:
- a) Ofcom will operate with a bias against intervention, but with a willingness to intervene firmly, promptly and effectively where required;
  - b) Ofcom will strive to ensure its interventions will be evidence-based, proportionate, consistent, accountable and transparent in both deliberation and outcome;
  - c) Ofcom will always seek the least intrusive regulatory mechanisms to achieve its policy objectives;
  - d) Ofcom will research markets constantly and will aim to remain at the forefront of technological understanding; and
  - e) Ofcom will consult widely with all relevant stakeholders and assess the impact of regulatory action before imposing regulation upon a market.

## Human Rights Act 1998

- 3.14 Under section 6 of the Human Rights Act 1998, there is a duty on Ofcom (as a public authority) to ensure that it does not act in a way which is incompatible with the European Convention of Human Rights (“the Convention”).
- 3.15 Article 10 of the Convention provides for the right to freedom of expression. It encompasses the broadcaster’s right to “impart information and ideas” and also the audience’s “right to receive information and ideas without interference by public authority”. Such rights may only be restricted if the restrictions are “*prescribed in law and necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health and morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary*” (Article 10(2) of the Convention).
- 3.16 Ofcom must exercise its duty in light of these rights and not interfere with the exercise of these rights in broadcast services unless it is satisfied that the restrictions it seeks to apply are required by law and necessary to achieve a legitimate aim.

## European legislation

- 3.17 The Television without Frontiers Directive (‘the TWF Directive’) was adopted by the then European Economic Community in 1989<sup>8</sup>, and entered force in the UK through the Broadcasting Act 1990 and the ITC’s Rules on Advertising Breaks (January 1991). The purpose of the Directive was to require Member States to adopt minimum common standards of advertising regulation in order to facilitate a single market in broadcasting services in accordance with the Treaty of Rome. The Directive was

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<sup>7</sup> Ofcom’s regulatory principles (<http://www.ofcom.org.uk/about/sdrp/>).

<sup>8</sup> Council Directive (89/552/EEC) of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (known as the Television without Frontiers Directive).

amended in 1997<sup>9</sup>, and remains in force in the UK, pending transposition of amendments made in December 2007 (see paragraph 3.23 below).

- 3.18 Recital 26 to the TWF Directive noted that ‘in order that the interests of consumers as television viewers are fully and properly protected, it is essential for television advertising to be subject to a certain number of minimum rules and standards and that the Member States must maintain the right to set more detailed or stricter rules ... for television broadcasters within their jurisdiction’. Recital 27 said that this could include ‘different conditions for insertion of advertising and different limits for the volume of advertising’.
- 3.19 The TWF Directive requires, amongst other things:
- a) that the amount of TV advertising spots and teleshopping spots be limited to a maximum of 20% (12 minutes) in any one clock hour, and that the total duration of advertising spots should not exceed a daily average of 15% (9 minutes) an hour (Article 18). In addition, no more than 8 teleshopping windows of not less than 15 minutes each are permitted on channels not exclusively devoted to teleshopping (Article 18a);
  - b) TV advertising should be readily recognisable as such (Article 10), and should be inserted between programmes, or in natural breaks within programmes (Article 11(1)). A period of at least 20 minutes should elapse between advertising breaks (Article 11(4)), except in the case of programmes with autonomous parts such as sports events (Article 11(2)), films (where Article 11(3) limited breaks to once in every period of 45 minutes), news and current affairs programmes, documentaries, religious and children’s programmes, where no break is allowed in any programme of less than 30 minutes.
- 3.20 The TWF Directive permits Member States to lay down different rules for television broadcasts intended solely for the national territory which cannot be received, directly or indirectly by the public, in one or more other Member States. The exceptions to this are the conditions laid down in Articles 11(2) and 18 (Article 20).
- 3.21 On 18 December 2007, the European Union adopted amendments to the Directive, which became the Audiovisual Media Services Directive (‘the AVMS Directive’). The UK has two years from this date to bring the amendments to the Directive into force. The amendments provide, amongst other things, that:
- a) the amount of TV advertising spots and teleshopping spots continues to be limited to a maximum of 20% (12 minutes) in any one clock hour, but the lower daily average of 15% per clock hour has been abolished (Article 18). The limit on the number of teleshopping windows has been removed, but the minimum window duration of 15 minutes remains (Article 18a);
  - b) the requirement for a period of 20 minutes to elapse between advertising breaks is abolished, and one advertising break is permitted in every scheduled period of 30 minutes in the case of films and news programmes, and in every children’s programme greater than 30 minutes (Article 11). The amendments abolish rules on breaks in news and current affairs programmes, documentaries, and religious

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<sup>9</sup> Directive 97/36/EEC of the European Parliament and of the Council of 19 June 1997 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities.

programmes, although breaks in programmes of religious services remain prohibited.

3.22 It should be noted that:

- a) these amendments are not yet in force;
- b) they do not preclude Ofcom from imposing or maintaining stricter requirements on television advertising than are set out in the AVMS Directive. However, the restrictions may not be less strict than those set out in the Directive – for example, Ofcom could not allow broadcasters to air more than 12 minutes of advertising an hour.

3.23 One of the purposes of this document is to enable decisions to be taken on how the amendments should be reflected in changes to the Rules on the Amount and Distribution of Advertising.

3.24 Article 49 of the EC Treaty requires that any restrictions on the free movement of services must be justified and proportionate.

### **Balancing Ofcom's duties and other relevant considerations**

3.25 In carrying out its functions, Ofcom is required to balance its statutory duties and other relevant considerations. Where it appears to Ofcom that any of their general duties conflict with each other in a particular case, it must secure that the conflict is resolved in the manner it thinks best in the circumstances (section 3(7)). Ofcom considers that, in the interests of transparency, it should explain how it proposes to balance its statutory duties and relevant considerations by explaining the regulatory objectives it proposes to adopt in relation to its review of the regulation of the Rules on the Amount and Distribution of Advertising.

3.26 Ofcom's primary duty is to further the interests of citizens and consumers. The Act gives examples of things which Parliament considers to be in the interests of these groups, including:

- a) the availability of a wide range of television services which (taken as a whole) are both of wide quality and designed to appeal to a variety of tastes and interests;
- b) the maintenance of a sufficient plurality of providers of different television services.

3.27 In addition, Ofcom must have regard to the desirability of ensuring that, taken together, the relevant television services (BBC channels, ITV1, Channel 4, Five and S4C) should fulfil the purposes of public service television broadcasting.

3.28 In the light of these considerations, Ofcom proposes that, in reviewing the regulation of TV advertising, the first regulatory objective should be:

- to further the interests of citizens and consumers, in particular, in relation to:
  - the range, quality and appeal of television services available throughout the UK and in different parts of the UK, and, in particular, public service channels;
  - the importance of securing a sufficient degree of plurality of providers of television services; and

- such other matters as appear, having regard to the opinions expressed by consumers, important to them.
- 3.29 In framing this objective, Ofcom has had regard, in particular, to its statutory duties and relevant considerations under sub-sections 3(1), 3(2)(c), 3(2)(d), 3(2)(d) 3(4)(a), 3(4)(i), and 3(4)(k).
- 3.30 In referring specifically to public service channels, Ofcom has had regard to the purpose of PSB channels as set out in section 264(6) of the Communications Act, and has taken account of the fact that these channels are:
- a) available free-to-air to everybody throughout the UK, a relevant consideration in the light of the requirement upon Ofcom to have regard to the interests of consumers in respect of price;
  - b) subject to content origination obligations intended to secure that such channels are consistently of high quality (section 278 and Schedule 12), a relevant consideration in the light of the interests of consumers in respect of quality;
  - c) subject to news and current affairs programming obligations intended to ensure that such programmes are of high quality and deal with both national and international matters (section 279 and Schedule 12). These are relevant considerations in the light of the interests of consumers in respect of choice and quality; and
  - d) required, in the case of ITV1, Five and S4C, to provide ‘a range of high quality and diverse programming’ and additionally, in the case of Channel 4, ‘to appeal to the tastes and interests of a culturally diverse society’ (section 265 and Schedule 12). These are relevant considerations in the light of the interests of consumers in respect of range, choice and quality.
- 3.31 Ofcom has also had regard to the requirement on one public service channel (ITV1) that it should provide high quality regional programmes (including regional news) of interest to persons living in the region. This is a relevant consideration in the light of the interests of consumers in respect of choice and quality.
- 3.32 Further to this, Ofcom proposes that any changes to current regulation would:
- in furthering the interests of citizens and consumers, so far as possible:
    - be evidence-based, transparent, proportionate, consistent, and limited to the measures needed to achieve the first objective;
    - avoid the imposition or maintenance of regulation that is unnecessary; and
    - take account of the desirability of promoting competition, and the nature and interests of different consumers, in relevant markets.
- 3.33 In framing this purpose, Ofcom has had regard, in particular, to its statutory duties and relevant considerations under sub-sections 3(3), 6(1) and 7(1) and in its regulatory principles.
- 3.34 While the way Ofcom applies these regulatory objectives would vary according to the circumstances, Ofcom would expect to lighten the regulatory burden where this would further the interests of consumers and citizens, or would have no significant

adverse effect on them, and to maintain or even strengthen regulation where this was necessary to secure the interests of consumers and citizens. In some cases, the choice may be less clear-cut: in order to secure higher priority interests, it may be necessary to accept some reduction of the regulatory burden in other areas.

*Q1. Do you agree that these proposed regulatory objectives strike an appropriate balance between the duties and other considerations that Ofcom must take account in reviewing advertising regulation? If not, please explain why, and what objectives you would consider more appropriate?*

## Implementation

- 3.35 Section 322 of the Act says that Ofcom must take account of such international obligations as the Secretary of State may notify to Ofcom for the purposes of directing broadcasters in relation to matters such as the maximum amount of time to be given to advertisements, the minimum interval between advertising breaks, the number of breaks allowed in any programme or in any hour or day, and the exclusion of adverts from specified parts of a television service. Ofcom understands that the Secretary of State will send an appropriate notification to Ofcom in due course.
- 3.36 Every licence for a television service includes a condition requiring the person providing the service to comply with directions given to him by Ofcom in respect of the following matters:
- a) the maximum amount of time to be given to advertisements in any hour or other period;
  - b) the minimum interval which must elapse between any two periods given over to advertisements;
  - c) the number of such periods to be allowed in any programme or in any hour or day; and
  - d) the exclusion of advertisements from a specified part of a licensed service.

## Section 4

# The role of TV Advertising

## Introduction

- 4.1 TV advertising is an important feature of many consumer-focused markets. It can have a role in informing consumers of new products or reminding consumers about existing products. It can play a role in informing consumers about key features of particular products and be used as a way of differentiating one product from another in a particular economic market. Ultimately, advertising is aimed at shaping consumer preferences although the precise ways in which this can be achieved are subject to much debate in the academic literature.
- 4.2 In this section we:
- a) explain the importance of TV advertising to advertisers;
  - b) assess the significance of advertising to commercial television; and
  - c) describe the nature of the market for TV advertising in the UK, and (in broad terms), how it operates.

## Importance of TV advertising to advertisers

- 4.3 It is clear from the large sums of money spent on advertising in the UK (see Table 4.1 below) that it is seen as an effective way of marketing goods and services. This is presumably based on a belief that advertising is able to influence the purchasing decisions that consumers make.

**Table 4.1: Total UK Advertising Expenditure\* 2001 – 2006**

£ million	2001	2002	2003	2004	2005	2006
Current Prices	16,537	16,772	17,348	18,472	18,948	19,083
% change yr-on-yr		1.4	3.4	6.5	2.6	0.7

Source: The Advertising Statistics Yearbook 2007

\* Includes expenditure on national and regional newspapers, consumer and business magazines, television, radio, outdoor, direct mail, cinema, Internet, directories and production costs.

- 4.4 Advertising can be split into display and classified advertising. Display advertising is advertising that combines text with other graphical information e.g. logos, photographs, diagrams, moving images etc. TV advertising is a form of display advertising. The data in Tables 4.2 and 4.3 indicates that television advertising grew faster than overall display advertising for much of the period 2001-2006. However, the significant fall in expenditure on TV advertising between 2005-06 meant that in 2006, TV's share of total display advertising – at 28.9% - was not that much greater than in 2001 when it stood at 28.4%. That said, TV advertising remains the single largest category of display advertising.



**Table 4.2: Display Advertising Expenditure 2001 – 2006**

£ million	2001	2002	2003	2004	2005	2006
Current Prices	12,410	12,630	12,919	13,537	13,686	13,507
% change yr-on-yr		1.8%	2.3%	4.8%	1.1%	-1.3%

Source: The Advertising Statistics Yearbook 2007.

**Table 4.3: TV Advertising Expenditure\* 2001 – 2006**

£ million	2001	2002	2003	2004	2005	2006
Current Prices	3,525	3,690	3,722	3,955	4,097	3,905
% change yr-on-yr		4.7%	0.9%	6.3%	3.6%	-4.7%

Source: The Advertising Statistics Yearbook 2007

\* includes agency commission

- 4.5 Against this backdrop there has been some debate about the rise of alternative advertising media and specifically the extent to which Internet advertising competes with TV advertising for a share of advertisers' marketing budgets. Internet advertising has been growing at an even faster rate than TV advertising, albeit from a much lower base. According to data in the Advertising Statistics Yearbook 2007, total Internet advertising was around £166m in 2001. By 2006 it was estimated to have grown to £2,016m. Furthermore, going forward, at least one industry commentator has predicted that expenditure on TV advertising is likely to stagnate and that expenditure on Internet advertising will exceed TV advertising revenue in the UK by 2009<sup>10</sup>.
- 4.6 However, it is important to note that the category of "Internet advertising" comprises not only a mix of 'display' and 'classified' but also "search" advertising i.e. where companies pay on-line companies to link their web-site to specific search words or phrases. In 2007, Internet display advertising accounted for 23% (around £464m) of total Internet advertising with the bulk of Internet advertising (58%) comprising "paid-for search" and the rest being other classified advertising<sup>11</sup>. It could be argued that TV and Internet search advertising can be complementary; examples include TV adverts which encourage viewers to visit websites for further information.
- 4.7 Based on discussions with the industry, our assumption is that TV and Internet advertising are complements rather than direct substitutes. This is supported by other competition authorities. For instance, the recent Competition Commission BSKyB/ITV report<sup>12</sup> considered potential competition effects in relation to TV advertising and explored whether the relevant economic market could be defined more broadly than TV advertising. It concluded not only that there was no evidence to suggest that Internet acted as a constraint on the price of TV advertising currently but also it was not likely to form a constraint in the foreseeable future<sup>13</sup>.

<sup>10</sup> Forecast by Group M, a subsidiary of WPP group. It expects UK Internet advertising revenues to grow by more than 30% to £3.4bn in 2008. In contrast TV advertising is expected to grow by less than 1% to £3.56bn in 2008. By 2009, after Sweden, Group M went on to predict that the UK is likely to become the world's first major economy to witness internet advertising exceeding TV advertising.

<sup>11</sup> Table 16.2, Advertising Statistics Yearbook 2007.

<sup>12</sup> Acquisition by British Sky Broadcasting Group Plc of 17.9 per cent of the share of ITV Plc (December 2007).

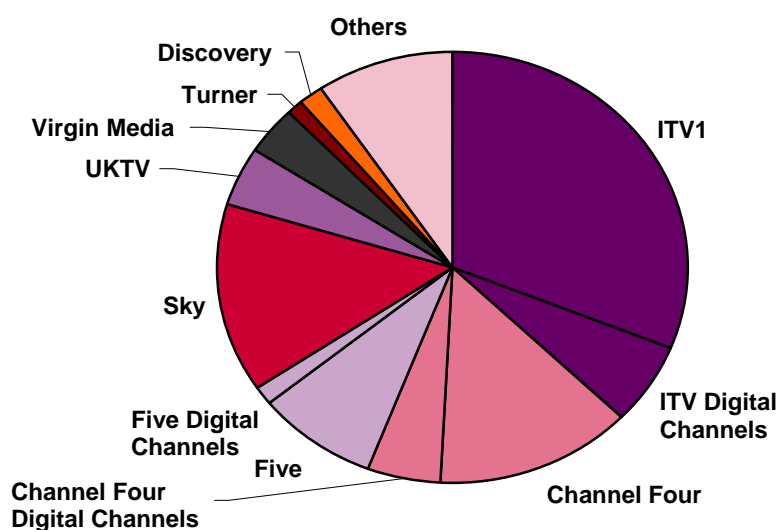
<sup>13</sup> Paragraphs 4.138-4.145 of BSKyB/ITV report.

- 4.8 For the time being, TV advertising offers important advantages over other forms of advertising to those wishing to market goods and services to consumers, including:
- a) near universal reach, which is important for manufacturers of Fast Moving Consumer Goods, such as detergent;
  - b) the ability to reach consumers rapidly, which is vital for manufacturers of goods that have a short shelf life (e.g. fashion items such as mobile ringtones); and
  - c) the ability to multiply and prolong the effect of TV advertising by using creative techniques and complementary media (such as the Internet) to engage public interest.
- 4.9 For these and other reasons, the ability to advertise on television is important to many businesses.

### **Significance of advertising to commercial television**

- 4.10 TV broadcasting is an activity which is characterised by high fixed costs and low marginal costs. Fixed costs include the acquisition or commission of television content and the transmission network to distribute that content. The marginal costs of serving each additional viewer are typically very low, if not actually zero. The challenge for commercial broadcasters is then to develop an appropriate business model which allows them to recoup those fixed costs.
- 4.11 For many (but not all) broadcasters, the business model they adopt assumes that they can generate revenue by selling airtime to advertisers. Thus, TV advertising revenue is a vital source of revenue for many broadcasters. Commercial, free to air (“FTA”) broadcasters seek to attract audiences to their programming which can then be “sold” to advertisers to raise revenue to support their business – we deal with this in more detail below. For commercial broadcasters there is thus a direct link between the audiences to a channel and the generation of the revenue needed to fund the channel in the first place. As the diagram in Figure 1 shows, the main commercial PSB channels – i.e. ITV1, Channel 4 and Five – still account for a significant proportion of the delivery of commercial TV audiences.

**Figure 1: Audience share of major broadcasters  
(all individuals, 2007)**



Source: BARB/TNS Infosys (Monday to Sunday, 01/01/2007 to 31/12/2007). All individuals

4.12 As a result, the main PSB channels secure a significant proportion of the net advertising revenue (“NAR”) earned by television broadcasters. However, NAR for the PSB channels has fallen between 2001 to 2006 (see Table 4 below). Taken together with Table 4.3, this implies that most of the growth in TV advertising expenditure over this period has been experienced by multi-channel television.

**Table 4.4: Net Advertising Revenue for PSB Channels (2001 – 2006)**

£ million	2001	2002	2003	2004	2005	2006
Current Prices	2,566	2,621	2,571	2,687	2,707	2,435
% change yr-on-yr		2.1%	-1.9%	4.5%	0.7%	-10.0%

Source: Table 11.11.1, The Advertising Statistics Yearbook 2007

4.13 PSB channels are thus facing increased competition for audiences from digital channels. As the penetration of digital TV has grown, so audiences have fragmented. The audience share accounted for by the main terrestrial channels has fallen and with it their share of total TV expenditure. However, both ITV and Channel 4 still retain a “price premium”. That is their share of NAR is higher than their share of commercial impacts.

## The TV advertising market

### A two-sided market

4.14 TV broadcasting can be thought of as a “two-sided market”. On one side of the market there is a commercial relationship between the broadcaster and advertisers, in which advertisers are charged for access to the audiences that they wish to target.

4.15 On the other side of the market, broadcasters offer “free to view” programming to attract audiences to their channels. Although the viewers do not pay specifically for the programming they watch, the advertising in programmes can be thought of as a

“price” of watching the free-to-view television. In this situation, an increase in the amount of advertising would represent an increase in price to the viewer (other things being equal). As with other products, if the price increases, it is likely that there would be a reduction in demand in that at least some of the audience might switch over or switch off. Free-to-air (“FTA”) broadcasters – i.e. ones that rely solely on advertising and sponsorship - therefore face the task of optimising the amount and distribution of advertising airtime in order to maximise their advertising revenue. However, too much advertising could well alienate viewers and actually lead to a reduction in audiences with a concomitant fall in advertising revenue. The analytical implications of the “two-sided” nature of broadcasting markets are explored in more detail in the Impact Assessment (Annex 4).

- 4.16 The existing rules on the sale of advertising airtime have an impact on both sides of the market. For instance, the RADA rules restrict the amount of advertising that channels can show and this would hold down the “price” of television to viewers. However, in the absence of the limits on the amount of advertising in RADA, some broadcasters might choose to offer more advertising than they do at present, especially on the commercial PSB channels where demand for advertising is highest. For channels that are constrained by the existing rules, the prices faced by advertisers are higher than might be the case if there were no restrictions on the amount of advertising airtime. Thus the effect of the regulatory regime could be to hold down the “price” faced by viewers with the result that prices faced by advertisers may be higher than would otherwise be expected.
- 4.17 In addition, the presence of the BBC may exert an influence. If viewers object to the volume of advertising on other PSB channels, then they have the option of switching over to the BBC to watch programming uninterrupted by advert breaks. It should be pointed out that it is not clear how strong this influence may be, or indeed whether it works on a consistent basis. Nonetheless, for some specific events, e.g. live sporting events which are shown on both ITV1 and BBC such as the FA Cup final, the BBC tends to enjoy significantly higher viewing figures. This would tend to suggest that – at least where there is identical programming available on the BBC and ITV1 - viewers have a preference for viewing without adverts. For more general programming, it is unclear whether BBC channels would necessarily be such a constraint for programming on commercial broadcasters.

### **Targeting and measurement of TV audiences**

- 4.18 Television audiences typically comprise a range of different demographic groups which can be differentiated according to three main characteristics i.e. age, sex, and socio-economic status. For example, a distinction can be made between broad categories such as “Adults” , “Men” , “Children” etc. and the “Adults” could then be further divided into (say) Adult ABC1 or Adult males, 16-34 etc. Different demographic groupings are not necessarily mutually exclusive e.g. the Adult males 16-34 demographic is a subset of Adult males and also a subset of 16-34 years Adults.
- 4.19 Advertisers obviously want to target those demographic groups that are most likely to purchase their goods or services. For example, a manufacturer of soap powder will be most interested in targeting the person in the household that makes purchase decisions. It will seek to reach the ‘Housewife’ demographic group, comprising those most likely to make decisions about which brand of soap powder should be purchased.

- 4.20 Given that the audiences for most TV programmes will not be uniform in composition, a broadcaster will be able to sell the advertising airtime around its programmes against different demographics. Within the same advertising break in a peak-time programme on ITV1, there may be adverts for a range of different products (e.g. a car, a shampoo product, a brand of beer and confectionery products) each of which could be expected to be aimed at a different demographic (although they may well appeal across a range of demographics). Advertisers will be interested in ensuring that their advertising is targeted appropriately and that “wastage” i.e. an advertisement reaching an audience that is not interested in the product, is minimised. Equally broadcasters would want to ensure that products are not advertised in airtime which could be used to target another demographic more efficiently. Both broadcasters and advertisers therefore have the same interest in avoiding wastage and broadcasters will thus seek to optimise the sale of airtime so that advertising is placed as efficiently as possible.
- 4.21 The demographic profile of television audiences for particular programmes is measured by BARB<sup>14</sup>. BARB statistics are based on television viewing by a panel of over 5,000 households, selected to be fully representative of all television households across the whole of the UK. This enables broadcasters and advertisers to identify what proportion of a particular demographic group is watching a programme. Experience of audience viewing habits enables broadcasters to predict what type of audience a programme will appeal to, and how many from each demographic group are likely to see it.

### **Characteristics of TV airtime**

- 4.22 The exposure of viewers to advertising is measured in terms of “commercial impacts” and this provides the “currency” in which broadcasters and advertisers deal i.e. broadcasters and advertisers contract with one another for the delivery of a given volume of impacts to a particular demographic group.
- 4.23 Each occasion when an advertisement is seen by a viewer counts as one commercial impact. Prices for advertising are normally denominated in ‘Costs per Thousand’ (CPT), either for a general audience, or for a particular demographic group.
- 4.24 The effectiveness of advertising in reaching a target demographic group is measured in television ratings, or TVRs. For a particular campaign, one TVR represents 1% of the target group. Thus, a 30 second advert in a programme that reaches 25% of a particular demographic group delivers 25 TVRs. Advertisers (or media buying agencies on their behalf) will ‘buy’ a given number of TVRs for their selected demographic group(s).
- 4.25 Given a focus on reaching a particular demographic a certain number of times in the course of an advertising campaign, advertisers tend to value the unique “reach” of a channel: advertisers would value four commercial impacts delivered to four different viewers more than to one viewer four times. This means that, in general, channels

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<sup>14</sup> BARB (the Broadcasters’ Audience Research Board Ltd) is jointly owned by ITV, BBC, Channel 4, Five, BSkyB, and the IPA). More detail is available on BARB’s website at <http://www.barb.co.uk/>.

which can deliver mass audiences (and therefore large numbers of unique impacts) tend to be the cornerstone of advertising campaigns<sup>15</sup>.

- 4.26 As a second order issue, advertisers would then consider the positioning of adverts. Adverts positioned at times when viewers are more likely to be attentive, that is in advert breaks during programmes rather than between programmes are likely to be valued more highly. Moreover, in breaks shown during programmes, adverts that are first, second or last in break tend to be more sought after, as research suggests that both viewing figures and attentiveness are higher for these slots than for adverts in the middle of a break.
- 4.27 Research suggests that viewing could drop during longer breaks and that the first and last adverts in each break attract more viewers than those in the middle of ad breaks<sup>16</sup>. A factor which could exacerbate this is that viewers who fast-forward through recorded programmes use the first and last ads in a break to identify the beginning and end of the break<sup>17</sup>. Research also suggests that adverts in shorter breaks could have a greater impact on viewers, as recall of such adverts is generally higher than for adverts in longer breaks<sup>18</sup>. Some broadcasters suggest that the fact that viewing remains higher during shorter breaks rather than longer breaks indicates that viewers would prefer shorter but more frequent breaks. The value of different aspects of advertising is discussed in more detail in the Impact Assessment.
- 4.28 In aggregate terms, the volume of commercial impacts has increased significantly. However, much of this has been driven more by an increase in access to multi-channel television.

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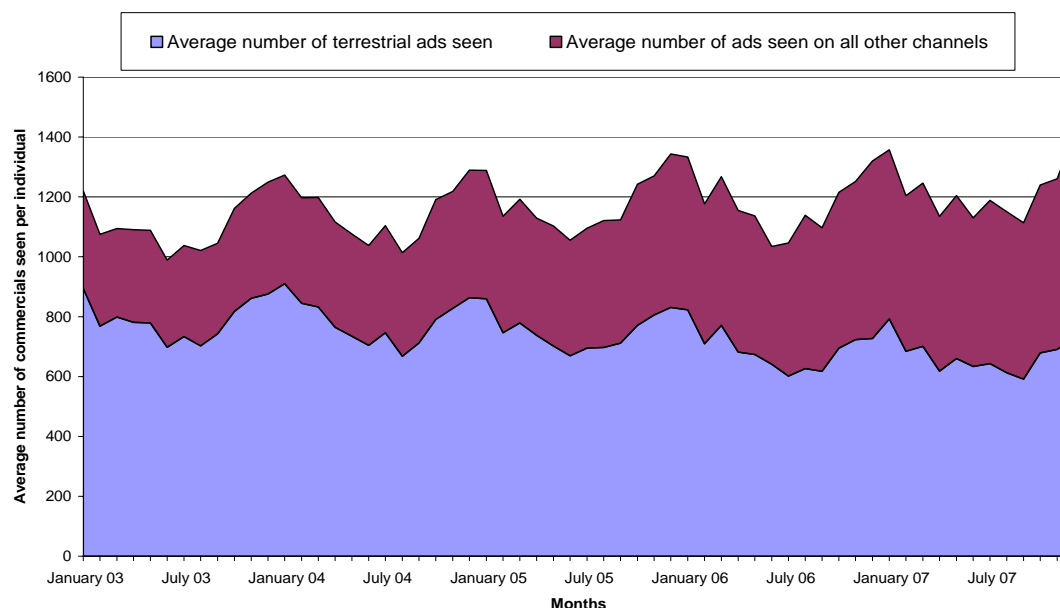
<sup>15</sup> At the same time advertisers want to ensure that the target demographic see the advert a certain number of times to promote recall of the product or brand. Channels which can offer both reach and frequency therefore tend to be more highly valued.

<sup>16</sup> *TV Advertising Clutter*, 2004, Carat (unpublished report).

<sup>17</sup> *Fast forward to the future of TV*, Nigel Foote, Starcom, Admap, December 2005.

<sup>18</sup> See, for example, *An Empirical Investigation of the Relationship between Television Program and Advertising Delivery*, June-Young Song and Kuen-Hee Ju-Pak, July 2003 (<http://list.msu.edu/cgi-bin/wa?A2=ind0309c&L=aejmc&P=1893>)

**Figure 2: Average number of commercials seen on television per individual (2003-2007)**



4.29 Competition in the supply of commercial impacts has thus steadily increased over time compared to the original situation in which ITV was the monopoly provider of TV advertising. However, even though the share of audience and advertising revenue accounted for by ITV1 has fallen over time, ITV through ITV Sales) remains the single largest sales house in the market for television advertising: it accounts for nearly twice the amount of NAR (around 45%) than its next largest competitor, Channel 4 Sales (around 24%).

### The buying and selling of TV airtime

4.30 Contracts for the sale of television advertising airtime are typically negotiated between broadcasters' sales houses and media buyers on an annual basis, towards the end of the preceding calendar year. For instance, most contracts for the sale of airtime in 2008 would have been negotiated at the end of 2007.

4.31 On the demand side, the overwhelming majority of advertisers tend to use media-buying agencies to buy TV airtime on their behalf. Only a very limited number of companies with very large advertising budgets (e.g. Unilever) will purchase airtime directly from a broadcaster.

4.32 Typically, advertisers will have multi-year contract with a media buying agency. Agencies will deal with all sales houses – they will not limit their negotiations just to one sales house for the delivery of commercial impacts for their clients.

4.33 On the supply side of the market, television advertising airtime is generally sold on behalf of broadcasters by broadcasters' sales houses. The larger broadcasting groups have their own sales houses i.e. ITV, GMTV, Channel 4, Five, GMTV, BSkyB, IDS and Viacom Business Solutions (VBS). Smaller broadcasters may then contract to sell some or all of their airtime through these sales houses.

- 4.34 In the short-run the amount of commercial impacts a broadcaster can offer is constrained. That is, given the nature of broadcasters' programme schedules, the lead-time to change programming mix, the pattern of audience behaviour and the annual nature of the sales contracts, there is little scope for individual broadcasters significantly to change the volume of commercial impacts they deliver in the short-run. However, in the medium to long-run, broadcasters would have more scope to increase the volume of commercial impacts through changes to their programme schedules, increasing the number of platforms they are available over etc.
- 4.35 At the same time, although advertisers plan their overall marketing budget a year in advance and perhaps offer a broad indication of how that could be split between different advertising media, it is unlikely that they will be able or want to commit to a particular level of TV advertising over a year or indeed to a particular distribution between different broadcasters. Media buyers act as aggregators in respect of the marketing expenditure of their individual clients and are thus to some extent able to "smooth" over the variability of expenditure of individual clients. However, they are not in a position to commit to particular levels of advertising expenditure with particular broadcasters on an annual basis.
- 4.36 In order to address this inherent uncertainty about the actual levels of advertising revenue, the focus of negotiations between broadcasters and agencies is on "share of broadcast" arrangements. That is, the level of discount that a sales house offers to an agency will depend on the proportion of the agency's total television advertising budget that the agency will commit to placing with that sales house. In return for making this share of broadcast commitment against a specified target audience or audiences, the agency would be guaranteed a set discount (or indeed premium) against the pricing mechanic that a broadcaster is using.
- 4.37 Although broadcasters will offer fixed price deals or sell specific spots, the most common pricing mechanic is the broadcaster's Station Average Price ("SAP"). The SAP is an average price per impact across a channel (or sometimes a range of channels). There will be different prices for different demographic groups. A key feature of SAP is that it is calculated *ex-post* i.e. the SAP is determined by the level of advertising expenditure and the volume of impacts actually achieved by a broadcaster. When an agency commits to a campaign with a broadcaster it is actually committing to a level of expenditure with the broadcaster in the expectation that it will achieve a certain level of impacts for that expenditure. It is not until the end of the campaign that the actual SAP is calculated and the volume of impacts actually delivered at that price can be determined. The auditing of advertising campaigns tends to focus on the relative rather than the absolute level of price for the delivery of commercial impacts against particular demographic groups.
- 4.38 Negotiations between media buying agencies and broadcasters do also address a range of other factors. For instance, contracts between agencies and broadcasters will cover the proportion of impacts to be delivered across different day-parts; the positioning of advertisements in breaks (see above) discussion, access to "special" event programming etc. However, a key aspect of the annual negotiations is that broadcasters and agencies tend to put considerable emphasis on a broadcaster's share of commercial impacts ("SOCl")<sup>19</sup>. That is, if broadcasters have been able to increase their SOCl over the previous year, then they would use that to try to get

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<sup>19</sup> As explained in paragraphs 4.22 to 4.23 above, one commercial impact represents one viewer seeing an advert once. A channel's share of commercial impacts ("SOCl") is simply the total number of commercial impacts 'delivered' by that channel divided by the total number of all the commercial impacts delivered across all channels.



agencies to commit a greater share of broadcast to them for the following year. Equally, agencies will be more interested in committing expenditure to broadcasters that have increased their SOCI because that would tend to demonstrate an ability to attract audiences which are of interest to advertisers.

4.39 Following on from the Carlton-Granada merger in 2003-04, ITV1 specifically is subject to the Contracts Rights Renewal (“CRR”) remedy. The remedy seeks to address the market power of the ITV Sales house identified at the time of the merger. One particular aspect of the remedy relates to this relationship between SOCI and share of broadcast commitments. The ratchet mechanism within the CRR remedy requires ITV1 to allow agencies to adjust their share of broadcast commitment to ITV1 as ITV1’s SOCI changes. Thus, if ITV1’s SOCI falls by a certain percentage, agencies are entitled to reduce their share of broadcaster commitment with ITV1 by the same percentage.

4.40 TV advertising is a complex and complicated area and this section has only sought to present some of the key features. In brief:

- in spite of recent falls in expenditure on TV advertising, it remains the single largest category of display advertising in the UK;
- TV advertising is a powerful advertising medium because there is daily availability of TV advertising in virtually all UK homes; it can combine moving pictures and sound for greater “impact”; and, advertisers are able to target (and to monitor in some detail) particular audiences and demographic/socio-economic groups.
- expenditure on TV advertising is an important source of revenue for funding broadcasters, particularly the commercial PSB channels which rely on TV advertising for the overwhelming majority of their funding.
- in analysing TV advertising, it is important to have regard to the two-sided nature of broadcasting markets. That is, there is an interaction between broadcaster and viewer in that a broadcaster provides programming to attract an audience. At the same time, there is an interaction between broadcaster and advertiser in that the broadcaster sells access to those audiences to advertisers.
- contracts between broadcasters and media buying agencies are negotiated on an annual basis. A key aspect of those negotiations is the interaction between a broadcaster’s SOCI and share of broadcast that an agency is prepared to commit to that broadcaster.

## Section 5

# The evolution of television advertising regulation

## Introduction

- 5.1 This section describes how television advertising regulation has evolved since commercial television began in the 1950s with the launch of ITV (now ITV1). It deals first with the changes in UK legislation, then describes the development of a European framework, before explaining how the regulatory codes elaborated the detailed rules.
- 5.2 From the 1950s to the 1980s, the television market evolved relatively slowly. Following the resumption of the BBC Television Service in 1946, it was nearly ten years before the Independent Television service (later ITV) was launched in 1955. It did not reach all parts of the UK and Channel Islands until 1963. BBC2 began service the following year, but it was almost two decades before the second commercial channel – Channel 4 – began operation in 1982. The final national terrestrial channel – Five – was launched in 1997.
- 5.3 Until the late 1980s, regulation was purely a matter for UK legislation, and reflected the nature of these channels – each of which had public service obligations as to the range and quality of their programming. This contributed to an expectation that regulation should protect the quality of the viewing environment.
- 5.4 From the mid-1980s, new means of distributing channels emerged, initially by cable and later by satellite. This extra capacity provided scope for many more channels, none of which carried public service obligations. By the end of the 1990s, hundreds of new channels were available.
- 5.5 The emergence of cross-border television prompted Member States of the European Union to agree common minimum standards for cross-border television services. These were set out in the so-called ‘Television without Frontiers’ (TWF) Directive of 1989. The Directive included a number of minimum requirements for advertising regulation. Since then, the UK’s advertising regulation has been set within a European framework. However, the detailed rules have been set out in a series of regulatory codes issued by the Independent Television Authority (ITA) and its successors.

## UK legislation

- 5.6 The Television Act 1954 established the Independent Television Authority (ITA), and laid down detailed rules on how much advertising was to be permitted, and which programmes it was to be excluded from.
- 5.7 Subsequent legislation<sup>20</sup> omitted detailed rules, merely requiring that advertisements should only be inserted at the beginning or end of programmes or in ‘natural breaks’.

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<sup>20</sup> Including the Television Act 1954, the Television Act 1964, the Independent Broadcasting Act 1973, the Broadcasting Act 1981, the Cable and Broadcasting Act 1984, the Broadcasting Act 1990, the Broadcasting Act 1996.

In place of detailed legislative rules, the relevant regulatory bodies<sup>21</sup> devised and published detailed rules with which broadcasters were required to comply by virtue of their licence conditions.

- 5.8 With effect from the Broadcasting Act 1990, legislation<sup>22</sup> has given regulators the powers to determine:
- a) the maximum amount of advertising in any hour or other period;
  - b) the minimum interval which must elapse between any two advertising breaks; and
  - c) the number of such periods to be allowed in any programme or in any hour or day; and
  - d) whether advertisements should be excluded from a specified part of a licensed service.

### European framework

- 5.9 In making such rules, regulators have been required to take account of the UK's international obligations as notified to them by the Secretary of State. Since the 1989 TWF Directive came into force, much of the framework for regulating TV advertising in the UK has been set at European level. Extracts from the TWF Directive dealing with non-content related aspects of advertising regulation are set out in Part 1 of Annex 2.
- 5.10 The TWF Directive has been amended to become the Audiovisual Media Services (AVMS) Directive. Amongst other things this allows the UK and other EU member states to change a number of advertising-related rules. Annex 2 includes extracts from the Directives dealing with non-content related aspects of advertising regulation.
- 5.11 Within the framework set by European Directives, EU Member States have been free to set their own domestic rules. These rules must reflect the minimum requirements of the TWF Directive, but can also reflect national policies. For example, in the UK, this includes stricter limits on the amount of advertising permitted on PSB channels than are applied to non-PSB channels.

### Regulatory codes

- 5.12 Since the mid-1950s, a series of regulatory codes (most recently, Ofcom's Rules on the Amount and Distribution of Advertising or RADA) has given effect to domestic and European rules. The main rules concerned:
- a) the definition of 'natural breaks' in programmes, into which advertising could be inserted;
  - b) the way in which advertising breaks should be identified;
  - c) a requirement that there be advertising-free buffers before and after certain types of programme;

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<sup>21</sup> The Independent Television Authority from 1954, the Independent Broadcasting Authority from 1972, the Independent Television Commission from 1991 and Ofcom from 2003.

<sup>22</sup> Including the Communications Act 2003 (section 322).

- d) the distribution of advertising breaks;
- e) categories of programming that could not include advertising; and
- f) the amount of advertising permitted.

5.13 This section summarises how regulation in each of these areas evolved. Since 2004, regulation of the standards of advertising content has been a matter for the Advertising Standards Authority, which has published a Code on Advertising Standards setting out rules intended to ensure that advertising content is 'legal, decent, honest and truthful' and does not mislead or cause harm or serious or widespread offence.<sup>23</sup>.

### **Natural breaks**

- 5.14 The concept of 'natural breaks' stemmed from the Television Act 1954 which required that: "Advertisements may be inserted only at the beginning or end of a programme or in natural breaks in it". The aim was to minimise any "detriment to the viewers' enjoyment of or interest in the programme". These principles were reflected in the ITA's Advertising Rules and Practices 1957.
- 5.15 The TWF Directive specified that 'advertising and teleshopping spots may ... be inserted during programmes in such a way that the integrity and value of the programme, taking into account natural breaks in and the duration and nature of the programme, and the rights of the rights holder are not prejudiced'. The AVMS Directive retains similar provisions.
- 5.16 The definition of a natural break in regulatory codes as "a point at which some interruption in programme continuity would in any case occur were the programme not to be interrupted by advertising" (RADA 6.1) has remained effectively unchanged since the first ITA rules in 1957. The rules are reviewed in section 6.

### **Break identification**

- 5.17 The Television Act 1954 stipulated that: "Advertisements must be clearly distinguishable as such and recognisably separate from the rest of the programme". The stated intention was that: "a viewer must be able to know quite clearly when he is looking at the advertising as opposed to the non-advertising parts of the programme". Subsequent regulation required that television advertising and teleshopping be readily recognizable and distinguishable from editorial content. To this end, the rules required that breaks containing advertising or teleshopping spots must be identified in vision and / or sound, and teleshopping windows must be identified in both vision and sound at the beginning and end of the break.
- 5.18 Similar provisions were incorporated in Article 10(1) of the TWF Directive, which requires that 'television advertising and teleshopping shall be readily recognizable as such and kept quite separate from other parts of the programme service by optical and / or acoustic means.

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<sup>23</sup> In 2004, Ofcom contracted out the regulation of advertising standards to the Advertising Standards Authority (ASA), in pursuance of the principle of promoting self-regulation. However, any changes to the Advertising Standards Codes (which can be found at [www.asa.org.uk](http://www.asa.org.uk)) must be approved by Ofcom.

- 5.19 Section 3.1 of RADA says that advertising and teleshopping spots must be identified in vision and / or sound, but that teleshopping windows must be identified in both Article 10(1) of the AVMS Directive is substantially the same, although it incorporates the possibility that advertising and teleshopping breaks can be kept distinct from programmes by 'spatial means'. This could include, for example, the use of split-screen techniques.

## Buffers

- 5.20 The requirement to ensure a gap between any advertising and coverage of religious services and royal ceremonies dates back to the 1957 ITA rules. At this time, the required buffer was two minutes, and also applied to schools programmes. While the rationale for this is not clear, it seems likely that it was prompted by concern that the juxtaposition of advertising material and religious / Royal programming would be inappropriate, and that a buffer would serve to 'insulate' such programmes from commercial content. The IBA's 1985 rules were more detailed, prescribing different lengths of buffer for different types of programme (including schools programmes).
- 5.21 In 1991, the ITC adopted the current, simpler, restrictions. These require that there must be a gap of at least 30 seconds between advertising and any of the following programmes:
- a) a religious service or any devotional programme; and
  - b) a formal Royal ceremony or occasion<sup>24</sup>.

## Restrictions on advertising within programmes

### Limits on the number and length of breaks

- 5.22 The Television Act 1954 set limits on the number of advertising breaks per hour and the minimum time between breaks. Breaks were not to exceed six an hour (including both breaks between programmes, and within programmes), averaged across the day and had to be at least three minutes apart. Advertising magazines and features (the forerunners of teleshopping spots and windows) were not included within these time limits. Although this was reflected in ITA rules published in 1957, ITA correspondence suggests that in practice, the ITA applied a reduced normal 'allowance' of an average of three breaks an hour over a week's broadcasting.
- 5.23 The Television Act 1963 dropped detailed rules on break patterns. However, the ITA's Advertising Rules and Practices (1966) stated that 'the general aim ... is to limit the intervals of advertising between the programmes and in natural breaks therein to an average of about three intervals an hour over a week's broadcasting'. The rules for programmes of different lengths were:
- a) up to 20 minutes – no breaks;
  - b) 21 - 40 minutes – one break of up to 2½ minutes;
  - c) 41-70 minutes – one break of up to three minutes / two breaks up to 2 minutes 30 seconds; and

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<sup>24</sup> This includes formal ceremonies or occasions where the Sovereign or members of the British Royal Family enjoying the prefix 'Royal Highness' are the centre. Examples are occasions such as the State Opening of Parliament and Trooping the Colour.

- d) 71-90 minutes – two breaks of up to 3½ / three breaks of up to 2½ minutes.
- 5.24 In 1991, the ITC published the ITC Rules on Advertising Breaks<sup>25</sup>, in part to give effect to the TWF Directive. For the first time, the rules drew a distinction between PSB channels and non-PSB channels - at that stage, a relatively new phenomenon. The ITC indicated that it considered that 'more demanding standards' on advertising on PSB channels than those required by European Directives were justified by the need to avoid 'too frequent advertising' that might 'excessively curtail the time for programmes proper' and affect the 'quality and value to viewers of the services concerned'. However, it did not consider that the same applied to non-PSB channels.
- 5.25 Although the rules on PSB channels were stricter than those for non-PSB channels, they did represent a slight increase in the permitted frequency and length of advertising breaks between programmes by comparison with the rules set out in 1966:
- a) up to 20 minutes – no breaks;
  - b) 21 – 45 minutes – one break of up to 3 minutes;
  - c) 45 – 65 minutes – one break of up to 3½ minutes or two breaks of up to 3 minutes each, plus an additional break of 3½ minutes for each additional half an hour or part thereof.
- 5.26 No such rules applied to non-PSB channels. However, the 20 minute rule in the TWF Directive effectively limited the number of internal breaks that non-PSB channels could take to two in a half-hour programme, and three in an hour long programme. In practice, many adopted break patterns similar to those of PSBs, with one internal break in a half-hour programme, and three in an hour long programme.
- 5.27 In 1998, the ITC again amended the rules applying to PSB channels to permit slight increases in the frequency of advertising and in the length of breaks, as follows:
- a) up to 20 minutes – no breaks;
  - b) 20 – 30 minutes – one centre break of up to 3 minutes;
  - c) 31 – 45 minutes – one break of up to 3½ minutes;
  - d) 45 – 65 minutes – two breaks of up to 3½ minutes each, plus an additional break of 3½ minutes for each additional scheduled half an hour or part thereof.
- 5.28 In October 2000, the ITC extended the limit on internal breaks from 3½ minutes to 3 minutes 50 seconds, of which no more than 3½ minutes could be used for advertising, and 20 seconds for promotions. In July 2006, following consultation on the Cross-Promotion Code, Ofcom lifted the limit on promotions, while retaining the overall limit on break length<sup>26</sup>.
- 5.29 These rules remain in force, and are set out in section 5 of RADA (Annex 3). However, the AVMS Directive has dropped the requirement for a 20 minute interval between advertising breaks. Consequently, Ofcom is taking the opportunity to review this and related rules in section 6 of this document.

<sup>25</sup> *ITC's Rules on Advertising Breaks*, Independent Television Commission, January 1991.

<sup>26</sup> Paragraphs 7.61-7.69, Statement in relation to Review of Cross Promotion Rules, Ofcom, May 2006 (<http://www.ofcom.org.uk/consult/condocs/promotion/statement/statement.pdf>)

5.30 As Table 4 shows, the effects of these changes over time were, broadly, to allow PSB channels:

- a) to take more of their advertising allowance in advertising breaks within programmes rather than between programmes; and
- b) to increase the frequency of advertising breaks within programmes.

5.31 For example, whereas in 1966 only one break of 3 minutes or two breaks of 2½ minutes was permitted in an hour-long programme, by 2000, it was permissible to take up to two breaks of 3½ minutes.

**Table 4: Rules on advertising breaks within programmes on PSB channels**

No of breaks	1966		1991		1998		2000 to date	
	Length in minutes							
	Prog.	Break	Prog. slot	Break	Prog. slot	Break	Prog. slot	Break
0	< 20	-	< 20	-	< 20	-	< 20	-
1	21-40	2 ½	21-45	3	20-30	3	21 - 44	3½
1/2	41-70	1 x 3 / 2 x 2½	45-65	1 x 3½ / 2 x 3	31- 45	3½	-	-
2	71-100	2 x 3 / 3 x 2½	65 - 95	2 x 3½	45-65	2 x 3½	45 - 59	2 x 3½
3	> 100	-	95 - 125	3 x 3½	66 - 95	3 x 3½	60 - 89	3 x 3½
4	-	-	125 - 155	4 x 3½	96 - 125	4 x 3½	90 - 119	4 x 3½
5	-	-	155 - 185	5 x 3½	126 - 155	5 x 3½	120 - 149	5 x 3½

Restrictions on advertising within certain programmes

5.32 The IBA's 1983 rules prohibited the insertion of advertisements in the course of any broadcast of:

- a) a documentary of less than half an hour scheduled duration;
- b) plays of half an hour duration or less;
- c) children's programme of less than 30 minutes;
- d) religious programmes of less than 30 minutes (other than services, in which advertisements were banned completely); and
- e) such other programmes as the IBA might specify from time to time (eg. programmes of a particularly harrowing or sensitive nature).

5.33 There were no specific bans on advertising breaks within news programmes, but in 1966, the ITA published a new code prohibiting these. The IBA's 1983 rules make no mention of this ban, but did prohibit advertising in documentaries of half an hour or less. The ITC's 1991 rules reinstated the ban on advertising in news programmes of

less than half an hour, and extended it to cover current affairs programmes. These rules have remained in force since then, and are set out in section 3 of RADA.

- 5.34 In anticipation of a decision to allow the broadcasting of Parliamentary proceedings, the IBA's 1983 code introduced a ban on advertising during formal Parliamentary proceedings. Broadcasts from the House of Lords began in 1985, but it was not until 1989 that permission was given to broadcast the proceedings of the House of Commons. The ITC's 1991 code included more detailed rules adopted in 1989 after consultation with the authorities of both Houses of Parliament. Amongst other things, these rules prohibit advertising during live proceedings in programmes of less than 30 minutes. Similar rules continue in force in section 10 of RADA.

### Prohibitions on advertising within certain programmes

- 5.35 Since commercial television began in the UK, certain categories of programming have not been permitted to carry advertising breaks. The 1954 Act said that advertising must not be inserted into certain 'special classes' of broadcast:
- a) any religious service or programme;
  - b) any formal Royal ceremony or occasion; and
  - c) the appearance of Her Majesty or a member of the British Royal Family in the course of any event in which such appearance is only incidental to the occasion.
- 5.36 Schools programmes were not specifically mentioned in the Act but, by agreement with the broadcasters, the rules issued by the Independent Television Authority (ITA) also excluded advertising from these.
- 5.37 The Television Act 1963 removed specific bans, but gave the ITA the power to give directions as to "the exclusion of advertisements from specific broadcasts". Subsequent Acts have adopted a similar approach of giving discretion to the regulator to decide from which programmes advertising should be excluded.
- 5.38 From 1989, the UK, in common with other Member States, became subject to rules contained in the TWF Directive. This said (Article 11) that advertising and teleshopping should not be inserted in any broadcast of a religious service (but not all religious programmes)<sup>27</sup>.
- 5.39 These changes were reflected in the rules published by the ITC in 1991. UK regulators continued to use their discretion to prohibit advertising all religious programmes (not just religious services), as well as in broadcasts of Royal ceremonies and occasions, and in schools programmes. As a result, with minor changes, the list of programmes from which advertisements are excluded has remained the same since the earliest days of commercial television. These rules remain in force, and are reviewed in section 6.

### Restrictions on long advertisements

- 5.40 The ITA's *Advertising Rules and Practices* (1966) said that single advertisements of up to 7 minutes' duration between programmes could feature a range of products, or illustrate a range of uses for a product. However, to avoid confusion in the mind of

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<sup>27</sup> See extracts from TWF Directive at Annex 2.



viewers, advertisers were obliged to make clear that they were not programmes by such means as frequent references to brand names or superimposed captions.

- 5.41 In 1991, the ITC's *Rules on Advertising Breaks* required that advertisements adopting a programme style must include a five second reminder of its advertising nature in each minute. The rules also forbade PSB channels from broadcasting advertisements exceeding 3½ minutes between 6pm to 11pm and 7am to 9am, and 7 minutes at any other time. These rules remain in force (section 7 of RADA).

### Advertising minutage

- 5.42 The Television Act 1954 required that “the amount of time given to advertising in the programme shall not be so great as to detract from the value of the programme as a medium of information, education and entertainment”.
- 5.43 The ITA concluded, having regard to American experience and the availability of the BBC channel, that any more than six minutes an hour of spot advertising would be counter-productive, because of adverse public reaction<sup>28</sup>. Accordingly, the ITA's Advertising Rules and Practices limited advertising to six minutes an hour averaged over the number of hours of broadcasting in each day.
- 5.44 Within a few years, the amount of advertising in peak hours had crept up, causing concern to the ITA. By 1966, the ITA's rules limited the total amount of advertising to an average of six minutes an hour averaged over a day's programming, but restricted advertising in any one clock hour to a total of seven minutes. Exceptionally, the ITA would allow up to 14 minutes in two adjoining clock hours if the timing of programmes, the incidence of natural breaks or the nature of programme breaks made that desirable in the interests of programme presentation. This rule was maintained by the IBA in the 1983 and 1985 Advertising Rules and Practice (Television).
- 5.45 In 1987, in the light of plans to move schools programmes from ITV to the new Channel Four, advertisers expressed concern that advertising minutage would be transferred from peak time to those times previously occupied by schools programmes. In order to maintain the supply of peak-time minutage, ISBA (the Incorporated Society of British Advertisers) pressed for the amount of advertising minutage on ITV to be increased to a daily average of seven minutes an hour, with a limit of eight minutes in any one clock hour. In the event, the IBA decided only to increase the average daily minutage to seven minutes an hour, and to retain the maximum of seven minutes in any one clock hour. In doing so, it said that it was not convinced that the public interest would be served by an increase in peak-time minutage. The new arrangements came into force in June 1987 and applied to ITV, Channel 4 and TV-am (now replaced by GMTV)<sup>29</sup>.

### Non-PSB channels

- 5.46 In 1991, the ITC issued an amended code which took account of the (then) recently-promulgated TWF Directive and of the emergence of non-PSB channels. The ITC argued that it had no remit to secure the quality of non-PSB channels, and that they should be allowed the maximum flexibility permitted by the TWF Directive. Accordingly, non-PSB channels were permitted to broadcast a daily average of 9

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<sup>28</sup> *Percentage of Time to be Given to Advertising* (ITA/ Paper/54/10), Independent Television Authority, 1954.

<sup>29</sup> Letter from IBA dated 6 March 1987 to ITCA Marketing Committee.

minutes per hour of advertisements, together with a further 3 minutes of teleshopping spot advertisements, subject to an overall limit in any one hour of 12 minutes. These rules remain in force.

## PSB channels

- 5.47 By contrast, the ITC concluded that it did have an obligation to protect the quality of the viewing environment on PSB channels (then only ITV and Channel 4), and that this would be adversely affected by 'too frequent advertising'. In addition to the limits on the distribution and length of advertising breaks between programmes, PSB channels remained subject to a daily average of 7 minutes an hour. PSB channels were also expected to follow these averages 'fairly closely' in any clock hour. They were permitted to carry teleshopping spots or features, but were not allowed any extra time for these.
- 5.48 However, it appears that the guidance on limits in each clock hour proved inadequate. Following the 1997 revision of the TWF Directive, the ITC published revised Rules on the Amount and Scheduling Advertising, in 1998. The guidance to PSBs on following the daily averages in any one clock hour was replaced by a rule specifying a peak-time average of 7½ minutes an hour between 7am and 9am, and between 6pm and 11pm. In October 2000, the peak-time average was increased to 8 minutes an hour. These rules remain in force in section 1 of RADA (Annex 3).
- 5.49 In addition to reiterating the ban on advertisements in schools broadcasts (see paragraph 5.36 above), the ITC's 1991 *Rules on Advertising Breaks* said that such programmes on Channel 4 (which had taken over from ITV as the main commercial broadcaster of schools programming) should not be taken into account in calculating permitted advertising minutage. However, the ITC's 1998 code said that the advertising minutage that Channel 4 could claim in respect of schools programming would be determined by the ITC. Section 2.3(A) of RADA contains a similar rule, which is discussed in section 6. In accordance with this rule, Channel 4 is permitted to reclaim 60% of advertising minutage 'foregone' and use it in other parts of the day. The 'discount' factor reflects the fact that it is permitted to use the minutage at times of the day when advertising is more valuable than during the periods when Channel 4 shows schools programmes.

## Teleshopping

- 5.50 'Teleshopping' (or advertising features') means television advertising which includes direct offers to the public with a view to the supply of goods or services, including immovable property, rights and obligations, in return for payment. It includes self-promotion channels, devoted to the promotion of the licensee's own goods or services.
- 5.51 The Television Act 1954 did not include the time devoted to advertising features or magazines (as teleshopping was called then) in the calculation of advertising limits. The ITA's *Advertising Rules and Practices* (1957) simply noted that advertising features and magazines would not be counted towards advertising minutage restrictions. However, the rules did require that they be clearly separated from editorial programming.
- 5.52 These provisions remained largely unchanged for many years. Although the Television Act 1964 (and subsequent legislation) did not allow spot advertisements to be presented in a magazine format, the IBA's Advertising Rules and Practices (1983)

made clear that this did not prevent the grouping of advertisements (e.g. for local goods and services) in 'shop windows'.

- 5.53 By the early 1990s, both dedicated teleshopping channels and teleshopping windows were beginning to emerge. For the first time, the ITC's *Rules on Advertising Breaks* (1991) included rules dedicated to 'extended advertising features, of the kind commonly known as home shopping or teleshopping'. This made clear that advertising rules other than the limits on spot advertising applied equally to teleshopping.
- 5.54 No additional time was allowed for teleshopping on either ITV or Channel 4, but other channels were allowed to use up to 20% of their transmission time for teleshopping. This included the 15% of their transmission time they were already allowed to use for spot advertising; a further 5% could only be used for teleshopping. However, the amount of time allowed for teleshopping windows was limited to one hour a day.
- 5.55 In 1997, the TWF Directive was amended to refer specifically to teleshopping, and to make clear that advertising rules other than those concerning the amount applied equally to teleshopping. The Directive also said that:
- a) teleshopping 'spots' could be included in broadcasts alongside conventional advertising spots, subject to the same hourly limit of 12 minutes; and
  - b) in addition, on general channels, teleshopping 'windows' of no less than 15 minutes could be broadcast, up to a daily maximum of 3 hours;
  - c) on dedicated teleshopping channels, there was no limit to the time allowed for teleshopping.
- 5.56 The ITC's *Rules on the Amount and Scheduling of Advertising* (1998) reflected these changes in its rules, and took account of other developments, such as the advent of:
- a) self-promotional channels (e.g. those operated by or on behalf of car manufacturers). The rules provided that these should be treated in the same way as teleshopping services, but should promote the broadcaster's own goods or services;
  - b) local channels, that Member States were permitted under Article 20 of the TWF Directive to exempt from the advertising minutage and teleshopping provisions of the Directive. The ITC's rules allowed local channels to broadcast up to 3 hours a day of local advertising features. Unlike teleshopping windows, these did not have to include a direct offer to the public.
- 5.57 However, PSB channels were not allowed any additional time for teleshopping. These rules remain in force in section 8 of RADA.

### **Review of RADA rules**

- 5.58 Against the background of changes to the European framework for television regulation, Ofcom has decided to review all aspects of the rules on the amount and distribution of television advertising. In doing so, it has had regard to the regulatory objectives described in section 3, which include relevant duties and considerations.
- 5.59 In section 6, Ofcom describes the outcome of its review of the rules related to the distribution of advertising, and invites the views of stakeholders on proposals to

change or maintain the current arrangements. In section 7, we invite views on whether the current rules on advertising and teleshopping minutage should be amended, and if so what other options could be considered. In the light of responses, as well as further research and consideration, Ofcom expects to consult on specific proposals later this year.

## Section 6

# Consultation on proposed changes to the rules on the distribution of advertising

## Introduction

- 6.1 This section:
- a) describes the rules on television advertising that affect the way advertisements are scheduled on channels showing conventional programmes;
  - b) explains what changes we propose (if any), how these changes relate to the regulatory objectives, and summarises what we believe would be the likely impact on viewers and broadcasters; and
  - c) seeks the views of stakeholders to facilitate decisions on changes to the rules on the distribution of advertising that Ofcom proposes to make later this year.
- 6.2 Relevant extracts from the AVMS and TWF Directives are in Annex 2. The Rules on the Amount and Distribution of Advertising are in Annex 3.

## Natural breaks

### Current rules

- 6.3 Current rules on the placing of breaks within programmes (Section 5.1 of RADA) reflect the requirement in Article 11(1) of the TWF Directive that natural breaks must not prejudice the ‘integrity and value’ of the programme in which they occur. Article 10 of the AVMS Directive requires that the scheduling of advertising should not prejudice the integrity of the programme, taking account of the nature and length of the programme and natural breaks.
- 6.4 Section 5 of RADA requires that advertising may only be scheduled during ‘natural’ breaks in a programme, and that such breaks must not damage the integrity or value of the programme in which they occur. It also provides that:
- a) in programmes with autonomous parts (such as magazine-format programmes), breaks may only be taken between the separate parts; and
  - b) in sports programmes or coverage of similarly-structured events or performances containing intervals, breaks may only be taken in the intervals.
- 6.5 Section 6 of RADA provides detailed guidance on when breaks can be taken in dramas and situation comedies, in documentaries and discussion programmes, in music programmes, children’s programmes, sporting events, outside broadcasts other than sport, programmes with prizes, acquired programmes and relays of overseas broadcasts.
- 6.6 Ofcom may require broadcasters to make available recordings of those instances that result in complaints, whether about advertising breaks or other issues. In practice, there are very few complaints about the scheduling of advertising breaks when considered in the context of the volume of commercial television. With few

exceptions, those complaints that have been made have tended to concern unfamiliar but compliant break patterns adopted in a few programmes.

### Proposed changes

- 6.7 Article 11 of the AVMS Directive (Annex 2) maintains the requirement on Member States to ensure that, where advertising or teleshopping is inserted during programmes, the integrity of the programmes is not prejudiced, taking into account natural breaks in and the duration of the programme, and the rights of rights holders. Accordingly, Ofcom needs to ensure that this principle is appropriately reflected in its rules.
- 6.8 However, the AVMS Directive dispenses with the rules governing the scheduling of advertisements during programmes of autonomous parts, and during sports and other similarly-structured programmes. Accordingly, it is open to Ofcom to retain, modify or dispense with its genre-specific rules on natural breaks.
- 6.9 Having regard to Ofcom's regulatory objectives, we consider that the retention of detailed genre-specific rules on what constitutes natural breaks is unnecessary to protect the interests of citizens and consumers. This is because, even without such rules, broadcasters would wish to avoid irritating viewers by adopting break patterns that disrupt the continuity of programmes, and would continue to be required to have regard to programme integrity and natural breaks when scheduling breaks. Moreover, even detailed rules cannot provide for every situation, and in these circumstances, broadcasters are better placed to make appropriate editorial judgements. We do not consider that the removal of these rules is likely to have a significant impact, either positive or negative, on broadcasters and advertisers.
- 6.10 Accordingly, Ofcom proposes that the rules should simply give effect to the principle set out in Article 11 of the AVMS Directive, by requiring that where advertising or teleshopping is inserted during programmes, licensees shall ensure that the integrity of the programme is not prejudiced, having regard to the nature and duration of the programme, and where natural breaks occur. As was the case with RADA, given that the rights of rights holders (e.g. copyright holders) are already protected by law, Ofcom does not consider that it is necessary or appropriate to refer to these in the Code.

*Q2. Do stakeholders agree that the new Code should discontinue detailed genre-specific rules on natural breaks?*

## Separation of advertising and programming

### Current rules

- 6.11 Section 3.1 of RADA requires that advertisements must be readily recognisable as such and kept quite separate from other parts of the programme service. Breaks containing advertising spots of any kind, including teleshopping spots, must be identified in vision and / or sound. Teleshopping spots must be identified both in vision and in sound at the beginning and end of the break.

### Proposed changes

- 6.12 Article 10(1) of the amended AVMS Directive is substantially the same as the corresponding provision of in the TWF Directive, which requires that 'television advertising and teleshopping shall be readily recognizable as such and kept quite

separate from other parts of the programme service by optical and / or acoustic means. However, the AVMS Directive does allow advertising and teleshopping breaks to be kept distinct from programmes by 'spatial means'. This could include, for example, split screen advertising.

- 6.13 It would be possible to comply with the AVMS Directive by leaving Section 3.1 of RADA unchanged. However, it would not be possible to dispense with all of the rules on the separation of advertising and programming.
- 6.14 We consider that the current rule is unnecessarily prescriptive. We do not consider that there would be any adverse effects on consumers or advertisers if broadcasters were permitted to choose which of the signals indicated by the AVMS Directive they used to separate programmes from advertisements. We therefore propose to amend the rule to reflect the AVMS Directive, that is, to allow advertising and teleshopping breaks to be denoted in sound or vision or by spatial means, and to drop the requirement for teleshopping segments to be distinguished from programmes by both sound and vision. Allowing advertisements to be denoted by spatial means (e.g. broadcasting both advertising and editorial content simultaneously on a split screen) would, for example, enable a broadcaster to show Grand Prix events without interruption.

*Q3. Do stakeholders agree that the new Code should allow advertising and teleshopping breaks to be signalled in sound or vision or by spatial means, and should drop the requirement for teleshopping segments to be distinguished from programmes by both sound and vision?*

## Buffers

### Current rules

- 6.15 Section 3.3 of RADA requires that there must be a gap of at least 30 seconds between advertising and either a religious service / any devotional programme ('religious programme), or a formal Royal ceremony or occasion.

### Proposed changes

- 6.16 The AVMS Directive has no impact on these rules, and it would be possible to leave them unchanged, or to modify them, or to dispense with them altogether.
- 6.17 Having regard to Ofcom's regulatory objectives, we think it unlikely that allowing advertising to precede or follow a religious programme or coverage of a Royal occasion without a buffer would be perceived by viewers as detrimental to their interests. For commercial reasons, both broadcasters and advertisers will want to ensure that any advertising that does follow such a programme is not likely to be regarded as inappropriate by viewers. In any case, as broadcasters often include promotional material about forthcoming programmes at the beginning and end of an advertising break, it is likely that in most cases, a buffer will remain. We therefore consider that this regulation is unnecessary and should be discontinued, rather than continued or modified.

*Q4. Do stakeholders agree that the new Code should discontinue the requirement for a buffer between advertising and coverage of a religious programme or Royal occasion?*

## Restrictions on advertising within programmes

- 6.18 With few exceptions<sup>30</sup>, there are no restrictions on the placement of breaks between programmes, as these do not interrupt the narrative flow. However, there are rules that:
- a) effectively limit the number of internal advertising breaks within programmes of different durations;
  - b) restrict advertising breaks in certain programmes;
  - c) prohibit advertising breaks in certain programmes; and
  - d) limit the length of advertisements and advertising breaks.

## Limits on the number of breaks

- 6.19 Section 5.4 of RADA requires that a period of at least 20 minutes should normally elapse between each successive internal break (different rules apply to films, news, documentaries, children's and religious programming; these are discussed later in section 6). The rules allow a slightly shorter interval where the interests of the viewer would be better served by an earlier break, but in such cases, the programme must not contain more internal breaks than would be permissible under the 20 minute rule.
- 6.20 The effect on non-PSB channels is to allow them, for example, to take two breaks in a half hour programme, provided that they are spaced 20 minutes apart. They may depart from the 20 minute rule if this would serve the interests of viewers better, but may not take more breaks than would be permitted if the 20 minute rule were strictly applied. However, our analysis of break patterns for three non-PSB channels (Sky One, UKTV Gold and MTV) suggests that they generally adopt similar break patterns to PSB channels.
- 6.21 PSB channels are subject to slightly stricter rules, set out in section 5 of RADA and reproduced in Table 5 below. The effect of these is to limit the number of internal breaks in a half-hour programme to one (as against two on a non-PSB channel), and three in a programme scheduled to last an hour. However, it is important to note that PSB channels may also schedule advertising breaks between programmes.

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<sup>30</sup> The exception is a rule on the maximum length of advertisements on PSB channels, which for convenience is discussed in this section.



**Table 5: effect of current rules on internal breaks**

<b>PSB channels</b> (section 5.6 of RADA)		<b>Non-PSB channels</b> (section 5.4 of RADA)	
<b>Scheduled duration</b>	<b>Maximum number of breaks</b>	<b>Scheduled duration</b>	<b>Maximum number of breaks</b>
21 - 44 minutes	1	30 minutes	2
45 -59 minutes	2	45 minutes	3
60 – 89 minutes	3	60 minutes	3
90 – 119 minutes	4	90 minutes	5
120 – 149 minutes	5	120 minutes	6

### 20 minute rule

6.22 The 20 minute rule has the effect of limiting the number of internal breaks within programmes, as do the stricter rules on PSB channels. The AVMS Directive scraps the requirement for a 20 minute interval between advertising breaks, leaving it to Member States to decide whether to place limits on the number of advertising breaks in a programme of a given length.

6.23 Ofcom believes that there are three separate but related issues for consideration:

- a) whether it is in the interests of viewers to maintain the requirement for a 20 minute separation between internal advertising breaks;
- b) whether there should be limits on the number of advertising breaks within programmes of a given scheduled duration; and
- c) if the answer to (b) is yes, what the limits should be, including whether different rules should continue to apply to PSB channels.

6.24 It would be possible to comply with the AVMS Directive by retaining the current rules, dispensing with any rules on the number of or intervals between advertising breaks, or modifying the rules.

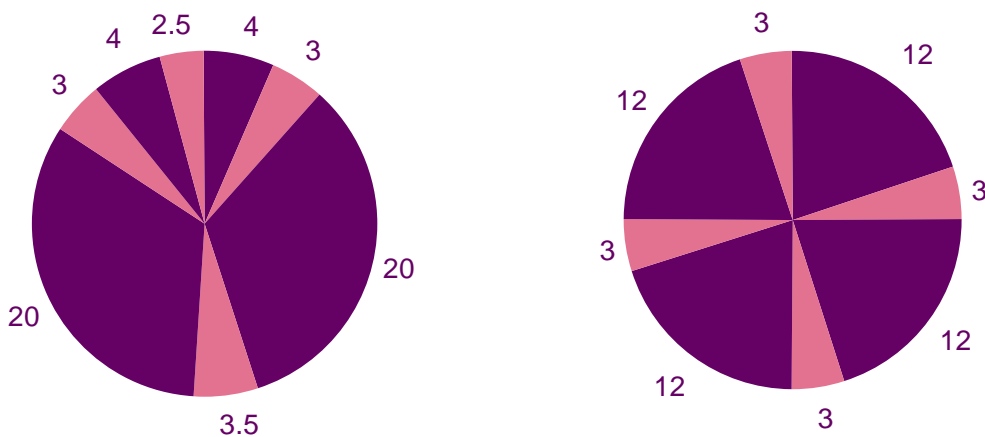
6.25 Feedback to Ofcom from viewers on specific programmes suggests that, at least in certain circumstances, strict application of the 20 minute rule makes the distribution of advertising breaks irritating to viewers, either because the rules require advertising breaks to be taken close together, or (in the case of imported programming), at times which clash with the way the programme is edited. For example:

- a) in a 30-minute programme on a non-PSB channel, strict application of the 20 minute rule requires that the first break be taken within the first few minutes of the start of the programme, in order that a 20 minute interval can take place before the second advertising break within the last few minutes of the programme. In these circumstances, the broadcaster may decide to schedule the breaks immediately after the opening sequence, and immediately before the closing credits. From time to time, some broadcasters have taken the view that viewers'

interests are better served by spacing the breaks more evenly, for example at 10 minutes and 20 minutes after the programme has started;

- b) in a 60-minute programme on a PSB channel, RADA rules allow PSB channels to air three advertising breaks within a programme scheduled for a 60 minute slot. However, given the 20 minute rule, the only way to do this is to schedule the first break shortly after the start of the programme, and the last shortly before the end credits, as shown in the pie chart on the left of Figure 3 below. Channel 4 reported receiving many complaints about the scheduling of early advertising breaks when the programme 'Lost' was shown on Channel 4 and E4, and a significant number of similar complaints in relation to the 'West Wing' on More 4;
- c) programmes imported from the United States (such as Lost, Desperate Housewives and West Wing) are designed to allow more frequent ad breaks, but these 'natural breaks' are designed to coincide with the US pattern of ad breaks rather than those in the UK.

**Figure 3: Pie charts showing effects on scheduling of three advertising breaks in a 60-minute slot, with and without 20 minute rule**



6.26 Against this background, broadcasters have suggested that it would be better for viewers if the 20 minute rule was scrapped, as it would allow breaks to be scheduled with particular regard to the natural breaks within programmes, whether made principally with UK television in mind, or imported from elsewhere.

6.27 Ofcom's experience is that, generally speaking, when (in order to preserve the integrity of programmes) broadcasters have spaced advertising intervals evenly across an hour-long programme, viewers have not complained. Accordingly, we consider that allowing broadcasters more flexibility to schedule advertising breaks should be beneficial to viewers. Ofcom therefore proposes that the 20 minute interval rule should be scrapped.

*Q5 Do stakeholders agree that the rule requiring a 20 minute interval between advertising breaks should be scrapped?*

Frequency of breaks

6.28 Pre-consultation with broadcasters and advertisers suggests that both would prefer the flexibility for channels to schedule more frequent and shorter advertising breaks. They cite two main reasons:

- a) some types of programming (particularly imported and music video programmes) lend themselves to more frequent ad breaks, and these would not compromise the integrity of programme content. Some broadcasters suggest that viewers would be likely to prefer shorter breaks, even if this meant that they were more frequent; and
  - b) shorter more frequent breaks are more valuable to advertisers, and hence to broadcasters, as viewers are more attentive during shorter breaks, and recall is higher<sup>31</sup>.
- 6.29 We have less evidence on what viewers themselves might feel about shorter and more frequent ad breaks. Ofcom has looked at available research, but the results are mixed, and shed little light on whether viewers would prefer a pattern of longer, less frequent ad breaks, or shorter, more frequent breaks. Partly for this reason, Ofcom is planning to conduct deliberative research with a group of representative consumers to try and ascertain what attitudes informed consumers might have.
- 6.30 We have also considered what might happen if there were no rules affecting the number and distribution of advertising breaks. The example of the United States, where there is no regulation of the frequency of advertising breaks, may be relevant. US television programmes tend to be strip-scheduled in slots of 30 minutes, 60 minutes or 120 minutes. In the past, substantial breaks of up to 10 minutes between each programme were common. However, as competition intensified, channels realised that they could lose viewers during such breaks. They began to run directly from one programme into another with only a very short ad break in between – and then scheduled a bigger break once the subsequent programme had started, often shortly after the programme credits. The intention is to ‘hook’ viewers with the aim of retaining them for the remainder of the show.
- 6.31 In addition to a practice of scheduling earlier breaks than is usual on UK television channels, advertising breaks on US channels tend to be more frequent. A recent study found that the average length of US breaks was 141 seconds (2 minutes 21 seconds) as against 236 seconds (3 minutes 56 seconds) in the UK – this, despite the fact that there is more advertising on US channels than is allowed in the UK<sup>32</sup>. This underlines the fact that breaks are more frequent on US television channels.
- 6.32 Research from the US suggests that viewers dislike the impression of ‘clutter’ arising from advertisement and programme promotions<sup>33</sup>. However, despite the attitude of viewers, in general, broadcasters have not responded by reducing the amount of advertising on US TV channels<sup>34</sup>. One possible reason is that advertisers may be

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<sup>31</sup> ‘Recall’ in this context means the ability to recall details of particular advertisements. The research evidence on this point is mixed. Tse & Lee (2001), *Journal of Advertising Research* found that the first two positions in an advertising break have the lowest recall and the last two positions in the break have the highest recall. Billets Share of Break study found that spots which are first and last in break have the highest recall whereas Carat Foretel found the opposite. However, notwithstanding this, our discussions with broadcasters and media buyers confirmed that there was greater demand for both first, second and end positions than for slots in the middle of advertising breaks.

<sup>32</sup> Tables 4A and 4B, *Comparative study on the impact of control measures on the television advertising markets. Report: United States, 2005*, Carat / Koan

(<http://ec.europa.eu/avpolicy/docs/library/studies/2003/44-03-co-usa.pdf>)

<sup>33</sup> *Clutter Watch 2006, 2007*, Mindshare (unpublished).

<sup>34</sup> *Clutter Muddies Programming on Cable Nets*, Linda Hardesty, *Cable World*, March 13, 2000; *Clutter watch 2006*, Mindshare, 2006.

unwilling to pay a premium for the opportunity to advertise in a less cluttered environment<sup>35</sup>.

- 6.33 In discussions with Ofcom, more than one UK broadcaster acknowledged that if some broadcasters sought to increase their share of commercial impacts by scheduling more internal breaks, they would have to follow suit. Taken together with the US experience, this suggests that, if regulation of the incidence of advertising breaks was scrapped completely, commercial pressures would push broadcasters towards scheduling shorter and more frequent breaks within programmes, even though the extra 'clutter' may not be welcomed by viewers.
- 6.34 Given these commercial pressures on both broadcasters and advertisers, Ofcom believes that if there were no regulation, broadcasters would be likely to step up the frequency of advertising breaks within programmes over time. In general, broadcasters did not dissent from this view, although they made clear that any changes would be likely to be gradual; they would want viewers to become used to new break patterns before experimenting with others.
- 6.35 While Ofcom accepts that shorter and more frequent advertising breaks would be likely to be more valuable to broadcasters, it does not have any evidence on the likely scale of the benefit, and how this might be reflected in expenditure that might further the interest of consumers. We would welcome evidence from broadcasters and advertisers on this point.
- 6.36 On the basis of the evidence described above, and having regard to its regulatory objectives, Ofcom considers that it would further the interests of consumers to retain effective limits on the number of advertising breaks within programmes of a given scheduled duration.

*Q6. Do stakeholders agree that there should be limits on the number of advertising breaks within programmes of a given scheduled duration?*

- 6.37 Ofcom believes that, if there were to be limits, the question of what the limits should be, and whether different rules should continue to apply to PSB channels would need to be considered alongside possible changes to the permitted amount of advertising, either on non-PSB channels or PSB channels. Such limited evidence as is currently available to Ofcom suggests that viewers may perceive changes to the number and pattern of breaks as changes to the overall amount of advertising, even where in fact, the overall amount of advertising is unchanged. Ofcom believes that further evidence is required on viewers' likely attitudes to changes in both the volume and pattern of advertising, and therefore proposes to seek views in this consultation on a variety of possible scenarios, and to commission independent deliberative research with a representative group of adult television viewers drawn from across the United Kingdom. In the light both of views expressed in response to this consultation, and in relation to the deliberative research, Ofcom would then make specific proposals on the frequency of advertising breaks in a consultation later this year.
- 6.38 Pending the outcome of that consultation, Ofcom proposes to maintain the effect of current restrictions on the number of breaks by retaining the existing rules for PSB channels for the time being, and introducing interim rules for non-PSB channels that limit the number of breaks on non-PSB channels to the number that would otherwise have been possible with the 20 minute rule. Accordingly, the draft Code at Annex 5 makes no substantive change to the rules on break frequency.

<sup>35</sup> *How much advertising do we see?* Andrew Green, Admap, February 2007.

6.39 Ofcom is not proposing any change to the arrangements which allow breaks before and after each separate programme, as such breaks do not interfere with the flow of programmes.

6.40 However, Ofcom would welcome the views of stakeholders on the following options for regulating the frequency of internal advertising breaks:

- a) adopting rules that would maintain the current limits on breaks within programmes – that is, allowing up to two breaks per half-hour programme on non-PSB channels, and one break per half-hour programme on PSB channels (Option 1);
- b) adopting rules that would limit the number of breaks on both PSB and non-PSB channels in a half-hour programme to two, and in a 60-minute programme to three (Option 2);
- c) adopting rules that would limit non-PSB channels the same number of breaks as PSB channels (Option 3);
- d) adopting rules that would limit PSB channels to the same number of advertising breaks as now, but allow non-PSB channels to decide for themselves how many breaks to schedule (Option 4); and
- e) allowing both PSB and non-PSB channels to decide for themselves how many breaks to schedule (Option 5).

6.41 The effect of each of these options on the number of permitted breaks in a half-hour or hour-long programme is shown in Table 6 below.

**Table 6: break frequencies: illustration of effects of different possible options**

Possible options	Scheduled length of programmes (minutes)	Number of breaks within programmes	
		PSB channels	Non-PSB channels
Option 1 (same number of breaks as now)	30 / 60 / 90 / 120	1 / 3 / 4 / 5	2 / 3 / 5 / 6
Option 2 (allowing PSBs the same number of breaks as non-PSB channels)	30 / 60 / 90 / 120	2 / 3 / 5 / 6	2 / 3 / 5 / 6
Option 3 (imposing PSB-style restrictions on non-PSB channels)	30 / 60 / 90 / 120	1 / 3 / 4 / 5	1 / 3 / 4 / 5
Option 4 (liberalising rules for non-PSBs only)	30 / 60 / 90 / 120	1 / 3 / 4 / 5	Any permitted

Option 5 (deregulation)	30 / 60 / 90 / 120	Any permitted	Any permitted
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*Q7. Has Ofcom identified the right options for break frequencies? What issues should Ofcom take into account in formulating proposals for consultation?*

## **Restrictions on advertising in certain programmes**

### Current rules

- 6.44 Section 5.5 of RADA says that feature films and films made for television (excluding series, serials, light entertainment and documentaries) must not have an internal break if their scheduled duration is 45 minutes or less. It also sets out how many breaks are permitted in films longer than 45 minutes.
- 6.45 Section 3.2 of RADA requires that advertisements must not be inserted in the course of any broadcast of:
- a) a news or current affairs programme of less than half an hour scheduled duration;
  - b) a documentary of less than half an hour scheduled duration;
  - c) children's programme of less than 30 minutes; and
  - d) religious programmes of less than 30 minutes.

### Proposed changes

- 6.46 The current rules give effect to Article 11(3) of the TWF Directive in respect of films, and Article 11 in respect of news and documentary, religious and children's programmes.

### Films, documentaries and religious programmes

- 6.47 Article 11(2) of the AVMS Directive relaxes the restrictions on advertising in documentary and religious programmes of less than half an hour (though the ban on advertising in religious programmes comprising coverage of religious services remains). It also allows one break for every scheduled period of at least 30 minutes in feature films, as compared to the 45 minute period specified by the TWF Directive.
- 6.48 The current restrictions impose an economic penalty on broadcasters who schedule films, documentary and religious programmes, by preventing them from scheduling as many of the more valuable breaks within programmes as they could within other types of programming. Since this could act as a disincentive to broadcasters to schedule such programmes, Ofcom considers that removing these restrictions would further the interests of consumers by promoting a wider range of programming that might otherwise be the case, and thus be compatible with the regulatory objectives.

*Q8. Do stakeholders agree that the restrictions on advertising in films, documentaries and religious programmes and children's programming should be relaxed to the extent permitted by the AVMS Directive?*

## News and children's programming

- 6.49 The same provision in the AVMS Directive also imposes stricter restrictions on advertising in:
- a) children's programmes, by requiring that no advertising may be inserted unless the scheduled duration is greater than 30 minutes, as compared to the TWF Directive, which permitted one break in a 30-minute programme; and
  - b) news programmes, by limiting the number of breaks to once in every scheduled period of at least 30 minutes, as compared to the TWF Directive, which applied the 20 minute rule to news programmes of 30 minutes or longer.
- 6.50 Most children's programmes are shorter than 30 minutes so would not be affected by the new restrictions. However, a few (mainly drama, factual and game show programmes) are scheduled in 30 minute slots. Ofcom considers that the effect of these restrictions may be to incentivise broadcasters to schedule, commission and acquire fewer children's programmes in thirty minute slots, as they would not be able to insert a commercial break during such programmes. This may tend to reduce the range of programming available to children.
- 6.51 As regards news programmes, Ofcom considers that the effect of the new restrictions would be to reduce the incentive on broadcasters to schedule long-form news programmes (such as Channel 4 news), by further limiting the number of internal breaks that are permitted.
- 6.52 Member States are obliged to implement the new rules within two years of their adoption. Having regard to the regulatory objectives, Ofcom sees no benefits to viewers, broadcasters or advertisers in implementing the necessary rule changes in relation to news and children's programmes earlier than is necessary, that is, in December 2009. It therefore proposes to make the necessary changes then.

*Q9. Do stakeholders agree that changes to the rules on advertising breaks in news and children's programmes that must be made to secure compliance with the AVMS Directive should be deferred until December 2009?*

## **Prohibition of advertising in certain programmes**

### Current rules

- 6.53 Section 3.2 of RADA requires, amongst other things, that advertisements must not be inserted in the course of any broadcast of:
- a) a programme designed and broadcast for reception in schools;
  - b) a religious service or other devotional programme;
  - c) a religious programme (other than religious services or devotional programmes which may not carry any internal advertising at all) of less than half an hour scheduled duration);
  - d) a formal Royal ceremony or occasion;
  - e) live transmission of Parliamentary proceedings; or

- f) such other programmes as Ofcom may from time to time specify in particular or general terms, for example, programmes of a particularly harrowing or sensitive nature.

6.54 Paragraph 3.4 of RADA requires that no advertising may follow epilogues and other religious items that appear before a closedown.

### Proposed changes

6.55 The AVMS Directive drops most of the genre-specific prohibitions on the inclusion of advertising in programmes, with the exception of a continuing ban on advertising and teleshopping during religious services in Article 11(2).

6.56 In general, Ofcom does not consider that the rule changes permitted by the AVMS Directive are likely to have a significant effect on viewers, broadcasters or advertisers. The nature of the content means that relatively few programmes on relatively few channels will be affected (mostly public service channels). For the most part, the changes simply mean that these programmes will be scheduled with break patterns similar to the rest of the schedule. Broadcasters will continue to be subject to a general requirement, when scheduling advertising breaks, to avoid prejudicing the integrity of programmes. Advertisers will have a few more opportunities to advertise, though for the most part, the programmes in question would not attract particularly large audiences, and so would not be especially valuable. On balance, Ofcom considers that relaxing genre-specific restrictions on advertising will further the interests of consumers and citizens, since it will remove or mitigate the disincentives to make and schedule such programmes.

### *Schools programmes*

6.57 Only one commercial broadcaster – Channel 4 – currently broadcasts schools programming. It generally shows schools programmes in two blocks (though not every day) – relatively short programmes between 4am and 6am, and half-hour programmes between 9.30am and 12 noon<sup>36</sup>.

6.58 Channel 4 is prohibited from including advertisements in those programmes. In practice, it has also refrained from showing advertising between programmes. Before 1994, it was allowed to transfer 100% of the unused advertising minutage to other parts of the schedule outside peak time. Since 1994, Channel 4 has been allowed to use the minutage during peak hours, but the amount transferable has been limited to 60% in recognition of the greater value of advertising minutage at this time.

6.59 The AVMS Directive maintains the ban on advertising during children's programmes of less than 30 minutes, and in Ofcom's view, this precludes advertising during schools programmes of less than 30 minutes. However, we see no reason why advertising should be excluded from breaks between programmes, given that children will be protected by the standards applying to other times of the day when children are watching television. Accordingly, Ofcom proposes to make clear in the Code that although advertising is not permitted during schools programmes, it is permitted between schools programmes.

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<sup>36</sup> Current listings can be found at <http://www.channel4learning.net/support/listings/C4/index.jsp>.



### *Religious programmes*

- 6.60 Most programmes with a religious theme other than services (from which advertising will continue to be excluded) are documentaries<sup>37</sup>, discussion programmes or short religious messages. Ofcom considers it unlikely that the inclusion of advertising breaks within such programmes would cause significant offence. Moreover, at a time when relatively few religious-themed programmes are broadcast, such a ban would make it less attractive for broadcasters to schedule such programmes. There may be occasions when it is less appropriate to include advertising, but Ofcom considers that broadcasters are both incentivised and better placed to make these judgements. For these reasons, we do not think that it would be in the interests of citizens or consumers to maintain a blanket prohibition on advertising in programmes with a religious theme of less than half an hour. Advertisers may also benefit from the opportunity to advertise to audiences for religious programmes.

### *Epilogues*

- 6.61 The current rule dates from a time when it was common for channels to close down overnight, and to broadcast a religious epilogue immediately before doing so. Given that few channels close down overnight, and that it is no longer the usual practice to broadcast epilogues, Ofcom does not consider that it would harm the interests of viewers to scrap this rule. Insofar as broadcasters and advertisers are concerned, it is largely irrelevant. In the event that channels do show epilogues, we believe that it can be left to the judgement of the broadcaster to decide whether a buffer is merited to avoid damaging the integrity of the programme. We therefore propose not to include this rule in the new Code.

### *Other programmes*

- 6.62 Section 3.2 of RADA allows Ofcom to exclude advertising from such other programmes as Ofcom may from time to time specify in particular or general terms, for example, programmes of a particularly harrowing or sensitive nature. A similar rule has featured in most regulatory codes. However, Ofcom is not aware that regulators have ever felt it necessary or appropriate to resort to this rule. In practice, it would be difficult to make use of this power, as Ofcom does not review programmes before they are broadcast. In reality, this has not mattered, as broadcasters are incentivised to act responsibly when scheduling adverts, in order not to offend viewers and upset advertisers. Ofcom is aware that broadcasters sometimes reschedule advertising in response to concerns that it may be inappropriate to insert it in particular types of programme. For these reasons, Ofcom does not consider that this rule is necessary to protect the interests of viewers, and proposes not to include it in the new Code.

Q10. *Do stakeholders agree that:*

- (a) *the Code should make clear that advertisements are permitted between schools programmes?*
- (b) *the requirement for a buffer between coverage of a religious service or Royal occasion and advertising should be discontinued?*
- (c) *the rule prohibiting advertising after an epilogue should be discontinued? and*

<sup>37</sup> Examples in recent years include the 'Secrets of the Koran' on the History Channel, 'Animated World Faiths' on Channel 4, and ITV1's 'Essentials of Faith'.

(d) *the rule allowing Ofcom to exclude adverts from specified programmes should be discontinued?*

### *Royal ceremonies and Parliamentary proceedings*

- 6.63 Like many of the rules in RADA, those in section 3.2(vii) and section 10 of RADA which restrict advertising in programmes of Royal ceremonies and live Parliamentary proceedings go back several decades. Given that such programmes rarely appear on commercial television services, and that in the case of Parliamentary proceedings, most rules are duplicated by Parliament's own conditions, it could be argued that the RADA rules are no longer necessary. However, Ofcom recognises the sensitivities that may attach to advertising in such programmes, and is not proposing any changes in this document. Nonetheless, we would welcome the views of interested parties on whether the rules remain necessary and appropriate.
- 6.64 In the meantime, the draft Code at Annex 5 seeks to maintain the current position with respect to rules restricting the scheduling of advertising during the broadcast of Royal ceremonies and live Parliamentary proceedings.
- 6.65 Regulation of the content of advertising is the responsibility of the Broadcasting Committee on Advertising Practice (BCAP) of the Advertising Standards Authority, which is currently reviewing its code. Ofcom will discuss with BCAP whether it would be more appropriate for the rules in section 10.4 and 10.5 of RADA, which deal with the content of advertisements during live Parliamentary proceedings, to be reflected in the BCAP code.

### **Limits on the length of advertisements and advertising breaks**

#### Current rules

- 6.66 All channels are required to ensure that it is clear to viewers that advertisements longer than one minute are advertisements not programmes.
- 6.67 PSB channels are also subject to additional rules (sections 5.6(A) and 7.2(A) of RADA) on the length of breaks:
- a) without Ofcom's prior approval, no advertisement may exceed 7 minutes, and no advertisement may exceed 3½ minutes during peak hours – that is 7am to 9am and 6pm to 11pm; and
  - b) advertisements of 3½ minutes must be drawn wholly or mainly from the same clock hour, with any shortfall coming from the closest clock hour;
  - c) the maximum duration of any internal break is 3 minutes 50 seconds, of which no more than 3 ½ minutes may be advertising.

#### Proposed changes

- 6.68 In practice, very few advertisements exceed a minute or two, and Ofcom is not aware of consumer concern about the broadcast of advertisements that are longer than normal<sup>38</sup>. Ofcom is not aware of any instances of advertisements exceeding 7

<sup>38</sup> The most recent example of a 'long' advertisement, for Honda cars, was approximately 2 minutes long (<http://uk.youtube.com/watch?v=SIMhFOwozoQ&feature=related>).

minutes, either on the PSB channels, or the non-PSB channels, where the length of advertisements is not regulated. It appears that there is little commercial demand for long advertisements. Ofcom therefore proposes to discontinue this rule in the new Code.

*Q11. Do stakeholders agree that the rules limiting the length of individual advertisements on PSB channels should be discontinued?*

- 6.69 Given the economic incentives on broadcasters to schedule shorter and more frequent advertising breaks, Ofcom does not think that detailed rules on the length of breaks on PSB channels are necessary to further the interests of citizens and consumers. While Ofcom does not expect the discontinuation of such rules to have significant benefits either to broadcasters or advertisers, we do consider that this regulation is unnecessary. We therefore propose that this rule should be discontinued in the new Code.

*Q12. Do stakeholders agree that the new Code should discontinue rules on the length of breaks on PSB channels?*

- 6.70 Ofcom also doubts the necessity for detailed rules explaining how the character of long advertisements should be made clear to viewers, given that the draft Code must contain the principle set out in Article 10(1) of the AVMS Directive (Annex 2), which states that television advertising and teleshopping must be readily recognisable and distinguishable from editorial content using visual, acoustic or spatial means. Ofcom considers that this provides a sufficient basis for it to intervene if broadcasters fail to adopt sensible measures to ensure that viewers are not misled about the nature of advertisements, and proposes to discontinue the detailed rules. Ofcom therefore proposes that the draft Code (paragraph 11 of Annex 5) should simply reproduce the principles set out in the AVMS Directive.

*Q13. Do stakeholders agree that the draft Code should establish the principle that the distinction between advertising and editorial content must be readily recognisable, and set out the means for doing this, but avoid more prescriptive rules?*

## Transfer of unused minutage

### Current rules

- 6.71 Section 1 of RADA allows broadcasters to transfer unused advertising minutage in exceptional cases where this is necessary in the interests of good programme presentation, although this may not result in the hourly average of advertising on any one day exceeding nine minutes.
- 6.72 Examples of where transfers may be permitted include cases where advertising minutage has not been used because of:
- a) good programme presentation reasons (for example, the suspension or limitation of advertising for a Royal death, or because of live coverage of a major news story); and
  - b) unforeseen human or technical failure or unavoidable interruptions in transmission.

## Proposed changes

- 6.73 If broadcasters were not able to transfer unused minutage from programmes in the circumstances described above, this could:
- a) incentivise broadcasters to compromise good programme presentation standards in some cases, which would not benefit viewers; or
  - b) lead to the loss of revenue in other cases. While this would obviously be detrimental to broadcasters, it would also reduce the funding available for making high quality programmes, and hence would not benefit viewers.
- 6.74 Accordingly, Ofcom believes that these arrangements should remain in force.
- 6.75 However, we doubt whether it is appropriate to continue the present arrangements applying to Channel 4 for transferring unused minutage to other times of the day. In practice, we doubt that Channel 4 would find it difficult to schedule more advertising between schools programmes, both during the late and early morning segments. Channel 4 already has scope to transfer minutage to other non-peak times of the day where it has not reached the permitted 12 minutes per hour maximum. In preliminary discussions with Ofcom, Channel 4 has suggested that there would be adverse financial repercussions from changes to the current arrangements, and Ofcom has invited the broadcaster to provide evidence on this point.
- 6.76 Subject to the outcome of the consultation, Ofcom proposes to make no special provision for the transfer of excess minutage to other times of the day. Channel 4 would remain free to transfer unused minutage to other parts of the schedule within the existing constraints. In the light of the regulatory objectives, Ofcom does not consider that this change would damage the interests of consumers and citizens, but does believe that it would serve to make regulation more consistent and transparent.

*Q14. Do stakeholders agree that the current arrangements for transferring unused minutage should remain in place, and be applied to Channel 4 in place of the special arrangements in respect of schools programmes?*

## Advertising on text services

- 6.77 Section 11 of RADA sets out rules on the amount of advertising permitted on the Public Teletext Service, the licence for which is held by Teletext PLC. We intend that the new Code should be limited to rules on advertising on television channels, and that the existing rules on teletext services should become a separate code applicable to the Public Teletext Service licensee. However, we have not reviewed the provisions applicable to the Public Teletext Service as part of the current exercise, and propose no changes for the time being.

## Section 7

# Rules on the amount of advertising and teleshopping: issues for consideration

## Introduction

- 7.1 In this part of the document, Ofcom sets out the issues it believes should be considered in reviewing the current rules on the amount of advertising and teleshopping. To aid discussion, we have set out a number of possible scenarios, and have set out our initial analysis of each of these. However, at this stage, we are not proposing any specific course of action. We invite views on any other issues that stakeholders believe should be addressed, or scenarios that should be considered.
- 7.2 Please note that this part of the document is not intended to be a consultation. It is Ofcom's intention to carry out a formal consultation on the issues set out in this section later this year. Any views expressed or representations made in response to the questions raised in this section will inform that consultation but will not be taken into account in assessing any policy options proposed in that consultation. Stakeholders will have the opportunity to make written submissions on those matters when the consultation document is published later this year.

## Current rules on spot advertising

- 7.3 Section 1 of RADA limits amount of spot advertising and teleshopping spots in any one hour to 12 minutes. It also imposes a daily<sup>39</sup> maximum on:
- a) PSB channels of an average of seven minutes per hour; and
  - b) non-PSB channels of an average of nine minutes per hour, plus a further three minutes per hour of teleshopping spots.
- 7.4 In addition, between 7am and 9am, and 6pm and 11pm, PSB channels must not exceed an average of eight minutes an hour without Ofcom's prior permission.

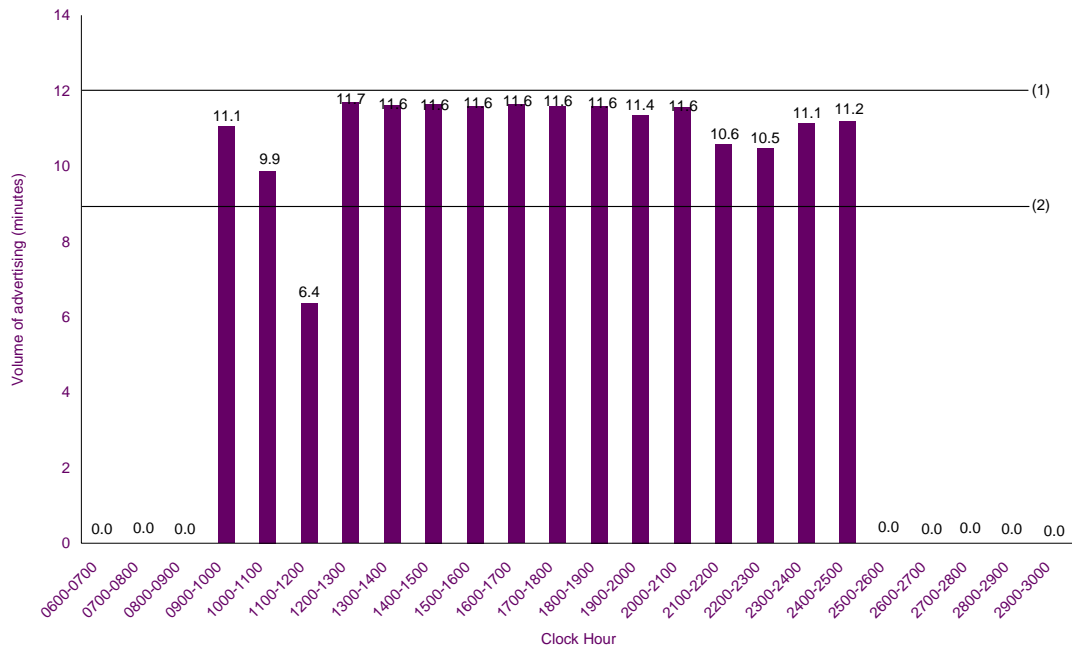
## Current situation

- 7.5 Broadcasters seek to maximise the revenue they earn from advertising, within the current rules. Non-PSB channels generally schedule close to the maximum amount of advertising they are allowed to show (12 minutes an hour) at times when audiences that advertisers wish to reach will be watching. They are able to do this by scheduling little or no advertising during the middle of the night. Figure 4 shows how one typical channel – UKTV Gold - does this.

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<sup>39</sup> For the purposes of this rule, the broadcasting day is deemed to start at 6am and run for the following 24 hours.

**Figure 4: Distribution of advertising minutage on UKTV Gold**



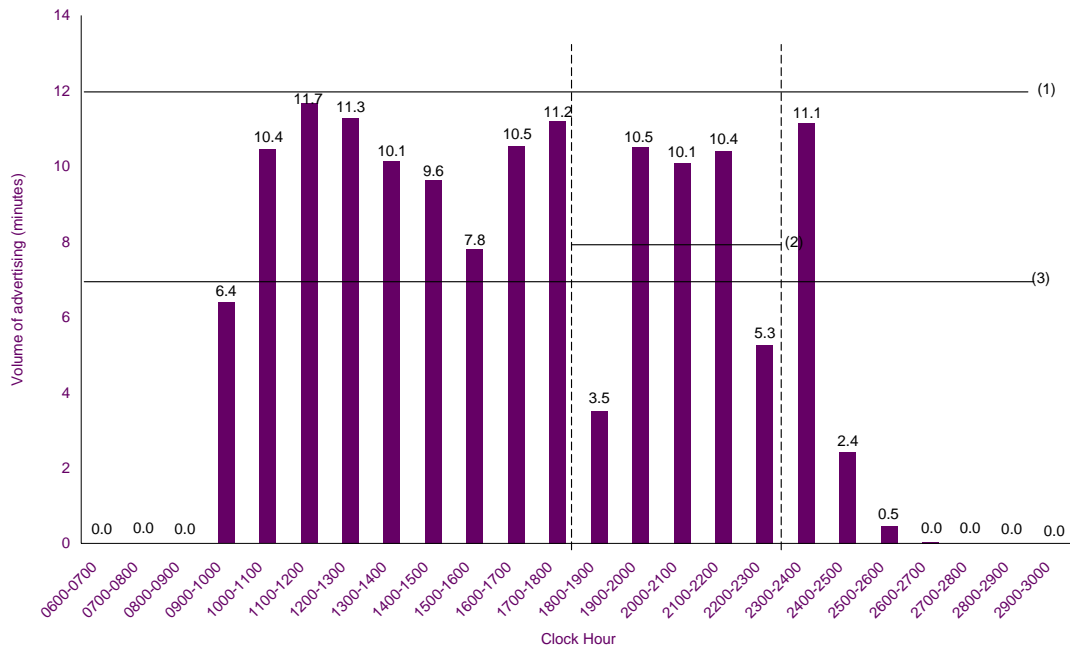
**Notes:**

- 1. TWF/AVMS rule of maximum of 12 minutes scheduled in any clock hour
- 2. RADA limit of 9 minutes average over broadcasting hours for non-PSB channels.

Source: Nielsen Media, Jan to Dec 2007

7.6 However, the peak-time restrictions limit the amount of advertising that PSB channels can show between 6pm and 11pm. Although PSB channels do show more advertising in their peak viewing hours than in the early and late peak hours, the minutage falls well short of 12 minutes in an hour, as the charts for ITV1 (Figure 5), Channel 4 (Figure 6) and Five (Figure 7) show.

**Figure 5: Distribution of advertising minutage on ITV1**

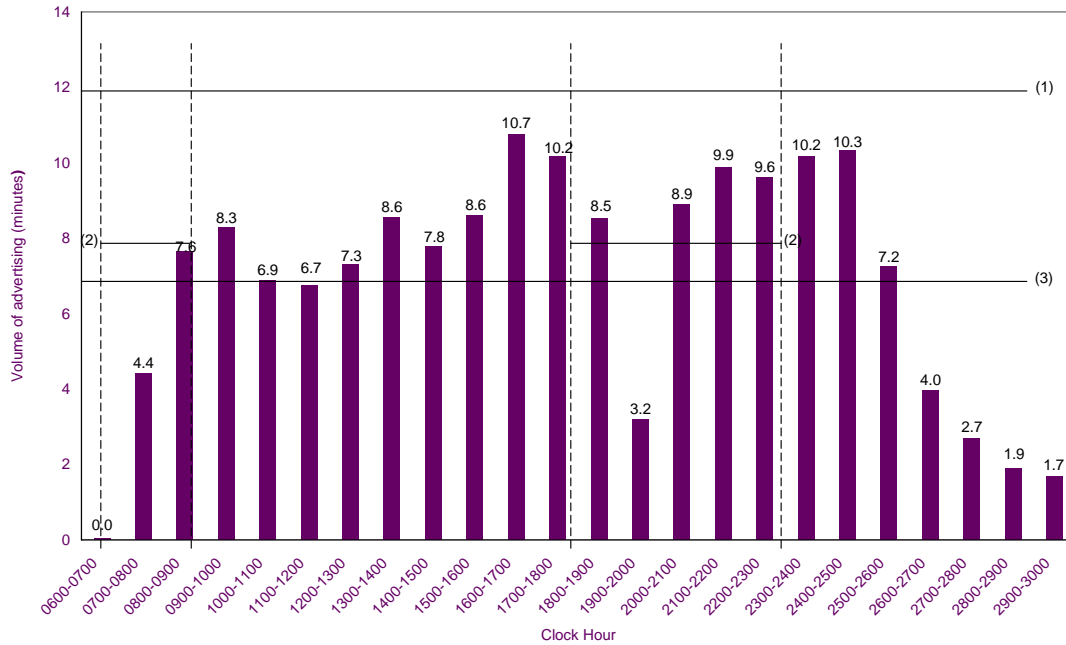


**Notes:**

- 1. TWF/AVMS rule of maximum of 12 minutes scheduled in any clock hour

- 2. RADA limit of 8 minutes average in peak for PSB channels
  - 3. RADA limit of 7 minutes average over broadcast hours for PSB channels.
  - 4. ITV1 does not broadcast between 6am and 9.25am as the licence for this period is held by GMTV.
- Source: Nielsen Media, Jan to Dec 2007

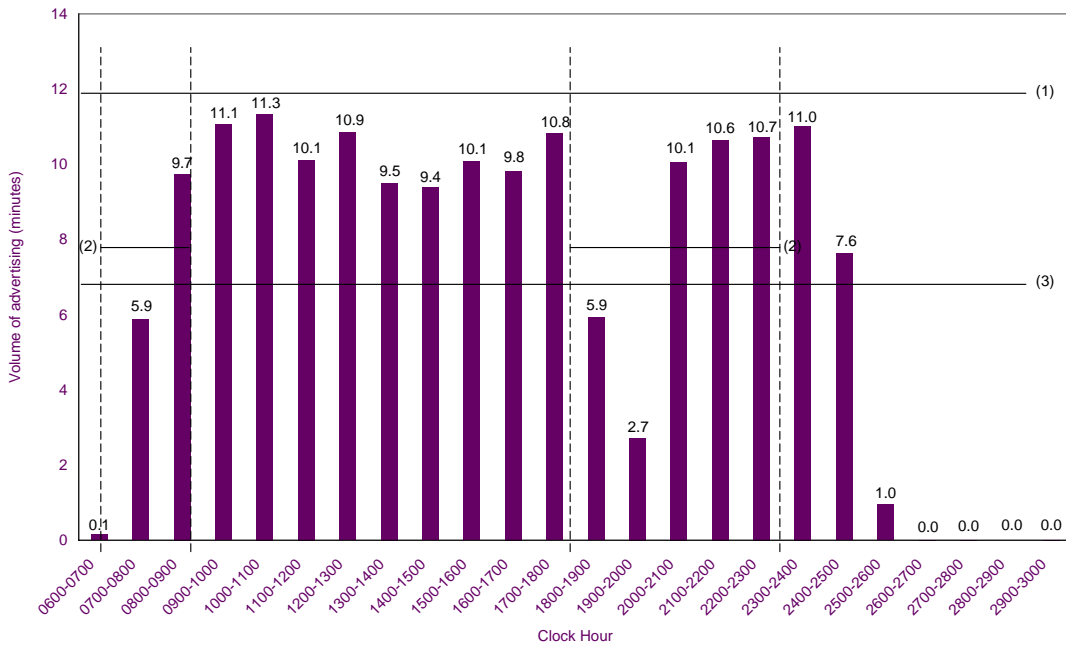
**Figure 6: Distribution of advertising minutage on Channel 4**



Notes:

- 1. TWF/AVMS rule of maximum of 12 minutes scheduled in any clock hour
  - 2. RADA limit of 8 minutes average in peak for PSB channels
  - 3. RADA limit of 7 minutes average over broadcast hours for PSB channels.
- Source: Nielsen Media, Jan to Dec 2007

**Figure 7: Distribution of advertising minutage on Five**



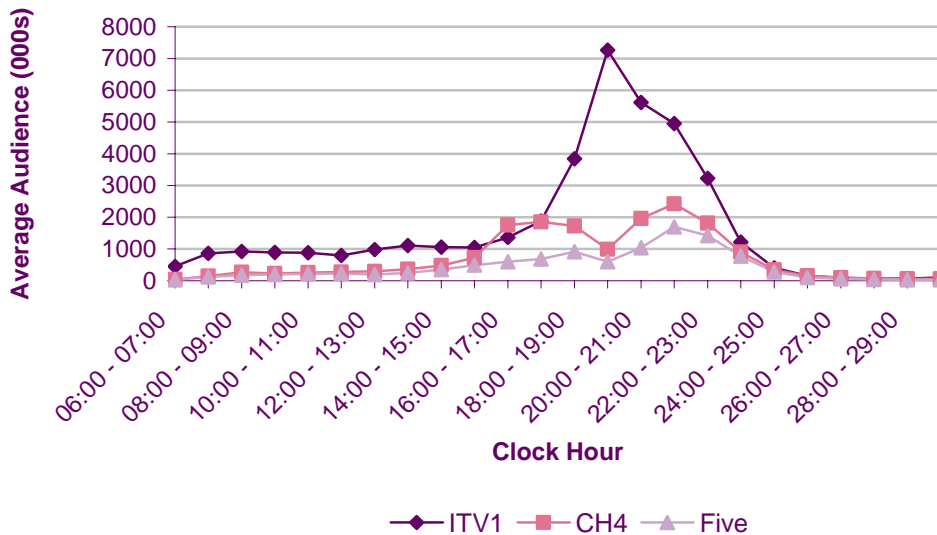
Notes:

- 1. TWF/AVMS rule of maximum of 12 minutes scheduled in any clock hour

- 2. RADA limit of 8 minutes average in peak for PSB channels
  - 3. RADA limit of 7 minutes average over broadcast hours for PSB channels.
- Source: Nielsen Media, Jan to Dec 2007

7.7 As the data in Figure 8 shows, most audience viewing takes place during the peak hours from 6pm to 11pm, with the bulk between 7pm and 10pm.

**Figure 8: average audiences for main PSB channels by hour**



Source: BARB/TNS Infosys (Monday to Sunday, 01/01/2007 to 31/12/2007). All individuals.

### Scope for change

7.8 The AVMS Directive allows Member States to increase minutage for advertising and teleshopping spots to a daily average of 12 minutes an hour, subject to a maximum of 12 minutes in any one hour. However, Member States are not obliged to do so (some use their discretion to impose stricter limits on advertising than are set out in the Directive<sup>40</sup>). In principle, a variety of approaches are open to Ofcom, including maintaining the status quo, reducing or increasing the amount of advertising minutage, and maintaining or altering the differential treatment of PSB and non-PSB channels.

### Initial views of stakeholders

7.9 We spoke informally to broadcasters, advertisers and media buyers about the scope for changes to the rules on the amount of advertising:

- a) advertisers were keen on allowing broadcasters – including public service channels - the maximum allowance of advertising time permitted under the AVMS Directive - that is, 12 minutes an hour across the day. They believed that this would make the cost of advertising on television cheaper. They were also keen on getting more advertising opportunities on ITV1, which can reach a mass audience. However, they did not expect that an increase in supply would increase

<sup>40</sup> For example, public service broadcasters in Germany are only permitted an average of 20 minutes a day, averaged over the year, while free-to-air channels in France are limited to an average of 6 minutes an hour. By contrast, there are no restrictions on advertising time in the United States or Hong Kong, and restrictions are being removed in Canada.



the amount of expenditure on television advertising, rather than the price would fall, allowing them to reduce expenditure on TV advertising if they chose to buy the same volume;

- b) media buyers were more cautious. In general, they wanted to keep the daily limit at an average of 9 minutes an hour, expressing concern that a significant increase in the amount of minutage would reduce both the effectiveness of television advertising and the price. However, they wanted public service channels to be allowed to have the same advertising allowance as other channels, and the peak-time restrictions to be removed. They did not expect there to be any increase in the amount of expenditure by television advertisers, but that if PSB peak-time restrictions were relaxed or removed, investment would move from non-PSB to PSB channels. They suggested that if prices did fall, advertisers would simply spend less;
- c) non-PSB channels favoured maintaining the status quo. They agreed with advertisers that increasing the supply of advertising minutage would reduce prices, and saw no benefit to them in doing so. They were concerned that any change that would allow the PSB channels (particularly ITV1 and Channel 4) to broadcast more advertising – particularly in peak times – would result in non-PSB channels losing significant advertising revenue;
- d) the views of PSB channels varied, although none favoured a general increase in the supply of advertising minutage, for the same reasons as the non-PSB channels. Like advertisers and non-PSB channels, they did not expect a reduction in the price of television advertising to stimulate an increase in advertising expenditure on television.

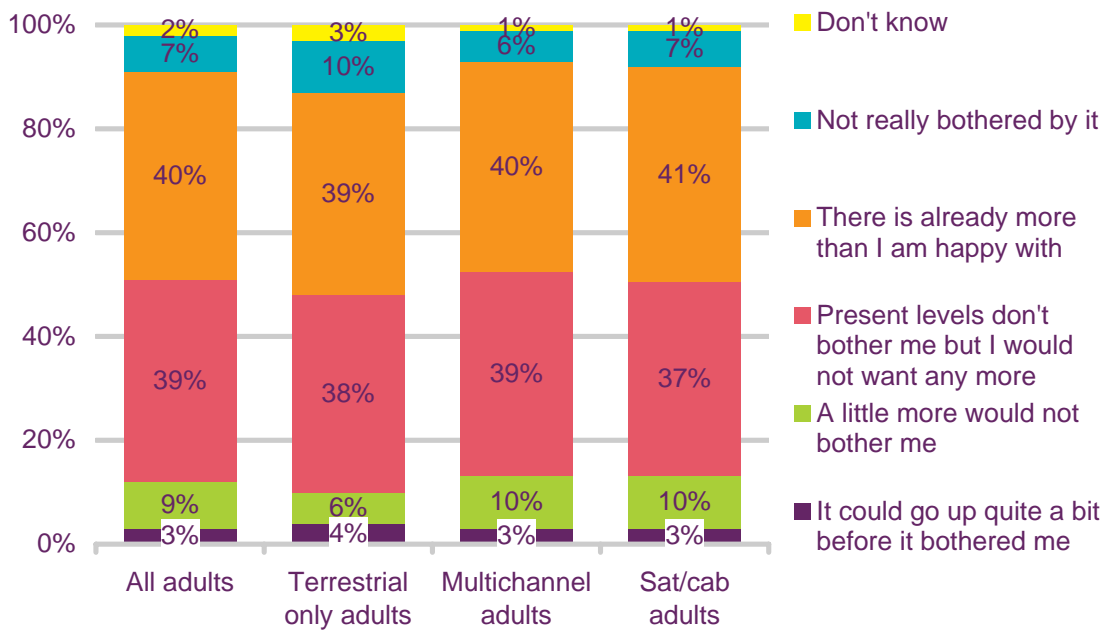
7.10 We also sought to gauge the likely views of consumers, by

- a) drawing on Ofcom's research into viewers' attitudes towards television advertising. Data from Ofcom's Tracker Survey for May and November 2007 shows that about 80% of viewers would prefer no more advertising on PSB channels (see Figure 9)<sup>41</sup>. Similarly, about 80% of viewers say that they would prefer no more advertising on non-PSB channels, although a higher proportion of these believe that there is already too much. In both cases, about 16% would be prepared to see more advertising (See Figure 10); and
- b) analysing advertising-related complaints by viewers to Ofcom from 2005 to 2007. Many of these concern the inappropriate scheduling of advertising breaks during F1 racing events, or too frequent breaks in certain other programmes. However, a significant number complain that there is too much advertising, either in specific programmes, or generally. Although in the cases referred to Ofcom, the broadcasters concerned had not exceeded the amount of advertising permitted, the complaints indicate that some viewers are sensitive to the amount of advertising on television, and would be likely to oppose an increase in the permitted amount.

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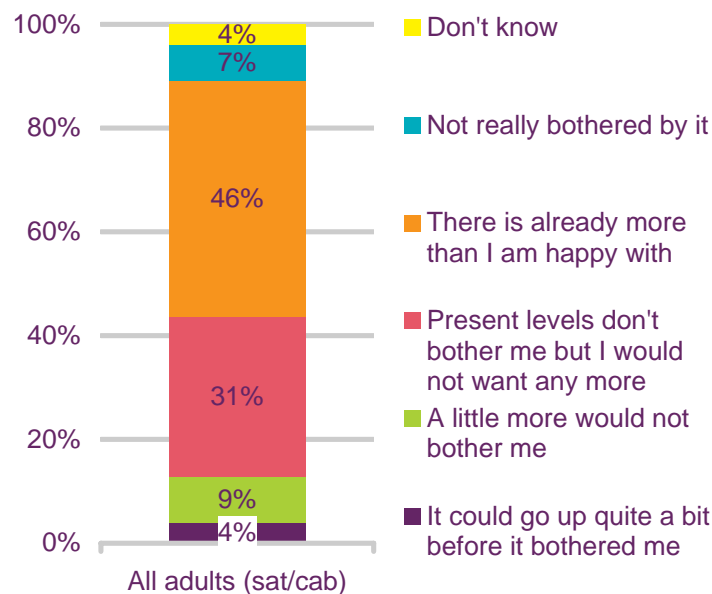
<sup>41</sup> Data from Ofcom's Tracker Survey is due to be published as part of Ofcom's Review of Public Service Broadcasting (Phase 1) in April 2008.

**Figure 9: Attitudes to amount of advertising on PSB channels**



Source: Ofcom Tracker Survey, May, November 2007

**Figure 10: Attitudes to amount of advertising on non-PSB channels**



Source: Ofcom Tracker Survey, May, November 2007

### Possible approaches

7.11 Before consulting on specific options for regulating the amount of advertising on television, Ofcom would like to gather more evidence, both on the likely views of consumers, and on the economic implications for television of alternative approaches to current rules (as they could have important repercussions on the ability of channels to provide consumers with a wide range of diverse, high quality

programming). It is important to note that Ofcom has not formed a view on whether any of these approaches would be preferable. Neither has Ofcom determined that changes to the current rules should necessarily be made. However, to prompt debate, we have outlined a number of broad approaches below, and set out a preliminary assessment of the broad implications of these approaches for viewers, broadcasters and advertisers. We encourage interested parties to offer both evidence on and comments about any of these approaches.

- 7.12 In order to get a better understanding of how informed consumers would view alternative approaches, we also intend to carry out deliberative research with a representative group of adults. The results will be taken carefully into account by Ofcom and published in line with Ofcom's general policy of publishing research findings.
- 7.13 In its preliminary assessment of the different approaches set out below, Ofcom has made the following assumptions:
- a) broadcasters will respond to any constraints (including relaxation of those constraints) on advertising minutage by seeking to maximise their share of commercial impacts. In most cases, this would mean scheduling as much advertising as permitted at times when most people are watching;
  - b) we have assumed that the current airtime sales rules which require PSBs to offer all their available minutage are maintained and that the PSBs are also able to sell any additional minutage (i.e. they do not have to 'give away' any additional minutage). However, in the case of non-PSB channels which are not currently able to sell their existing allowances of advertising minutage, we assume that they would not benefit from any increase in permitted advertising minutage; and
  - c) that there is no reduction in audiences as minutage is increased (i.e. we have assumed that audiences in advertising breaks do not decline even if there is an increase in the volume of advertising).

## **Status quo**

- 7.14 One possibility would be to leave the current rules on minutage essentially unchanged. That would mean that non-PSB channels would remain subject to a daily average of 9 minutes of advertising an hour (plus a daily average of 3 minutes teleshopping an hour), and that PSB channels would remain subject to a lower daily average of 7 minutes an hour, and stricter limits during peak viewing time (an average of 8 minutes an hour between 7am and 9am, and between 6pm and 11pm).

## **Ofcom's preliminary assessment**

- 7.15 For consumers this would mean little or no change. The bulk of people's viewing would continue to take place at times when most non-PSB channels were showing around 10 minutes an hour of advertising. On PSB channels, it is likely that the advertising minutage would remain at lower levels, particularly between 6pm to 7pm, and between 10pm to 11pm. This would enable current levels of time devoted to public service content (e.g. national and regional news) to be maintained. The data in Figure 9 above suggests that just over half of viewers would be content with this (i.e. they are content with existing levels of advertising or would be prepared to see more), and that less than half of viewers would be dissatisfied with the level of TV advertising.

## Levelling the playing field between PSBs and non-PSBs

- 7.16 One broad approach would be to eliminate or reduce the differences between the rules applying to PSB channels, and those applying to other channels. As described earlier, the main differences concern the average minutage across the day (9 minutes an hour for non-PSBs; 7 minutes an hour for PSBs) and the peak-time restrictions on PSB channels (an average of 8 minutes an hour between 7am and 9am, and 6pm and 11pm).

### Increasing daily average minutage

- 7.17 Allowing PSB channels to sell the same amount of advertising minutage as non-PSBs (an average of 9 minutes an hour) would enable them to increase the PSB's share of commercial impacts by 5.8%<sup>42</sup>, even with the existing peak-time restrictions remaining in place. Consequently, their share of advertising revenue might also increase at the expense of other non-PSB channels. An estimate of the net revenue effect<sup>43</sup> on PSBs is a collective increase of £54 - £80 million, which is a 2-3% increase in their net asset revenue (NAR) and a collective reduction for other non-PSB channels of some £36 - £43 million, which is roughly 5.7% to 6.8% of their NAR. So far as viewers are concerned, there would be no change to the amount of advertising on non-PSB channels, but some increase in the amount of daytime advertising on PSB channels, as well as very late at night. However, advertising on PSB channels during the early and late peak hours (7am to 9am and 6pm to 11pm) would remain constrained by the peak-time rules;
- 7.18 Allowing both PSB and non-PSB channels to sell up to 12 minutes an hour (as would be permitted by the AVMS Directive) could increase the PSBs' share of commercial impacts substantially, in the order of 12.9%. The effect could be a significant transfer of revenue from non-PSB channels to PSB channels, resulting in a net increase in advertising revenue for the PSBs of up to £183 million, and a collective reduction for other non-PSB channels of up to £84 million. In the absence of changes to the PSB peak-time rules, the impact on viewers would be broadly similar to that described in paragraph 7.17 above; there would be more advertising in the middle of the night and in daytime on PSB channels, but relatively few viewers would be affected.

### Relaxing peak-time restrictions

- 7.19 A further possibility would be to relax just the peak-time restrictions on PSB channels, bringing them closer to the regime applying to other channels. PSB channels would be likely to increase their share of commercial impacts substantially - depending on the degree to which peak-time restrictions were relaxed. For instance, if the peak-time restrictions were to be relaxed to allow 9 minutes per hour across the peak period without any change in the overall limit, then the effect could be a net increase in advertising revenue for PSBs of around £39 - £62 million, and a collective reduction for other non-PSB channels ranging from £25 - £30 million. Those PSB channels with the largest audiences in peak time (ITV1 in particular) would benefit most. The benefits to Five and S4C1 would be much less significant. The impact on GMTV would be finely balanced.
- 7.20 While the viewing environment on non-PSB channels would be unchanged, peak-time viewers of PSB channels would be likely to see more advertising in all peak-time

<sup>42</sup> Including the impacts from non-PSB channels owned by PSBs, such as ITV2, E4 and Five Life.

<sup>43</sup> The net increase to PSBs is measured as the increase in NAR to the PSB channels less the reduction in NAR from their other non-PSB channels, such as ITV2, E4 and Five Life.

hours. The amount of extra advertising would vary, with the biggest increases occurring between 6pm and 7pm, and 10pm to 11pm. The number of peak time viewers to commercial PSB channels varies between 18 million (6pm to 7pm) and 24 million (9pm to 10pm), out of a total UK population of television viewers of about 57 million.

- 7.21 There could also be other effects on consumers. An increase in peak-time advertising could (for example) encroach on the time available for coverage of regional and national news stories; on the other hand, it would provide additional revenue that PSB channels could use to fund public service programming. However, given the scope to schedule more advertising, the opportunity costs of scheduling lower-rating programming to meet PSB obligations would grow.

### Levelling down

- 7.22 Limiting non-PSB channels to the same advertising minutage as PSBs (an average of 7 minutes an hour) would reduce the supply of advertising impacts overall. As PSB rules would remain unchanged, their impact delivery is unlikely to change, and the PSB channels' share of commercial impacts would rise by the same proportion. The impact on revenue depends on how the change in share of commercial impacts is translated into a change in NAR. An upper estimate of the revenue effect could be a significant transfer of revenue from non-PSB channels to PSB channels, resulting in a net increase in the overall advertising revenue to PSBs of some £76 million, which is 2.8% of their current NAR, and a collective reduction for non-PSB channels of some £26 million, which is 4.1% of their current NAR<sup>44</sup>. Further detail on this is set out in Part 3 of the impact assessment in Annex 4. As all channels would still be able to schedule up to 12 minutes an hour of advertising an hour during their peak viewing hours, it is unlikely that peak-time viewers would notice much change to the amount of advertising they saw. Audiences for daytime and late night programmes on all channels would be likely to see less advertising.

*Q15. What views do stakeholders have on the possible approaches to advertising minutage regulation outlined above?*

### **Restrictions on teleshopping**

- 7.23 Section 8 of RADA gives effect to teleshopping<sup>45</sup> provisions in the TWF Directive which limit:
- a) teleshopping spots to a maximum duration of 20% of daily transmission time, including the maximum permitted allowance of 15% of daily transmission time for spot advertising; and
  - b) teleshopping windows on channels not exclusively devoted to teleshopping to no more than eight, each with a minimum uninterrupted duration of 15 minutes, together comprising no more than 3 hours of daily transmission time.

### **PSB channels**

- 7.24 However, RADA excludes PSB channels from the provisions described in (b) above. Although PSB channels may carry teleshopping and long-form advertisements between midnight and 6am, these must be included in the permitted allowance for

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<sup>45</sup> See definition in paragraph 5.51.

general advertising. As a result, this provision offers very little benefit to PSB channels.

### Non-PSB channels

- 7.25 Some non-PSB channels are exclusively devoted to teleshopping and derive all their revenue from it (such as QVC, bid tv and Gems TV). Such channels offer a convenient way for consumers to purchase goods and services. However, it is open to question how much they contribute to the objective set for Ofcom by the Communication Act 2003 of furthering the interests of citizens and consumers in relation to the range, quality and appeal of television services available throughout the UK. Ofcom would welcome views on this point.
- 7.26 Many but not all of the other non-PSB channels (such as ITV3, Dave, and Virgin1) supplement revenue from advertising and subscriptions by showing up to the maximum of 3 hours of teleshopping permitted by RADA. It is arguable that such channels make a more significant contribution to range, quality and appeal of television services available in the UK. Teleshopping on these channels tends to be shown late at night, when there are few viewers, but generates income that contributes to the viability of channels serving a broad range of interests.

### Possible options

- 7.27 The AVMS Directive maintains the overall restriction on teleshopping spots of 20% of daily transmission time (3 hours for a 24-hour channel), and the minimum duration for teleshopping windows of 15 minutes. However, it removes the limitations on teleshopping features on channels not exclusively devoted to teleshopping. In practice, therefore, the AVMS enables Member States to permit any amount of teleshopping on television services (including channels not exclusively devoted to teleshopping), provided that the teleshopping content (which may include teleshopping spots, is grouped in features of not less than 15 minutes. It is open to Ofcom to maintain existing teleshopping provisions, liberalise them to the extent permitted by the AVMS Directive, or impose stricter rules on the amount of teleshopping.

### Non-PSB channels

- 7.28 The options open to Ofcom include:
- a) maintaining the status quo (Option 1), that is allowing dedicated teleshopping channels to show as much teleshopping content as they wish, but limiting other non-PSB channels to 3 hours a day;
  - b) increasing the amount of teleshopping content allowed on non-PSB channels not exclusively dedicated to teleshopping from the current three hours to a longer period (Option 2);
  - c) reducing the amount of teleshopping allowed on channels not exclusively devoted to teleshopping (Option 3); and
  - d) removing the volume restrictions on teleshopping on non-PSB channels not exclusively devoted to teleshopping, so that they would be free to decide for themselves how much teleshopping to schedule (Option 4).
- 7.29 Ofcom's preliminary assessment is that:

- a) Option 1 would offer no additional benefit to consumers or advertisers, but would tend to encourage non-PSB channels to schedule editorial programming at times when most people are watching;
- b) Option 2 raises the issue of whether substituting a different limit for the current 3-hour limit and applying to all editorial non-PSB channels would further the interests of consumers and citizens. As set out in the IA, the impact on viewers and broadcasters will depend on whether the non-PSB channels choose to develop their own teleshopping services or simply simulcast existing teleshopping. If non-PSBs develop their own teleshopping services this could be beneficial to both viewers and advertisers, but potentially harmful to dedicated teleshopping channels;
- c) Option 3 would not serve the interests of consumers and citizens, given that teleshopping may contribute to the viability of some editorial channels that add to the range and diversity of television services. Restricting the amount of teleshopping would not benefit broadcasters or advertisers; and
- d) Option 4 would be likely to effects on viewers, broadcasters and advertisers similar to that of Option 2, though the scale of the impacts would depend on how much teleshopping editorial non-PSB channels chose to schedule.

*Q16. What views do stakeholders have on the teleshopping options and preliminary assessment outlined above in relation to non-PSB channels?*

## PSB channels

7.30 The options open to Ofcom include:

- a) maintaining the status quo, which severely restricts the ability of PSB channels to take advantage of teleshopping (Option 1);
- b) allowing PSB channels to provide teleshopping under the same arrangements applying to other channels (Option 2);
- c) allowing PSB channels to operate under the same arrangements for teleshopping as other channels between midnight and 6am. For example, if the status quo was maintained, this would allow PSB channels to show 3 hours of teleshopping between midnight and 6am. Alternatively, if all channels were allowed to decide for themselves how much teleshopping to show, this could allow PSB channels to broadcast up to 6 hours of teleshopping overnight. Ofcom has separately proposed that gambling should be classified as teleshopping, which would mean that PSB channels would be allowed to show gambling programmes, in place of the quiz shows that were shown in the past<sup>46</sup>.

7.31 Ofcom's preliminary assessment is that:

- a) Option 1 would mean that late night / early morning viewers (such as shift workers) would continue to have access to some programming. However, this may be a limited benefit: not all PSB channels broadcast programmes throughout the night. Moreover, an increasing number of people will be able to record or retrieve or watch programmes of their choice at times of their choice. This option

<sup>46</sup> Proposal to re-classify TV gambling channels as teleshopping services, 20 February 2008 (<http://www.ofcom.org.uk/tv/ifi/gambling/>)

would prevent PSB channels from generating more revenue to fund public service programming;

- b) Option 2 would be likely to work against the interest of consumers and citizens if this meant that PSB channels substituted programmes with teleshopping at times when significant numbers of people are watching. Competition from PSB channels for teleshopping could also significantly reduce the opportunities for non-PSB channels to generate teleshopping revenue;
- c) Option 3 would protect the interests of consumers and citizens by safeguarding the broadcast of programmes at times of the day when significant numbers are watching, but would allow PSB channels to generate some additional revenue at other times. This revenue would be available to fund public service programming at other times. On the other hand, it could have an adverse effect on other channels showing teleshopping overnight, including dedicated gambling channels.

*Q17. What views do stakeholders have on the teleshopping options and preliminary assessment outlined above in relation to PSB channels?*



## Annex 1

# Responding to this paper

### Introduction

- A1.1 This Annex sets out Ofcom's consultation principles and processes, and explains how to respond to this consultation. Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 28 May 2008**.

### Consultation principles

- A1.2 Ofcom has published the following seven principles that it will follow for each public written consultation:

#### Before the consultation

- A1.3 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

#### During the consultation

- A1.4 We will be clear about who we are consulting, why, on what questions and for how long.
- A1.5 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened version for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.
- A1.6 We will normally allow ten weeks for responses to consultations on issues of general interest.
- A1.7 There will be a person within Ofcom who will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organizations interested in the outcome of our decisions. This individual (who we call the consultation champion) will also be the main person to contact with views on the way we run our consultations.
- A1.8 If we are not able to follow one of these principles, we will explain why. This may be because a particular issue is urgent. If we need to reduce the amount of time we have set aside for a consultation, we will let those concerned know beforehand that this is a 'red flag consultation' which needs their urgent attention.

#### After the consultation

- A1.9 We will look at each response carefully and with an open mind. We will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

## How to respond to this consultation

- A1.10 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 28 May 2008**. If you want to discuss the issues and questions raised in this consultation, please contact Peter Bourton on 020 7981 3494.
- A1.11 Ofcom strongly prefers to receive responses using the online web form at <http://www.ofcom.org.uk/consult/condocs/rada/howtorespond/form>, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing the response cover sheet at the end of this Annex, to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.12 For larger consultation responses - particularly those with supporting charts, tables or other data - please email [daniel.maher@ofcom.org.uk](mailto:daniel.maher@ofcom.org.uk) attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.13 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- Daniel Maher  
Floor 5  
Content & Standards Group  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA
- Fax: 020 7981 3806
- A1.14 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A1.15 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed below. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

## Confidentiality

- A1.16 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk), ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.
- A1.17 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. Please make it clear on the coversheet below if you would like all or part of your response kept confidential. Please also note that sometimes we may need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.18 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual

property rights is explained further on its website at <http://www.ofcom.org.uk/about/accoun/disclaimer/>

## Consultation questions

### Main document

Q1. Do you agree that these proposed regulatory objectives strike an appropriate balance between the duties and other considerations that Ofcom must take account in reviewing advertising regulation? If not, please explain why, and what objectives you would consider more appropriate?

Q2. Do stakeholders agree that the new Code should discontinue detailed genre-specific rules on natural breaks?

Q3. Do stakeholders agree that the new Code should allow advertising and teleshopping breaks to be signalled in sound or vision or by spatial means, and should drop the requirement for teleshopping segments to be distinguished from programmes by both sound and vision?

Q4. Do stakeholders agree that the new Code should discontinue the requirement for a buffer between advertising and coverage of a religious service or Royal occasion?

Q5. Do stakeholders agree that the rule requiring a 20 minute interval between advertising breaks should be scrapped?

Q6. Do stakeholders agree that there should be limits on the number of advertising breaks within programmes of a given scheduled duration?

Q7. Has Ofcom identified the right options for break frequencies? What issues should Ofcom take into account in formulating proposals for consultation?

Q8. Do stakeholders agree that the restrictions on advertising in films, documentaries and religious programmes and children's programming should be relaxed to the extent permitted by the AVMS Directive?

Q9. Do stakeholders agree that changes to the rules on advertising breaks in news and children's programmes that must be made to secure compliance with the AVMS Directive should be deferred until December 2009?

Q10. Do stakeholders agree that:

(a) the Code should make clear that advertisements are permitted between schools programmes?

(b) the requirement for a buffer between coverage of a religious service or Royal occasion and advertising should be discontinued?

(c) the rule prohibiting advertising after an epilogue should be discontinued? and

(d) the rule allowing Ofcom to exclude adverts from specified programmes should be discontinued?

Q11. Do stakeholders agree that the rules limiting the length of individual advertisements on PSB channels should be discontinued?

Q12. Do stakeholders agree that the new Code should discontinue rules on the length of breaks on PSB channels?

Q13. Do stakeholders agree that the draft Code should establish the principle that the distinction between advertising and editorial content must be readily recognisable, and set out the means for doing this, but avoid more prescriptive rules?

Q14. Do stakeholders agree that the current arrangements for transferring unused minutage should remain in place, and be applied to Channel 4 in place of the special arrangements in respect of schools programmes?

Q15. What views do stakeholders have on the possible approaches to advertising minutage regulation outlined above?

Q16. What views do stakeholders have on the teleshopping options and preliminary assessment outlined above in relation to non-PSB channels?

Q17. What views do stakeholders have on the teleshopping options and preliminary assessment outlined above in relation to PSB channels?

## Impact assessment

Q IA1: Do you agree with this overview of the impact of the current rules? Do you agree with our starting hypothesis in respect of the extent to which the current rules are likely to impose a constraint on different broadcasters i.e. PSBs and non-PSBs? If not, please set out your reasoning.

Q IA2: Do you agree with the broad assessment of the impact on different stakeholders of changes to the rules on the distribution of TV advertising set out in Part 2? If not, please set out your reasoning.

Q IA3: Do you consider that our optimisation approach is a reasonable approximation as to how additional advertising minutage would be used by broadcasters in practice? If not, please set out how you would approach this modelling issue and what assumptions you would adopt.

Q IA4: Do you consider dividing non-PSB channels into the three categories of “sold out”, “nearly sold out” and “unsold inventory” reflects the realities of the TV advertising market for non-PSB channels. If not, how would you suggest we approach this issue in modelling terms?

Q IA5: Do you agree that the assumptions of no drop-off effect is a reasonable assumption to make for the purposes of this modelling exercise? If you disagree, please explain your reasoning and provide data to support any alternative assumptions that you would use.

Q IA6: Do you consider that this range of scenarios is appropriate? Are there any other types of scenarios that you believe we should explore as part of our modelling work?

Q IA7: Is the modelling of the changes in the volume of commercial impacts/share of commercial impacts for these different scenarios broadly in line with any modelling work you have carried out? If not, we would be interested to understand what results you have obtained in modelling these scenarios.

*Q IA8: To what extent do you think that is reasonable to assume a constant price premium in light of changes to minutage restrictions? If you think that this could be unreasonable, please set out what you think might happen and how that could be modelled.*

*Q IA9: To what extent do you think that this approach would be a reasonable modelling approach to adopt?*

*Q IA10: To what extent do you think that is reasonable to make use of the elasticity estimates derived from the PwC study? Are they in line with your own views as to the operation of the TV advertising market? If not, please explain your reasoning.*

*Q IA11: To what extent is there evidence to support the argument that an increase in advertising minutage could reduce overall advertising expenditure on TV, i.e. that the advertising market is inelastic?*

*Q IA12: To what extent do you consider that these estimates of the financial impact of changes to the rules on the amount of advertising minutage provide an indication of the potential overall scale of any changes as well as the distribution of the impact between PSBs and non-PSBs? Are they in line with your own views as to how the TV advertising market would adjust to such changes? If not, please explain your reasoning.*

*Q IA13: The discussion of the modelling approach set out above has focused on the potential impact on different types of broadcasters. To what extent could there be an impact on other stakeholders, particularly media buying agencies and their clients, the advertisers? What is the attitude of these stakeholders to changes in the volume of advertising minutage?*

*QIA14: Do stakeholders agree with the analysis of the impact of these options on non-PSB channels? If not, please set out your reasons, providing evidence to support your analysis wherever possible.*

*QIA15: Do stakeholders agree with our analysis of the impact on PSB channels of these three options? If not, please explain your reasons, providing evidence to support your analysis wherever possible.*

## Next steps

- A1.19 Following the end of the consultation period, Ofcom intends to consider the implications of comments on the options in the context of a separate review of public service broadcasting. It expects to consult on the future of advertising regulation in the autumn of 2008, with a view to reaching a decision in the first quarter of 2009.
- A1.20 Please note that you can register to receive free mail updates alerting you to the publications of relevant Ofcom documents. For more details please see: [http://www.ofcom.org.uk/static/subscribe/select\\_list.htm](http://www.ofcom.org.uk/static/subscribe/select_list.htm)

## Your views on Ofcom's consultation processes

- A1.21 Ofcom seeks to ensure that responding to a consultation is easy as possible. If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at [consult@ofcom.org.uk](mailto:consult@ofcom.org.uk). We would particularly welcome thoughts on how Ofcom

could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.

- A1.22 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Vicki Nash, Director Scotland, who is Ofcom's consultation champion:

Vicki Nash  
Ofcom  
Sutherland House  
149 St. Vincent Street  
Glasgow G2 5NW

Tel: 0141 229 7401  
Fax: 0141 229 7433

Email [vicki.nash@ofcom.org.uk](mailto:vicki.nash@ofcom.org.uk)

## Cover sheet for response to an Ofcom consultation

### BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

### CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing	<input type="checkbox"/>	Name/contact details/job title	<input type="checkbox"/>
Whole response	<input type="checkbox"/>	Organisation	<input type="checkbox"/>
Part of the response	<input type="checkbox"/>	If there is no separate annex, which parts?	

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

### DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

## Annex 2

# European framework for advertising regulation

## Extracts from Television without Frontiers Directive<sup>47</sup>

### Article 1

(c) 'television advertising' means any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes by a public or private undertaking in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations, in return for payment;

(f) 'teleshopping' means direct offers broadcast to the public with a view to the supply of goods or services, including immovable property, rights and obligations, in return for payment.

### Article 10

1. Television advertising and teleshopping shall be readily recognizable as such and kept quite separate from other parts of the programme service by optical and / or acoustic means.
2. Isolated advertising and teleshopping spots shall remain the exception.
3. Advertising and teleshopping shall not use subliminal techniques.
4. Surreptitious advertising and teleshopping shall be prohibited.

### Article 11

1. Advertising and teleshopping spots shall be inserted between programmes. Provided the conditions set out in paragraphs 2 to 5 are fulfilled, advertising and teleshopping spots may also be inserted during programmes in such a way that the integrity and value of the programme, taking into account natural breaks in and the duration and nature of the programme, and the rights of the rights holders are not prejudiced.
2. In programmes consisting of autonomous parts, or in sports programmes and similarly structured events and performances containing intervals, advertising and teleshopping spots shall only be inserted between the parts or in the intervals.
3. The transmission of audiovisual works such as feature films and films made for television (excluding series, serials, light entertainment programmes and documentaries), provided their scheduled duration is more than 45 minutes, may be interrupted once for each period of 45 minutes. A further interruption shall be allowed if their scheduled duration is at least 20 minutes longer than two or more complete periods of 45 minutes.

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<sup>47</sup> The consolidated text of the TWF Directive can be found at <http://eur-lex.europa.eu/LexUriServ/site/en/consleg/1989/L/01989L0552-19970730-en.pdf>.



4. Where programmes, other than those covered by paragraph 2, are interrupted by advertising or teleshopping spots, a period of at least 20 minutes should elapse between each successive advertising break within the programme.

5. Advertising and teleshopping shall not be inserted in any broadcast of a religious service. News and current affairs programmes, documentaries, religious programmes and children's programmes, when their scheduled duration is less than 30 minutes, shall not be interrupted by advertising or by teleshopping. If their scheduled duration is 30 minutes or longer, the provisions of the previous paragraphs shall apply.

## **Article 18**

1. The proportion of transmission time devoted to teleshopping spots, advertising spots and other forms of advertising, with the exception of teleshopping windows within the meaning of Article 18a, shall not exceed 20 % of the daily transmission time. The transmission time for advertising spots shall not exceed 15 % of the daily transmission time.

2. The proportion of advertising spots and teleshopping spots within a given clock hour shall not exceed 20 %.

3. For the purposes of this Article, advertising does not include:  
— announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from those programmes;  
— public service announcements and charity appeals broadcast free of charge.

## **Article 18a**

1. Windows devoted to teleshopping broadcast by a channel not exclusively devoted to teleshopping shall be of a minimum uninterrupted duration of 15 minutes.

2. The maximum number of windows per day shall be eight. Their overall duration shall not exceed three hours per day. They must be clearly identified as teleshopping windows by optical and acoustic means.

## **Article 19**

Chapters I, II, IV, V, VI, VIa and VII shall apply mutatis mutandis to channels exclusively devoted to teleshopping. Advertising on such channels shall be allowed within the daily limits established by Article 18 (1). Article 18 (2) shall not apply.

## **Article 19a**

Chapters I, II, IV, V, VI, VIa and VII shall apply mutatis mutandis to channels exclusively devoted to self-promotion. Other forms of advertising on such channels shall be allowed within the limits established by Article 18 (1) and (2). This provision in particular shall be subject to review in accordance with Article 26.

## **Article 20**

Without prejudice to Article 3, Member States may, with due regard for Community law, lay down conditions other than those laid down in Article 11 (2) to (5) and Articles 18 and 18a in respect of broadcasts intended solely for the national territory which cannot be received, directly or indirectly by the public, in one or more other Member States.

## Extracts from Audio Visual Media Services Directive<sup>48</sup>

### Article 1

(i) “television advertising” means any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes by a public or private undertaking or natural person in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations, in return for payment;

(l) “teleshopping” means direct offers broadcast to the public with a view to the supply of goods or services, including immovable property, rights and obligations, in return for payment;

### Article 10

1. Television advertising and teleshopping shall be readily recognisable and distinguishable from editorial content. Without prejudice to the use of new advertising techniques, television advertising and teleshopping shall be kept quite distinct from other parts of the programme by optical and /or acoustic and / or spatial means.

2. Isolated advertising and teleshopping spots, other than in transmission of sports events, shall remain the exception.

### Article 11

1. Member States shall ensure, where television advertising or teleshopping is inserted during programmes, that the integrity of the programmes, taking into account natural breaks in and the duration and the nature of the programme, and the rights of the right holders are not prejudiced.

2. The transmission of films made for television (excluding series, serials and documentaries), cinematographic works and news programmes may be interrupted by television advertising and/or teleshopping once for each scheduled period of at least thirty minutes. The transmission of children's programmes may be interrupted by television advertising and/or teleshopping once for each scheduled period of at least 30 minutes, provided that the scheduled duration of the programme is greater than 30 minutes. No television advertising or teleshopping shall be inserted during religious services.

### Article 18

1. The proportion of television advertising spots and teleshopping spots within a given clock hour shall not exceed 20 %.

2. Paragraph 1 shall not apply to announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from those programmes, sponsorship announcements and product placements.

### Article 18a

Teleshopping windows shall be clearly identified as such by optical and acoustic means and shall be of a minimum uninterrupted duration of 15 minutes.

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<sup>48</sup> At the time of publication, an official consolidated version of the AVMS Directive was not available. However, an unofficial version published by the European Commission can be found at [http://ec.europa.eu/avpolicy/docs/reg/avmsd/avmsd\\_cons\\_en.pdf](http://ec.europa.eu/avpolicy/docs/reg/avmsd/avmsd_cons_en.pdf).

### **Article 19**

The provisions of this Directive shall apply *mutatis mutandis* to television channels exclusively devoted to advertising and teleshopping as well as to television channels exclusively devoted to self-promotion. Chapter III as well as Article 11 and Article 18 shall not apply to these channels.

### **Article 20**

Without prejudice to Article 3, Member States may, with due regard for Community law, lay down conditions other than those laid down in Article 11(2) and Article 18 in respect of television broadcasts intended solely for the national territory which cannot be received directly or indirectly by the public in one or more other Member States.

**Annex 3****Rules on the Amount and Distribution of Advertising (current)****Contents**

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3	General Separation of Advertisements and Programmes	5
4	Particular Separations of Advertisements and Programmes	7
5	Internal Breaks in Programmes	8
6	Recognition of Natural Breaks	10
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## **FOREWORD**

- (a) This document sets out the rules that Ofcom requires television broadcasters licensed by it to observe on the amount, scheduling and presentation of advertising. Standards for the content of television advertising are administered by the *Advertising Standards Authority (ASA)* [[www.asa.org.uk](http://www.asa.org.uk)].
- (b) Section 322 of the Communications Act 2003 gives Ofcom the power to give directions to its licensees on these matters and this document sets out the basic regime to which these directions will refer.
- (c) These rules give effect to requirements laid down in the EU Directive on Television Broadcasting 89/552/EEC of 3 October 1989 (as amended by Directive 97/36/EC of 19 June 1997), and the 1989 Council of Europe Convention on Transfrontier Television.

The rules are of three kinds:

- (i) those which apply to all services and appear as plain text;
  - (ii) those which apply only to Channel 3 (ITV and GMTV), Channel 4, Channel 5 and the 'qualifying' (ie: 'simulcast') digital services of these channels. These are identified by (A) after the rule number. (Note that the rules for Channel 4 also apply to S4C);
  - (iii) those which apply only to services other than Channels 3-5 and their 'qualifying' digital services. These are identified by (B) after the rule number.
- (d) Ofcom does not believe there is a case for imposing substantially greater restrictions than those required by the EU Directive on services other than Channels 3-5. Rules in this area are principally concerned with limiting interference to programmes from too much or too frequent advertising, and with ensuring that the time set aside for advertising does not curtail excessively the time available for programmes proper. These matters relate to the quality and value to viewers of the services concerned. Ofcom does not have a remit to influence programme quality on services other than Channels 3-5; its role is confined to enforcing consumer protection standards in areas defined by the Communications Act and implementing the United Kingdom's obligations under international instruments. In the case of Channels 3-5 Ofcom's remit does extend to the quality and value these services provide to viewers and it believes that in some cases more demanding standards than those required by the Directive remain justified.
  - (e) The European instruments give discretion to national authorities not to apply the requirements relating to amount and distribution of advertising to broadcasts intended solely for one EU Member State or Convention Party which may not be received, directly or indirectly, in any other such State or Party. In the case of satellite services, Ofcom will not regard a service as qualifying for consideration under this criterion unless its signal is encrypted and neither its service nor its means of decryption is marketed outside the single EU Member State or Convention Party concerned. Any licensee wishing to have any part of these Rules disapplied in relation to their service must obtain the prior approval in writing of Ofcom. Ofcom will only agree to such requests if it is satisfied that there are particular circumstances which warrant this and that to do so would not confer an unfair competitive advantage on the service concerned.

## Section 1

# Amount of Advertising

## 1.1 Amount per day

### (Channels 3-5 only)

#### 1.1.1(A)

- (a) The total amount of advertising in any one day must not exceed an average of seven minutes per hour of broadcasting.

#### NOTES:

- (i) *Transfers of advertising entitlement from one day to another are permissible only exceptionally and where this is necessary in the interests of good programme presentation. In principle, all advertising foregone for good programme presentation reasons (for example the suspension of advertising for a Royal death, during major news stories or because the nature of the programme does not allow the full allocation to be taken, as in the case of long operas) can be recouped by transfers to other days. This will be subject to the ability to recoup within a reasonable period of time.*
- (ii) *Additionally, Ofcom may permit transfers to make good losses (including marred presentation) sustained through unforeseen human or technical failure or unavoidable interruptions in transmission. In all cases, losses should where possible be recouped in airtime of similar value. Losses of up to three and a half minutes may be reclaimed automatically and Ofcom notified of the date and time of the recoupment. Ofcom's prior permission must be sought for the recoupment of any time in excess of three and a half minutes. Where a licensee is unable for any reason to transmit any part of its service, no advertising time is earned.*
- (iii) *In no circumstances may transfers cause the hourly average on any particular day to exceed nine minutes.*
- (b) For the purposes of this rule a day's broadcasting is deemed to commence at 6am and run for the following 24 hours.
- (c) In the periods 6pm–11pm and 7am–9am the total amount of advertising must not, without Ofcom's prior permission, exceed an average of eight minutes an hour on any one day.

### (Other services)

#### 1.1.2(B)

- (a) The total amount of spot advertising in any one day must not exceed an average of nine minutes per hour (15 per cent) of broadcasting.
- (b) This may be increased by a further three minutes per hour (5 per cent) devoted to teleshopping spots, but this additional 5 per cent must not be used for other forms of spot advertising.

#### NOTE:

*For the requirements relating to teleshopping windows and to channels dedicated exclusively to teleshopping see Section 8, and Section 9 for the rules relating to extended advertising features on certain kinds of local television channels.*

## **1.2 Maximum amount in any one hour**

In any one clock hour there must be no more than 12 minutes of advertising spots and/or teleshopping spots. (See Section 8 for teleshopping windows.)

## **SECTION 2**

### **The Calculation of Advertising Time**

#### **2.1 Advertising items**

For the purposes of calculating advertising time the following are deemed to be advertising items:

- (a) all items of publicity broadcast on behalf of someone other than the licensee in breaks in or between programmes, apart from public service announcements, charity appeals broadcast free of charge, announcements required by Ofcom and information to viewers broadcast in accordance with an Ofcom requirement;
- (b) publicity by the licensees themselves except information to viewers about or in connection with programmes.

#### **NOTES:**

- (i) *Publicity by licensees addressed to potential advertisers or investors will be regarded as an advertising item.*
- (ii) *Cross-promotion of programmes within Channel 3 does not count as an advertising item.*
- (iii) *On Channels 3–5 all items of publicity are taken into account for the purposes of the rules on maximum duration of centre breaks (see Section 5.6(b)).*
- (iv) *For the purposes of regulation of advertising content there is no exemption for any of the items referred to in (a) and (b) above.*
- (v) *For the rules governing the promotion of licensees' own goods and services and programme-related material, see Section 10 of the Ofcom Broadcasting Code*
- (vi) *On-air promotions of teleshopping items will count as advertising unless they form part of a general list of forthcoming programmes, the teleshopping material is not emphasised and there is no reference in the promotion to any specific products.*

#### **2.2 Intervals between programmes**

Intervals of more than five minutes between programmes do not count towards the broadcasting time from which entitlement to advertising minutage is calculated. For example, 'interludes', the transmission of slides with programme details or technical breakdowns and the like do not count as broadcasting time.

## **(Channel 4 only)**

### **2.3 (A) Schools programmes**

The amount of minutage that may be claimed by Channel 4 in respect of advertising forgone in connection with schools programming will be as determined by Ofcom from time to time.

## **SECTION 3**

# **General Separation of Advertisements and Programmes**

### **3.1 Break identification**

Television advertising must be readily recognisable as such and kept quite separate from other parts of the programme service. Breaks containing advertising spots of any kind, including teleshopping spots, must be identified in vision and/or sound, for example station identifications going in and out of breaks. Teleshopping windows must be identified both in vision and in sound at both the beginning and end of the break. (see Section 8.1.2B (iii) below).

### **Categories of programme carrying no advertising 3.2**

Advertisements must not be inserted in the course of any broadcast of:

- (i) a news or current affairs programme of less than half an hour scheduled duration;
- (ii) a documentary of less than half an hour scheduled duration;
- (iii) a programme for children of less than half an hour scheduled duration;
- (iv) a programme designed and broadcast for reception in schools;
- (v) a religious service or other devotional programme;
- (vi) a religious programme (other than religious services or devotional programmes which may not carry any internal advertising at all) of less than half an hour scheduled duration;
- (vii) a formal Royal ceremony or occasion;

**NOTE:**

*3.2(vii) means a formal ceremony or occasion of which the Sovereign or members of the British Royal Family enjoying the prefix 'Royal Highness' are the centre. It applies to occasions such as the State Opening of Parliament and Trooping the Colour.*

- (viii) a programme of live transmission of Parliamentary proceedings, including coverage of Committees, of half an hour scheduled duration or less;

**NOTE:**

*See Section 9 for further rules on advertising in relation to Parliamentary broadcasts.*

- (ix) such other programmes as Ofcom may from time to time specify in particular or general terms, for example, programmes of a particularly harrowing or sensitive nature;

## **(Additional for Channels 3-5)**

### **3.2(A)**

- (x) any programme of less than 20 minutes scheduled duration.



### **3.3 Buffers**

- (a) There must be a gap of at least 30 seconds between a programme in the following categories and any advertising preceding or following it:
  - (i) a religious service or other devotional programme;
  - (ii) a formal Royal ceremony or occasion as defined in Section 3.2 (vii).
- (b) No advertising may follow epilogues and other religious items that appear before a closedown.

### **3.4 Isolated Advertising and Teleshopping Spots**

In accordance with an EU requirement breaks in programmes containing just one spot advertisement or one teleshopping spot shall remain the exception.

## **SECTION 4**

### **Particular Separations of Advertisements and Programmes**

Standards for the content of television advertising are administered by the Advertising Standards Authority (ASA). These include rules governing particular separations of advertisements and programmes.

## **SECTION 5**

### **Internal Breaks in Programmes**

#### **5.1 Placing of Breaks**

Breaks within programmes may be taken only at a point where some interruption in continuity would, in any case, occur (even if there were no advertising) and such natural breaks must not damage the integrity or value of the programme in which they occur.

*NOTE:*

*More detailed guidance on natural breaks is given in Section 6.*

#### **5.2 Programmes with ‘Autonomous Parts’**

In programmes made up of autonomous parts (for example magazine format programmes) breaks may be taken only in between the separate parts.

#### **5.3 Events containing Intervals**

In sports programmes and in coverage of similarly structured events or performances containing intervals, breaks may be taken only in the intervals.

#### **5.4 Period Between Breaks**

In the case of programmes other than those referred to in 5.2 and 5.3 above, a period of at least 20 minutes should normally elapse between each successive internal break. A slightly shorter interval is acceptable only where the interests of viewers would be better served by taking a break earlier (for example to fit in with a particularly suitable interruption of continuity).

However, in such cases the programme must not contain more internal breaks than would be permissible by strict application of the 20 minute minimum separation principle.

## 5.5 Films

Feature films and films made for television (excluding series, serials, light entertainment and documentaries) must not carry an internal break if their scheduled duration is 45 minutes or less. Taking their scheduled duration as a whole, longer films may be interrupted once for each complete period of 45 minutes with a further break if scheduled duration is at least 20 minutes longer than two or more complete periods of 45 minutes. Thus:

films of 45 minutes or less	no breaks;
between 46 and 89 minutes	one break;
between 90 and 109 minutes	two breaks;
between 110 and 135 minutes	three breaks;
between 136 and 180 minutes	four breaks;
between 181 and 225 minutes	five breaks, etc.

### (Additional for Channels 3-5)

## 5.6 (A) Internal Breaks on Channels 3–5

(a) In programmes of up to 20 minutes duration - no breaks.

### NOTE 1

The normal use of internal breaks in longer programmes should be as follows:

- (i) in programmes of 21- 44 minutes duration - one break
- (ii) in programmes of 45-59 minutes duration - two breaks
- (iii) in programmes of 60-89 minutes duration - three breaks
- (iv) in programmes of 90-119 minutes duration - four breaks
- (v) in programmes of 120-149 minutes duration - five breaks

### NOTE 2

*When inserting additional breaks in existing programmes licensees should take particular note of Section 6 following when selecting a 'natural break' point.*

- (b) The maximum duration of any break within a programme is three minutes fifty seconds, of which no more than three and a half minutes may be advertising<sup>49</sup>.
- (c) Ofcom may permit departures from the normal requirements in 5.6(a) if it is satisfied that these are justified for programming reasons.
- (d) Limited departures from the pattern in 5.6(a) are also permissible in the case of coverage of certain sporting and similarly structured events where there are frequent natural breaks of brief duration. The distribution of advertising in such intervals must, however, have regard to the interests of good programme presentation. It will often be preferable for some intervals not to carry advertising.

<sup>49</sup> Amended July 2006. See paras 7.61-7.69 of Statement in relation to Review of Cross-Promotion Rules dated 9 May 2006:

<http://www.ofcom.org.uk/consult/condocs/promotion/statement/statement.pdf>

## **SECTION 6**

### **Recognition of Natural Breaks**

#### **6.1 Definition**

For the purposes of these rules a 'natural break' is defined as a point at which some interruption in programme continuity would in any case occur were the programme not to be interrupted by advertising. Rule 5.1 requires that such natural breaks must not damage the integrity or value of the programme in which they occur. The following guidance applies to the interpretation of these requirements. The rules in this Section apply to the placing of all breaks, whether or not they contain advertising.

#### **6.2 Drama and Situation Comedy**

A break may be taken only when:

- (i) there is a clearly marked and dramatically significant lapse of time in the action, or
- (ii) there is a complete change of scene, with a significant break in the continuity of action, or

#### **6.3 Documentaries and Discussion Programmes**

A break may be taken only when:

- (i) there is a change of topic, or
- (ii) there is a change of exposition, or
- (iii) at the end of any filmed inserts used in live documentaries, or
- (iv) new participants in a discussion programme are introduced.

#### **6.4 Light Entertainment**

A break may be taken only at the end of an act or at the end of a sequence.

#### **6.5 Music**

A break may normally be taken only at the end of a musical composition, a set, or between the acts of an extended musical work. Breaks may not be taken between movements of a symphonic or similar work, nor between segments of a series of pieces usually heard as a continuous performance.

#### **6.6 Children's Programmes**

Depending on the composition of the programmes, the same rules as for drama and light entertainment apply.

#### **6.7 Sport**

- (a) Breaks may be taken during intermissions of the particular sport being televised - for example half time, between races, between innings, etc.
- (b) In live coverage of long continuous events breaks may be taken at points where the focus of coverage shifts from one point to another of the event for example after a resume of the current placings in a race and before refocusing on a particular section of the race.

Breaks may also be taken adjacent to cut-away discussion or background film insert sequences.

- (c) Where edited recorded sport programmes are shown, break points should be selected to avoid creating the impression that some part of the event for example a round in a boxing match - has been omitted to accommodate advertising.

## **6.8 Outside broadcasts other than Sport**

Breaks may be taken where the commentator finishes discussing one item in the programme and moves to another - for example exhibitions, displays etc.

## **6.9 Programmes with Prizes**

A break may be taken at the point where one competitor leaves the scene and before a new competitor is introduced. Where there is no change of competitor, a break may occur at the end of one complete round of questions.

## **6.10 Acquired Programmes**

Licensees should note that in programmes acquired from overseas pre-existing breaks may be taken only where this does not conflict with Rule 5.4.

## **6.11 Relays of Overseas Broadcasts**

Where an Ofcom licensee relays a live programme feed from an overseas broadcaster, the break pattern of the originating broadcaster may be taken. Where advertising inserted by the originating broadcaster is also taken, the Ofcom licensee is responsible for ensuring that he has the ability to block or otherwise replace the transmission of any material that does not comply with Ofcom Codes and rules.

# **SECTION 7**

## **Long Advertisements**

### **7.1 Identification of Long Advertisements**

- 7.1.1 Any advertisement that lasts longer than one minute should be particularly carefully assessed to ensure that there is no risk of confusion with programme material.
- 7.1.2 Except where the style makes it is fully apparent that it is an advertisement, any advertisement which lasts more than a minute must be flagged as such (for example by superimposed text) at the beginning, and at the end (if its character as an advertisement is not clearly established at the end).
- 7.1.3 Where an advertisement adopts a programme style (for example documentary, studio interview, cookery demonstration) there must in addition be a five second reminder to viewers of its advertising nature in every full minute of duration and a three second reminder in any part minute over 20 seconds.

*NOTE:*

*7.1.3 does not apply to material on dedicated teleshopping or self-promotional channels (see Section 8) or where the presence in the schedule of an extended advertising feature such as a teleshopping 'window' (see Section 8.1.2) is separately identified to viewers in programme information and published listings. In this case it will be sufficient for its commercial purpose to be identified by optical and acoustic means at the beginning and end of each item.*

- 7.1.4 Licensees are reminded that the BCAP Advertising Code forbids advertisements to refer to themselves as 'programmes'.

## **(Channel 3 – 5 only)**

### **7.2(A) Long Advertisements on Channels 3 – 5**

- (a) Without Ofcom's prior approval no advertisement may exceed seven minutes duration.
- (b) Airtime for advertisements of three and a half to seven minutes duration must be drawn wholly or principally from the same clock hour with any shortfall coming from the closest immediately adjacent clock hour.
- (c) Without Ofcom's prior approval, advertisements lasting longer than three and a half minutes must not be broadcast in the periods 6pm–11pm and 7am–9am.

**NOTE:**

*The requirement in Rule 7.2(A) above does not apply to advertisements, including teleshopping, broadcast between midnight and 6am in the time aggregated from the advertising allowance between those hours. (See 8.1.4 below).*

## **SECTION 8**

### **Teleshopping and Self Promotional Channels**

#### **8.1 Teleshopping**

The EC Directives make special provision for teleshopping. Their requirements are set out in Rules 8.1.1–3 below which apply, as relevant, to channels other than Channels 3–5. Teleshopping on Channels 3–5 is dealt with in Rule 8.1.4.

- (a) Teleshopping (also known as home shopping, advertorials, infomercials, etc.) is a form of advertising involving the broadcast of direct offers to the public with a view to the supply of goods or services, including immovable property, or rights and obligations, in return for payment.
- (b) Teleshopping offers of any kind must contain the direct offer for sale to the public within the teleshopping transmission itself. Where the offer for sale is only contained elsewhere (for example in a text service) the material may not be classed as teleshopping.
- (c) For the avoidance of doubt, for the purposes of all aspects of compliance teleshopping spots and teleshopping windows are part of the service on which they appear, even when supplied by another licensee. Teleshopping spots and teleshopping windows count towards the teleshopping allocation of the service on which they appear.

- (d) Where a teleshopping service is transmitted between other services or in intervals between two parts of one service, both licensees must make it clear in sound and in vision when their respective services begin and end.
- (e) Licensees are reminded that the requirements of BCAP Advertising Code apply in full to teleshopping spots, teleshopping windows or channels devoted to teleshopping, and to any claims made in them.
- (f) Except where otherwise specified the requirements of Section 7 (Long Advertisements) apply to teleshopping material.

### **8.1.1(B) Teleshopping Spots**

Up to 5 per cent of daily transmission time above the spot advertising maximum of 15 per cent of transmission time may be devoted to teleshopping spots. This 5 per cent may be increased by any balance of 15 per cent of transmission time not devoted to spot advertising. (See Section 1.1.2(B).)

### **8.1.2(B) Teleshopping Windows**

Teleshopping windows are extended teleshopping features with a minimum uninterrupted duration of 15 minutes. They may be broadcast on channels not exclusively devoted to teleshopping subject to the following:

- (i) there may be no more than eight teleshopping windows per day;
- (ii) the overall duration of teleshopping windows may not exceed three hours per day;
- (iii) teleshopping windows of whatever length may not be interrupted by any other material, whether advertising or teleshopping spots or by editorial. Advertising and teleshopping spots may, however, be inserted between adjacent teleshopping windows.
- (iv) teleshopping windows may comprise a collection of separate teleshopping spots, provided that the window as a whole is presented as a single entity and identified as such in listings of any kind.
- (v) teleshopping windows must be identified both in vision and in sound at both the beginning and end of each window in a way which makes clear to viewers its commercial nature;
- (vi) teleshopping windows must be separately identified in published programme listings. *(See also Section 2.1 Note (vi) on promotion of teleshopping material).*

### **Teleshopping Channels 8.1.3(B)**

- (a) Channels otherwise devoted exclusively to teleshopping may carry other forms of advertising up to the limits set out in Section 1.1.2(B).
- (b) Sections 1.2 and 8.1.2 above do not apply to such channels.

## **Additional for Channels 3 – 5.**

### **Teleshopping on Channels 3 – 5 8.1.4(A)**

- (a) There is no additional airtime for teleshopping on Channels 3–5. Between midnight and 6 a.m. these channels may run long-form advertisements, including teleshopping. This airtime will, however, count towards the daily maximum referred to in Section 1.1(A).

- (b) Any such advertisements exceeding 7 minutes' duration must be separately identified in published programme listings. *(See also Section 2.1 Note (vi))*
- (c) Licensees are reminded that for the purposes of Section 1.2, which implements an EU Directive requirement, any advertising other than a teleshopping feature of a minimum duration of 15 minutes will count towards the 12 minute maximum in any one clock hour.

## **8.2(B) Self Promotional Channels**

- (a) For the purposes of these rules, self promotional activities are deemed to be a particular kind of advertising in which the broadcaster promotes its own products, services or channels.
- (b) Channels devoted exclusively to self-promotion are permitted and their self-promotional content is not subject to the quantitative limits on advertising in these rules.
- (c) Advertising and teleshopping for other products and services on such channels are permitted up to the limits set out in Section 1.1.2(B).
- (d) Licensees are reminded that the requirements of the BCAP Advertising code apply in full to self-promotional channels and to any claims made in them.

### **GENERAL NOTE:**

*For the avoidance of doubt, channels devoted exclusively to teleshopping under 8.1.3 or to self-promotion under 8.2 above may not broadcast material (other than permitted advertising and teleshopping) which does not contain direct offers to the public in the first instance or promote the broadcaster's own goods or services in the second. Neither type of channel may contain conventional programme elements such as news, sport, films, documentaries or drama, etc.*

## **SECTION 9**

### **Advertising on Local Television Channels**

#### **9.1(B) Definition**

For the purposes of this Section a 'local television channel' is one which regularly broadcasts programmes about the specific locality in which it is received and which:

- (i) is provided only under a single Restricted Television Service Licence or only under a single Television Licensable Content Service Licence which is distributed within contiguous cable areas served by a single head-end; and
- (ii) may not be received, directly or indirectly, in one or more other Member States of the European Union

#### **NOTE:**

*Although condition 9.1(ii) does not bear directly on whether a channel is 'local', in the ordinary sense of the word, it is a necessary one under European law if the regime in this Section is to apply to the channel concerned*

## **9.2(B) Local Advertising Features**

Local television channels may use all or part of the airtime for teleshopping windows to which they are entitled for the purpose of broadcasting local advertising features, provided:

- (i) the advertising purpose is clearly flagged to viewers, in vision and sound, at the beginning and end of each feature;
- (ii) the features are of a minimum duration of 15 minutes and are separately identified in listings;
- (iii) a significant proportion of the content of each feature refers specifically to the locality in which it appears. This does not exclude customisation of material prepared for wider purposes but such customisation should be significant e.g. in the case of coverage of national advertisers not be confined to the addition of slides with details of local outlets but should, for example, include extended material filmed at those outlets.

*NOTE:*

*For the avoidance of doubt, licensees are reminded that the content of any such advertising features must comply with the BCAP Advertising code*

## **SECTION 10**

### **Parliamentary Broadcasts**

#### **10.1 Introduction**

This Section sets out special requirements for the handling of advertising in broadcasts of Parliamentary proceedings, which were adopted after consultation with the authorities of both Houses of Parliament.

*NOTE:*

*The application of these requirements to broadcasts of proceedings in other elected assemblies would need to take account of the wishes of those bodies.*

#### **10.2 Definition**

'Parliamentary proceedings' include proceedings on the floor of either House and Parliamentary Committees.

#### **10.3 Presentation**

Normal ITC rules on the amount and scheduling of advertising as set out in Sections 1 and 5 will normally apply, subject to the particular conditions noted below.

10.3.1 No programmes of half an hour scheduled duration or less devoted to live transmission of Parliamentary proceedings may be interrupted.

10.3.2 In live coverage, transition to and from the Chamber must be effected via a programme presenter in vision or sound in order to avoid excessive abruptness.



10.3.3 Breaks in live coverage may only be taken at natural transitional points, and programme directors/editors must be given discretion to advance, delay or cancel breaks to avoid artificial interruptions in live proceedings.

10.3.4 Breaks should be dropped altogether where this would be incompatible with editorial responsibility, for example in coverage of matters of great gravity or emotional sensitivity.

## **10.4 Exclusion of certain types of advertisement**

The following categories of advertisement are not acceptable for transmission during live broadcasts of Parliamentary proceedings, or other programmes that include footage of Parliamentary proceedings other than brief news extracts:

- (i) advertisements featuring or referring to Members of Parliament, or Parliamentary parties, or with a Parliamentary setting;
- (ii) advertisements with direct and specific relevance to main items of Parliamentary coverage where these are known in advance;
- (iii) such other advertisements as Ofcom may from time to time specify in particular or general terms.

## **10.5 Use of Programme Material**

In no circumstances may footage from Parliamentary broadcasts be used in advertisements.

# **SECTION 11**

## **Amount of Advertising on Text Services<sup>50</sup>**

The following rules set out the limits on the amount of advertising permitted on the Public Teletext Service (PTS) and the PTS in digital form.

### ***11.1 Permitted advertising***

Advertising may be included in the form of full advertising pages (which may be allocated to one or a number of advertisers) or in the form of advertising messages which appear on pages containing editorial material. Such messages may refer to advertising on other pages.

### ***11.2 Amount of advertising***

11.2.1 Advertising on any page containing editorial material must not in area exceed 30% of that page.

11.2.2 In a multi-page which contains any editorial material, full advertising pages must appear for no more than 35% of the time.

11.2.3 The number of full main pages of advertising (including the source pages of advertising multi-pages) must not exceed 35% of the total number of main pages offered by the licensee. For the purposes of this rule only, any multi-page which includes both editorial

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<sup>50</sup> The rules in this section previously appeared in the ITC Code for Text Services.

and full pages of advertising will count as a proportion of one advertising main page and one editorial main page, e.g. two full advertising pages within a six frame multi-page will count as 1/3 of an advertising main page and 2/3 of an editorial main page. (A multi-page carrying only advertising will count as one advertising page regardless of the number of sub-pages it contains.)

## Annex 4

# Impact Assessment

## Introduction

- A4.1 The analysis presented in this annex represents an impact assessment (“IA”) as defined in section 7 of the Communications Act 2003 (the Act).
- A4.2 IAs provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making. This is reflected in section 7 of the Act, which means that generally we have to carry out IAs where our proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in Ofcom’s activities. However, as a matter of policy Ofcom is committed to carrying out and publishing IAs in relation to the great majority of our policy decisions. Further information about our approach to IAs is set out in Ofcom’s guidelines<sup>51</sup>.
- A4.3 In part 1 of this IA, we set out an economic framework for analysing changes to the rules on the amount and distribution of TV advertising. Part 2 comprises an assessment of the specific options for changes to the rules on the distribution of TV advertising airtime. Where possible we attempt to quantify the impact of the different options being considered. Where it has not proved possible to quantify the effects we have instead attempted to describe the likely impacts in qualitative terms and to describe their relative magnitudes. Part 3 sets out a modelling approach for analysing the potential impact of changes to the amount of TV advertising airtime. At this stage we are not putting forward specific options for consultation. Rather, we want to explore the issues that are likely to arise in making an assessment of the potential impact of different types of changes to the existing rules on the amount of TV advertising. Finally Part 4 examines the issue of changes to the rules on teleshopping.
- A4.4 You should send any comments on this IA to us by the closing date for this consultation – 28 May 2008. We will consider all comments in relation to changes in the distribution rules before deciding whether to implement our proposals. In relation to changes in the amount and frequency of advertising, we will take into account comments on our modelling approach and use them to inform the development of specific options to be consulted on in the next phase of this process.

## Citizen-Consumer Interest

- A4.5 As set out in the main document, Ofcom considers that, as regards television advertising regulation, the interests of citizens and consumers concern:
- a) the availability of a wide range of television services that, taken as a whole, are both of high quality and calculated to appeal to a variety of tastes and interests;
  - b) the maintenance of a sufficient plurality of providers of different television services;

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<sup>51</sup> *Better policy-making: Ofcom’s approach to Impact Assessments*  
([http://www.ofcom.org.uk/consult/policy\\_making/guidelines.pdf](http://www.ofcom.org.uk/consult/policy_making/guidelines.pdf))

- c) the fulfilment of the purposes of public service television broadcasting (set out in section 3 of the main document);
- d) such other matters as appear, having regard to the opinions expressed by consumers, important to them.

A4.6 In respect of (d) we are aware, both from issues raised by individual viewers, and by research that we have commissioned, that viewers are concerned both with the amount of advertising and the frequency of advertising breaks on television. However, these issues are often conflated. While consumers also express opinions from time to time about the content of individual advertisements, these issues lie outside the current consultation, which deals only with issues related to the rules on the amount and distribution of advertising.

### Ofcom's policy objectives

A4.7 As explained in section 3 of the main document, Ofcom has considered what its objectives should be (in relation to television advertising regulation), in the light of its statutory duties and other relevant considerations (including those set out above under 'Citizen consumer interest'). In brief, Ofcom proposes that its policy objective in this case should be to further the interests of citizens and consumers, in particular, in relation to:

- a) the range, quality and appeal of television services available throughout the UK and in different parts of the UK, and, in particular, public service channels;
- b) the importance of securing a sufficient degree of plurality of providers of television services; and
- c) such other matters as, having regard to the opinions expressed by consumers, appear important to them.

A4.8 In doing so, Ofcom will also seek to secure that such regulation:

- a) is evidence-based, transparent, proportionate, consistent, and limited to the measures needed to achieve the first objective;
- b) avoids the imposition or maintenance of regulation that is unnecessary;
- c) takes account of the desirability of promoting competition, and the nature and interests of different consumers, in relevant markets; and
- d) is consistent with the UK's obligations under the European Convention of Human Rights.

A4.9 Given these policy objectives, and having regard to section 7 of the Communications Act 2003, Ofcom considers that the IA should assess the impact of different options for advertising regulation on:

- viewers – e.g. whether the change is likely to adversely affect the viewer in terms of the viewing experience and the perceived quality of the programming;
- broadcasters, in particular PSBs: e.g. whether the burden imposed on broadcasters by either existing or new rules is proportionate and/or the likely financial impact of any proposed change; and,

- other stakeholders; for instance, the impact on the advertisers or media buying agencies or whether there is an impact on the use of television as an advertising medium.

## Part 1 - Economic Analysis of TV Advertising

- A4.10 As discussed in general terms in the main part of the document, television advertising can be analysed in the context of a two-sided market framework.
- A4.11 A market is two-sided when there is an intermediary that facilitates the interaction between two distinct groups of end-users. The intermediary seeks to attract each side to the market by charging them appropriately and to exploit the positive externalities<sup>52</sup> arising from such interaction. Thus, in the case of commercial free-to-air TV channels, the broadcaster provides programming to one end-user group - the viewers. At the same time it is able to “sell” that audience to another end-user group - the advertisers. Other things being equal, the larger the audience for the broadcaster’s programming, the more valuable that audience is likely to be to advertisers. The broadcaster acts as the intermediary between viewer and advertiser.
- A4.12 Commercial TV channels compete for both viewers and advertisers, which are in turn attracted by the possibility of reaching potential customers. A key feature of two-sided markets is that there is an inter-dependence between the players on either side of the market i.e. actions which impact on one side of the market not only have a knock-on effect to the other side of the market but there can also be in turn a feedback effect into the first market. For instance, if a channel increases the amount of spending on its programming or reduces the number of repeats it shows or increases the amount of live sport it shows, then there could be a positive impact in terms of attracting more viewers to that channel. The increase in audience share could then have a positive impact on advertisers’ demand for airtime on that channel, causing an increase in its advertising revenues. A channel operator would hope that the increase in advertising revenue more than offsets the initial increase in expenditure on its programming.
- A4.13 A key issue for firms operating in two-sided markets is determining the optimal pricing *structure* as well as the pricing level. In two-sided markets it is frequently observed that the pricing structure is skewed in favour of a particular side e.g. there is tendency to subsidise the side of the market that is assumed to be more price sensitive. Advertising-financed TV channels are a good example of the (apparent) subsidisation of one side of the market. There is no (direct) charge for viewers and it is only advertisers who pay for the delivery of their commercial messages. That said, although there appears to be an apparent subsidy for viewers, it is possible to regard the programme interruptions caused by advertising breaks as the “price” paid by viewers for the provision of the free to air television service. Under this approach an increase in the amount or frequency of advertising could be regarded as an increase in the price to the viewer (all other things being equal).
- A4.14 It is important to recognise that not all advertising is automatically “bad” from the point of view of viewers. Advertising can be a means of communicating information about products to viewers, informing them of new product launches, reminding them of product attributes etc and viewers could benefit from the provision of this information. Viewers may also benefit from the presence of more advertisers if the

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<sup>52</sup> A positive externality occurs when an economic transaction results in a positive effect on a third party not directly involved in the transaction.

advertising revenue generated for the broadcaster results in improved 'quality' of programming (e.g. more blockbuster movies or live broadcasts of high-profile sports events).<sup>53</sup>

- A4.15 The fact that there are both positive and negative aspects to TV advertising, suggests that there is likely to be some optimal level (in terms of the amount and frequency) of advertising in terms of the trade off between viewers and advertisers. The optimal level could also vary by broadcaster. Given that there is likely to be this optimal level, the key issue from a regulatory point of view is then whether the market for television advertising will function in a way which is likely to deliver the socially optimal level of advertising in terms of balancing the interests of viewer<sup>54</sup> and advertiser.
- A4.16 In a market that is working effectively one might expect viewer irritation with the level and/or frequency of advertising to provide an important self-disciplining constraint on broadcasters. For instance, if a broadcaster showed too many adverts on a channel, then – other things being equal – one might expect viewers to switch away from that channel. In effect the price to the viewer of watching that channel has gone up and viewers could respond by switching away. A decrease in audiences to that channel would reduce the commercial impacts delivered by that channel which in turn would make it less attractive to advertisers, leading them to switch their advertising budgets to other channels. As a result the broadcaster would end up suffering a reduction in income.
- A4.17 In addition, the presence of the BBC might have a role as a disciplining device on advertising funded broadcasters. If viewers object to the volume of advertising on these channels, then they would have an option of switching over to the BBC to watch programming that was not interrupted by advert breaks. It should be pointed out that it is not clear how strong this disciplining function may be or indeed whether it works on a consistent basis. It is the case that for some specific events, e.g. live sporting events which are shown on both ITV1 and BBC - such as the FA Cup final - the BBC tends to enjoy significantly higher viewing figures. This would tend to suggest that – at least where there is identical programming available on the BBC and ITV1 - viewers have a preference for viewing without adverts. However, for more general programming, it is not clear that programming on BBC channels would automatically be a direct substitute for programming on commercial broadcasters e.g. for *Coronation Street* on ITV1.
- A4.18 However, there are a number of factors which could prevent the market from self-correcting in this way i.e. leading to a market failure. For instance, as has been noted already in the main document, the annual sales contracts that are negotiated between sales houses and media-buying agencies tend to focus on share of broadcast deals. This in turn incentivises broadcasters to protect their SOCI position. If a single broadcaster were to increase the volume of advertising (and if there was no dramatic drop off in audiences), that broadcaster would see an increase in their SOCI. The nature of the contractual negotiations between broadcasters/sales houses and media-buying agencies means that the broadcaster could then use this increase in SOCI to get agencies to increase the proportion of their TV advertising expenditure that they place with that channel going forward. Although this analysis might hold for a single channel, given the dynamic with

<sup>53</sup> The fact that, from the viewers' standpoint, there are both positive and negative effects from TV commercials, suggests that there is a socially optimal level of advertising.

<sup>54</sup> We intend to conduct deliberative research as part of the consultation process to provide us with insight into how consumers value the benefits and disbenefits of advertising

respect to the importance of SOCI, if one broadcaster were to increase the amount of advertising then there would be an incentive on all other broadcasters to follow suit and to increase the volume of advertising in order to preserve their respective SOCI positions. Thus, it could be the case that even if the market was working effectively, the outcome might still be socially sub-optimal.

- A4.19 If there were market power in respect of the provision of television airtime this could limit the ability of advertisers to switch advertising expenditure away from a particular broadcaster in response to falling audiences. Also, audience fragmentation makes the delivery of consistently large audiences more challenging. Channels that are able deliver large audiences relative to other channels allow advertisers to build unique coverage quickly and effectively and are likely to remain valuable to advertisers.
- A4.20 The market power issue referred to above would tend to be relevant to particular market circumstances and to particular broadcasters. The issues around the incentive to safeguard SOCI would appear to be relevant to all broadcasters/sales houses and could dominate concerns about viewer irritation. In addition, it could be that the BBC only provides a limited constraint on commercial broadcasters. All of these reasons could provide an economic rationale for intervention.
- A4.21 Historically intervention in the UK TV advertising market has been aimed at limiting the amount and distribution of advertising. The underlying concern has been that the incentive to safeguard SOCI would tend to dominate concerns about viewer irritation i.e. the market would not necessarily self-correct and the amount of advertising would be above the optimal level. The focus of intervention from an economic point of view has therefore been on limiting the amount of TV advertising with an implicit presumption that without intervention the amount and frequency of TV advertising actually delivered could be in excess of the optimal level. That is not to say that there might not be other public policy reasons for intervention in this area. However, the focus of this IA is on the economic analysis of any intervention.

### **Impact of RADA on the amount of advertising**

- A4.22 The impact on individual broadcasters of the current rules on minutage will depend on whether or not the restrictions actually constrain the amount of advertising broadcasters schedule. We use a stylised representation of the market for TV advertising to provide an economic framework in which to consider potential changes in the amount of advertising. For ease of exposition, the analysis focuses on one side of the market – the interaction between broadcaster and advertisers over the delivery of commercial impacts.
- A4.23 We make an assumption that the demand for commercial impacts can be represented in the form of a downward sloping demand curve i.e. if the price of commercial impacts falls, there is likely to be an increase in the demand for commercial impacts. The extent of this effect will depend on the slope of the demand curve.
- A4.24 In Figure 1 below we represent the situation in which the existing minutage rules do in fact constrain the volume of advertising airtime that a broadcaster can offer. Demand for commercial impacts on that channel is represented by the downward sloping demand curve (D). We assume that the marginal cost of providing commercial impacts by the broadcaster is constant for the ease of exposition. In the diagram,  $P^*$  and  $Q^*$  represent the profit maximising levels of price and quantity –

denoted by the point where marginal revenue is equal to marginal cost<sup>55</sup>. Given the demand curve and the broadcaster's costs, this would represent the price/volume combination of commercial impacts that the broadcaster would choose to offer if not subject to any constraints<sup>56</sup>.

- A4.25 We represent the impact of the current advertising rules in terms of the vertical line  $S_1$ . RADA constrains the amount of advertising and it is assumed that in the short-run a broadcaster cannot change their schedule to deliver larger audiences for a given amount of airtime. In the short-run the constraint on the volume of advertising means that the volume of impacts delivered by the broadcaster cannot be increased beyond the level  $Q_1$  and the resultant price is  $P_1$ . One implication of this situation is that the actual price paid by advertisers ( $P_1$ ) may have been kept higher than the (profit maximising) price  $P^*$  that broadcasters would choose to offer if not constrained by RADA. So, RADA, while holding down the price to viewers, may have had the effect of increasing the price to advertisers.
- A4.26 Another implication of the impact of the RADA constraint is that any increase in the demand for commercial impacts would only result in an increase in price – the broadcast could not increase the volume of impacts delivered and price rises instead.

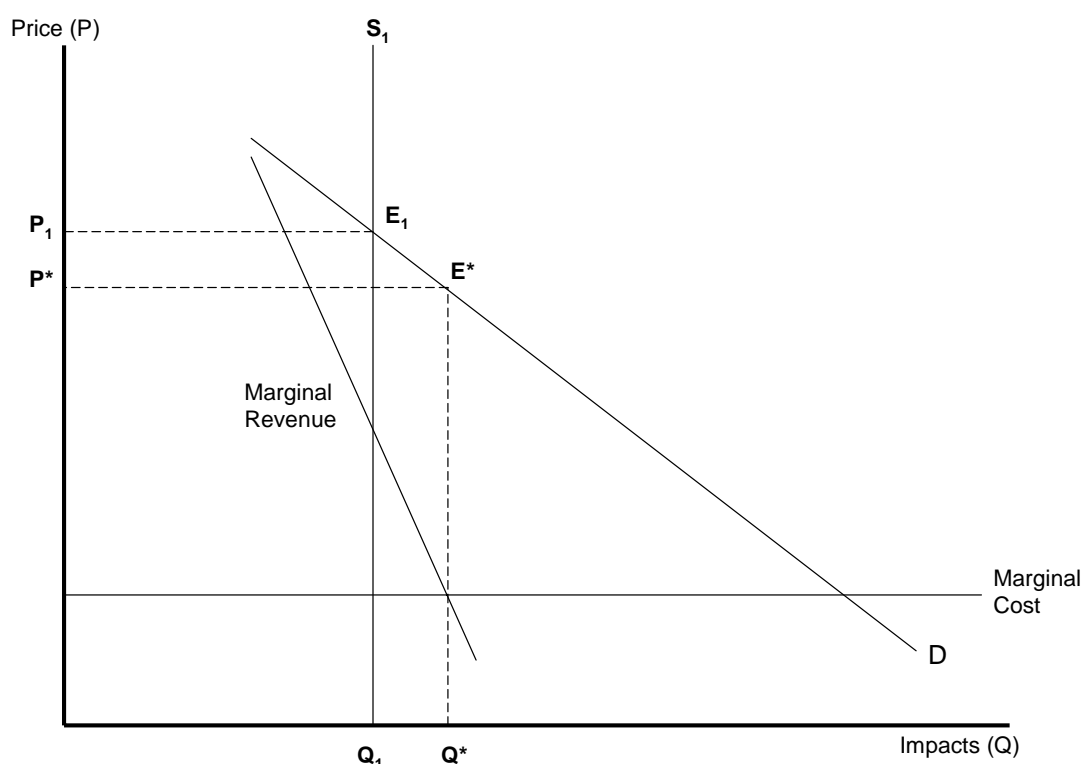
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<sup>55</sup> This is the profit maximising point because below this level of output the revenue the firm would derive from the sale of additional advertising airtime would be greater than the cost of providing that airtime while above this level of output the marginal cost of advertising would be above the marginal revenue earned on the sale of that airtime.

<sup>56</sup> This is in itself a simplification – there could be different profit-maximising points at different times of the day.



**Figure 1: Impact on a broadcaster of the current advertising rules (where the constraint is binding)**

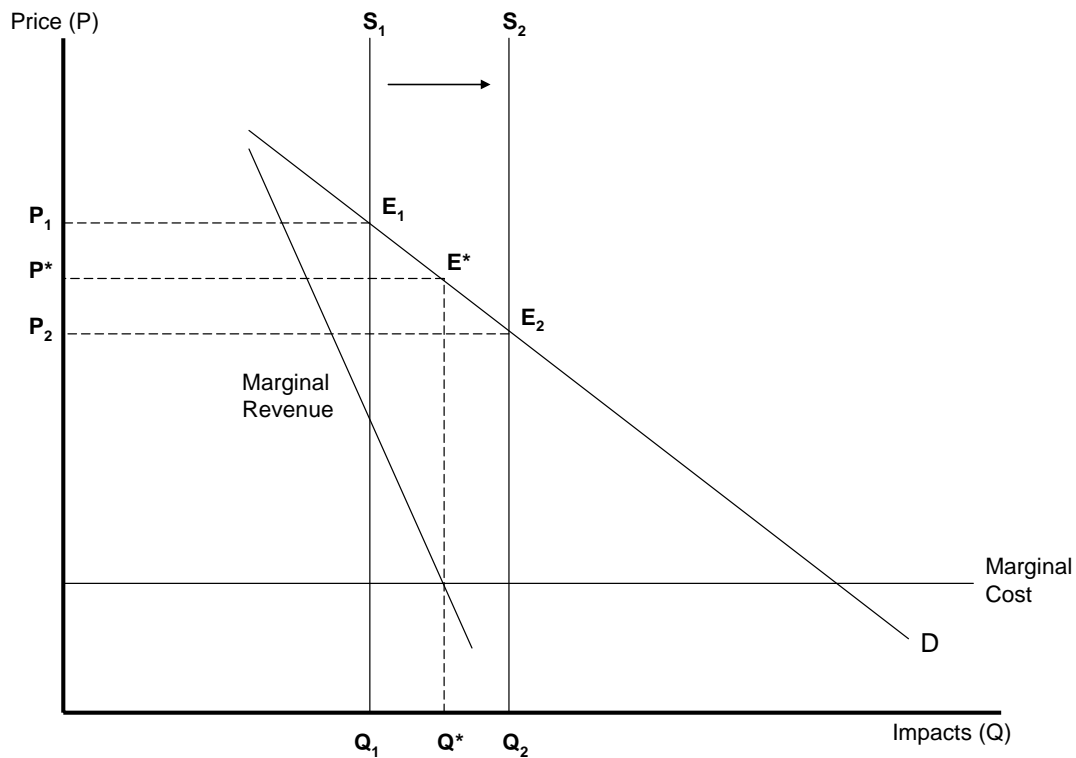


- A4.27 The idea that the impact of the RADA rules is price to advertisers could be higher than would otherwise be the case is not a universal result across all broadcasters. In a situation where the profit maximising point ( $P^*$ ,  $Q^*$ ) is to the left of the vertical  $S_1$  constraint implied by the RADA rules then the constraint does not have an effect on the firm<sup>57</sup> i.e. RADA is non-binding. The firm would choose to offer airtime up to its profit-maximising level of airtime but no more and the price to advertisers would not be artificially inflated.
- A4.28 The impact of an increase in the rules on the amount of advertising can be illustrated graphically by a shift in the constraint (the S-line) to the right.
- A4.29 If the original constraint was binding then a rightward shift in the S-line means that the constraint is moved closer to the profit-maximising position. If this is the case then a broadcaster would be expected to increase the amount of airtime that it offers and at the same time the price of airtime would be reduced. A broadcaster would be expected to increase the airtime it offered up to its profit-maximising point.
- A4.30 If the constraint was not binding in the first place then relaxing the output restriction implied by RADA would have no effect on output or price of the unconstrained firm as the profit-maximising level of output is unchanged.

<sup>57</sup> Provided that the broadcaster was not also subject to the Airtime Sales Rules which requires PSBs (ITV1, C4, five, GMTV and S4C) to sell all their airtime up to the maximum level permitted by the RADA rules.

- A4.31 If – as a result of relaxing the rules - the constraint represented by the  $S_1$  line were to end up at a point beyond the profit-maximising point (see  $S_2$  line in Figure 2 below) then – unless the broadcaster is a PSB and is subject to the Airtime Sales Rules – RADA would cease to be a binding constraint and the broadcaster would not be expected to offer any more airtime than that implied by its profit-maximising level of output (i.e.  $Q^*$ ).

**Figure 2: Impact of the relaxation of the advertising rules.**



- A4.32 One issue that needs to be taken into account when considering changing the constraints on the amount of advertising minutage is that we do not know where the existing RADA constraints (as represented by the S-lines in the above diagrams) sit in relation to the profit-maximising point for individual broadcasters<sup>58</sup>. PSBs are required to sell all their available airtime so we are not able to observe what their behaviour might be in the absence of any rules. We can, however, observe that not all non-PSBs sell out their airtime. This could reflect a lack of demand for that broadcaster's airtime or that for broadcasters that are relying on a combination of subscription and advertising revenue for funding, the profit maximising amount of advertising airtime is to the left of the limit imposed by RADA.
- A4.33 Our starting hypothesis is that the existing rules are likely to impose a constraint on the PSBs but that they only impose a constraint on certain non-PSBs.

*Q IA1: Do you agree with this overview of the impact of the current rules? Do you agree with our starting hypothesis in respect of the extent to which the current rules*

<sup>58</sup> Indeed we do not know the overall optimal level of advertising that would balance both sides of the market.

*are likely to impose a constraint on different broadcasters i.e. PSBs and non-PSBs? If not, please set out your reasoning.*

## **Impact of RADA on the distribution of advertising**

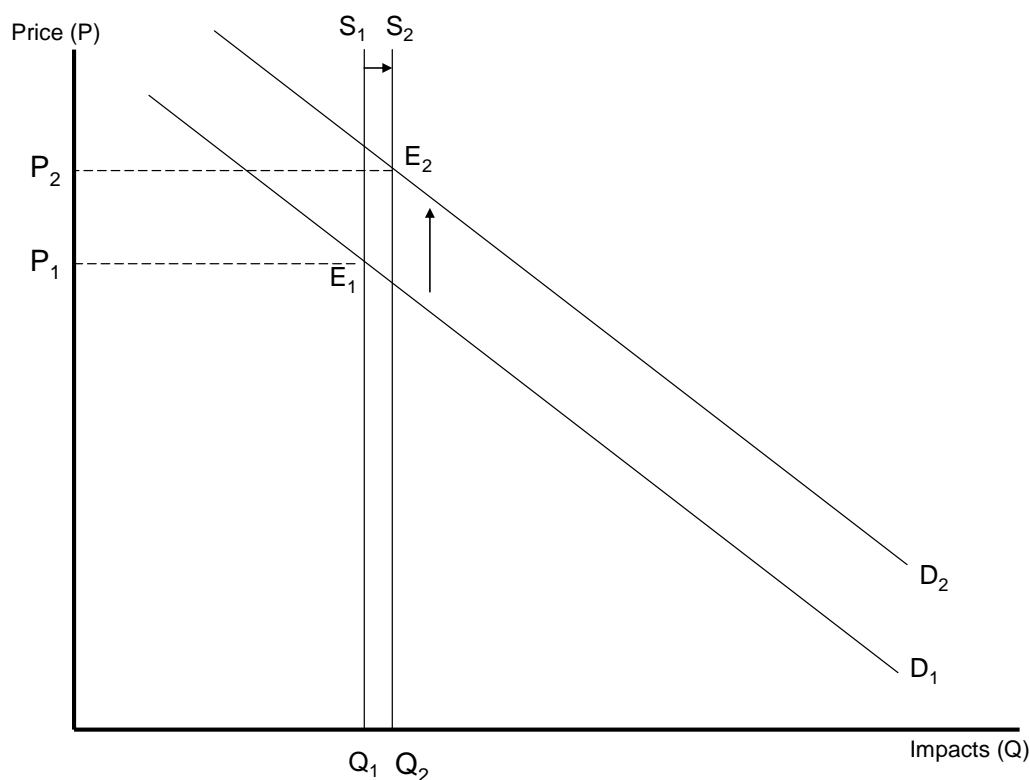
- A4.34 The current rules on the distribution of advertising breaks impose certain restrictions on the way in which advertising breaks are scheduled. However, it is more difficult to represent the impact of these rules in the same way as it is possible to represent the rules on the amount of advertising. However, it is possible to represent what changes to the rules could mean at a market level.
- A4.35 Ofcom understands that a greater frequency of advertising breaks (within a fixed amount of advertising airtime) would provide advertisers with a higher share of break and also more first and last in break positions. The research available to Ofcom appears to suggest a clear benefit to advertisers from an increased share of break, both in terms of a lower drop off in ratings<sup>59</sup> and increased effectiveness in raising brand recall for those who actually watch the ad<sup>60</sup>. However, the benefits of being first and last in break are not certain<sup>61</sup>. The evidence also seems to suggest that on the whole more frequent, shorter breaks are likely to yield higher recall and therefore to be valued by media buyers.
- A4.36 As in the previous discussion, let us assume that in the short run the supply of advertising airtime is essentially fixed. This means that the market supply of commercial impacts can be represented as a vertical supply line (see diagram below). It is possible to regard changes to the rules on the distribution of advertising as having an impact on both the supply and demand for TV advertising.
- A4.37 On the supply side, if changes to the rules on the distribution of advertising allow a more sympathetic break pattern, then any drop off in ratings in advertising breaks is likely to be lower. This means that there would be an overall increase in the supply of impacts. In the diagram below this can be represented as a shift in the supply curve from  $S_1$  to  $S_2$ .
- A4.38 On the demand side, if changes to the distribution rules had the effect of improving the effectiveness of television in raising (say) brand recall, then it is possible that advertisers would be prepared to pay more for a given volume of advertising i.e. the overall quality of TV as an advertising medium could be considered to have increased. In diagram below this can be represented as an upward *shift* in the demand curve from  $D_1$  to  $D_2$ .
- A4.39 The outcome of these two effects is that the amount of commercial impacts supplied increases (from  $Q_1$  to  $Q_2$ ) and price rises from  $P_1$  to  $P_2$ .

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<sup>59</sup> June-Young Song (2005)

<sup>60</sup> Billets Share of Break Study, 1993

<sup>61</sup> Tse & Lee (2001), Journal of Advertising Research found that the first two positions in an advertising break have the lowest recall and the last two positions in the break have the highest recall. Billets Share of Break study found that spots which are first and last in break have the highest recall whereas Carat Foretel found the opposite.

**Figure 3: Changes to the Rules on the Distribution of Advertising.**

A4.40 As set out above, the IA now divides into three. The next section considers specific proposals in respect of the way in which the distribution of advertising is regulated. Part 3 looks at the issues that arise in respect of considering changes in the amount of advertising. Part 4 looks at the issue of teleshopping.

## Part 2 – Rules on the distribution of advertising

A4.41 The distribution-related rules in RADA comprise:

- a) the detailed genre-specific rules on natural breaks;
- b) rules on the means by which the separation of advertising and programming is achieved, including break identification and buffers (e.g. between advertising and coverage of a religious service or a Royal occasion);
- c) rules on the intervals between advertising breaks (all channels), and the frequency of breaks in programmes of a given duration (PSB channels).

A4.42 The existing distribution-related rules are summarised in section 6 of the main document, and reproduced in full in Annex 3. In many cases, the AVMS Directive would allow these rules to be retained, modified or scrapped. We consider the impact of each of these options on stakeholders – viewers, broadcasters and advertisers and deal with the issues in the order that they are set out in section 6.

A4.43 Pre-consultation discussions with relevant stakeholders have indicated that it would be difficult to quantify – in a systematic fashion the impact of changes in relation to

the distribution of advertising. As a result, this section of the IA sets out the impact on different groups of relevant stakeholders in qualitative terms and only discusses the likely magnitude of any changes in general terms. Our starting hypothesis has been that more flexibility/fewer prescriptive rules should represent a benefit to broadcasters and advertisers. We only seek to quantify the impact where stakeholders have provided relevant data. Unless otherwise stated the comparison we make in considering different options is relative to the status quo.

## Natural breaks

- A4.44 Section 5 of RADA (Annex 3) sets out the general principle that advertising breaks within programmes should not damage the integrity of programmes, and should occur in natural breaks, where these exist. This general principle reflects Article 11 of the TWF Directive, which is carried forward into the AVMS Directive. The RADA rules also set out detailed genre-specific guidance on how natural breaks should be taken in different types of programme.
- A4.45 Ofcom's rules must retain the general rule set out in Article 11(1) of the AVMS Directive but otherwise can consider retaining the rules, modifying them, or scrapping them.

### *Ofcom proposal*

- A4.46 Our proposal is to remove the genre-specific guidance and to rely instead on the general principle that advertising breaks in programmes should not damage the integrity of the programmes and should occur in natural breaks.

## Impact on viewers

- A4.47 Our assumption here is that the change should not be detrimental for viewers and could even be beneficial. In pre-consultation discussions, broadcasters and indeed media buying agencies have suggested that, given that there is a need for advertising breaks, audiences would prefer breaks to occur at a "natural" point in the programming. This would reduce the risk that the ad.break is perceived as interrupting a programme and would thus mitigate the risk of viewer irritation.
- A4.48 Removing detailed specifications should give broadcasters more flexibility to produce programming which could be structured in a way that is more likely to enhance the viewer experience compared to the status quo.

## Impact on broadcasters

- A4.49 If audiences are more receptive to advertising if an ad.break can be positioned at a natural point in a programme, then this proposal is likely to increase the effectiveness of TV as an advertising medium. If that is the case then the impact on broadcasters should be a positive financial benefit or at least help to keep advertisers using TV; it would remove detailed regulation while retaining a guiding principle that broadcasters have said is important to them as well as to viewers. However, we believe that the scale of this effect on its own is likely to be small and difficult to quantify.

## Impact on advertisers

- A4.50 We would expect that advertisers would welcome measures which allowed broadcasters to maintain or improve the effectiveness of TV advertising as a

medium. Such changes would assist them in achieving their marketing objectives. Again, we believe that the scale of the benefit is difficult to quantify but would be likely to be positive.

## Separation of advertising and programming

A4.51 Article 10(1) of the amended AVMS Directive requires that ‘television advertising and teleshopping shall be readily recognisable as such and kept quite separate from other parts of the programme service by optical and/or acoustic means. It also incorporates the possibility that advertising and teleshopping breaks can be kept distinct from programmes by ‘spatial means’. The RADA rules are slightly more prescriptive: advertising breaks must be identified in vision and/or sound, and teleshopping windows must be identified in both vision and sound.

A4.52 In order to comply with the AVMS Directive, Ofcom must retain the requirement to identify both advertising breaks and teleshopping windows by means of sound, vision or spatial separation. The options available to it are to retain the current rules, or to modify them.

### *Ofcom proposal*

A4.53 We propose to amend the rule to reflect the AVMS Directive, that is, to allow advertising and teleshopping to breaks to be denoted in sound or vision or by spatial means and to drop the requirement for teleshopping segments to be distinguished from programmes by both sound and vision.

## Impact on viewers

A4.54 As it will continue to be necessary to distinguish advertising from programmes by sound, vision or spatial means, we do not consider that the changes would have any particular impact on viewers.

## Impact on broadcasters

A4.55 There could be a small benefit to some broadcasters in terms of moving to a more consistent approach to identifying both advertising breaks and teleshopping windows in the same way rather than using different approaches.

## Impact on advertisers

We do not anticipate that there would be any impact on other stakeholders e.g. advertisers.

## Buffers

A4.56 At present, section 3.3 of RADA requires that there should be a gap of at least 30 seconds between the coverage of a religious service or Royal occasion and any preceding or subsequent advertising. The options available to Ofcom are to retain, modify or scrap this rule.

### *Ofcom proposal*

A4.57 We propose removing this rule in its entirety.

### Impact on viewers

- A4.58 We do not think that viewers would regard the absence of a buffer between coverage of religious services and Royal occasions as likely to be detrimental to their interests. Viewers are much more familiar with the presence of advertising around a range of programmes than they were when the rule was originally introduced in the 1950s. We would also expect that commercial pressures (see below) would tend to mean that broadcasters will be sensitive to the scheduling of advertisements around such programming.

### Impact on broadcasters

- A4.59 We think that broadcasters are likely to be mindful to take into account how advertising breaks might be structured in and around such programming. We believe that there will be a certain amount of commercial pressure on all broadcasters to take into account the particular sensitivities of their advertising clients to placing their adverts in and around such programming. Broadcasters would not want to erode the effectiveness of the medium by the inappropriate scheduling of advertising breaks around religious services or Royal occasions.
- A4.60 Broadcasters often include promotional material about forthcoming programmes at the beginning and end of an advertising break and so it would be easy enough for broadcasters to maintain some sort of buffer if they considered that to be appropriate.

### Impact on advertisers

- A4.61 Ofcom does not consider that advertisers would be compromised by the removal of this rule. Advertisers are often sensitive to the programmes that their products are associated with and broadcasters are also likely to take this into account.

## **Restrictions on the advertising within programmes**

### **Limits on the number of breaks**

- A4.62 As set out in the main document, Section 5.4 of RADA requires that a period of at least 20 minutes should normally elapse between each successive internal break in programmes other than films and certain other types of programmes. PSB channels are subject to slightly stricter rules, set out in Section 5 of RADA (Annex 3). The effect of these is to limit the number of internal breaks in a half-hour programme to one (as against two on a non-PSB channel), and three in a programme scheduled to last an hour.
- A4.63 The AVMS Directive removes the existing restriction and so provides Ofcom with an opportunity to decide whether to retain, modify or scrap the so-called 20 minute rule. In addition there is then the need to consider whether there should be limits on the number of advertising breaks in programmes of a given scheduled duration and, if so, what those limits should be.

### Ofcom proposal

- A4.64 In view of the lack of clear evidence on viewers' response to changes in the distribution of advertising, we propose to end the 20 minute rule but adopt rules which have the effect of maintaining the status quo in terms of the overall number of advertising breaks per hour. Broadcasters will have discretion about the positioning

of advertising breaks subject to a limit, for example, of two breaks per half-hour programme on non-PSB channels and one break per half-hour programme on PSB channels.

- A4.65 We will return to the issue of the appropriate limits on the number of breaks having gathered further data from responses to this consultation and from deliberative research we plan to undertake later in 2008. In the meantime, as indicated in question 7, we would welcome views on whether the options identified in section 6 are the right ones to consider. We would also welcome views and evidence on how each option might affect the distribution of advertising between broadcasters.

### Impact on viewers

- A4.66 Option 1 would essentially replicate the status quo in terms of the maximum number of breaks allowed on all channels. As such we do not think that there would be a significant impact on viewers. The absence of widespread complaints about the frequency of breaks at present suggests that viewers are content with the status quo. There would be some benefit in terms of the viewer experience from the flexibility given to broadcasters in getting rid of the 20 minute rule.

### Impact on broadcasters and advertisers

- A4.67 Broadcasters have told us that the status quo means maintaining the longer advertising breaks that are common with current break patterns (up to 3 minutes 50 seconds on PSB channels, and slightly longer on non-PSB channels). It would of course be open to broadcasters to have longer end breaks.
- A4.68 An effect of these longer breaks can be that viewing figures can drop off (although it is not clear to what extent any “drop off” in audiences is a significant problem). If drop off were an issue, then that would imply that broadcasters were losing potential commercial impacts and that television advertising was not as efficient as it could be.
- A4.69 Advertisers have also told us that they would prefer a move away from the status quo towards shorter, more frequent advertising breaks. They have also suggested that viewers would not be averse to this outcome.

## **Restrictions on advertising in certain programmes**

### Films

- A4.70 Reflecting a provision in Article 11(3) of the TWF Directive, section 5.5 of RADA limits feature films and films made for television (excluding series, serials, light entertainment and documentaries) to one break for every scheduled period of 45 minutes.
- A4.71 The AVMS Directive would allow one advertising break for every period of 30 minutes. This would enable channels to schedule one additional break in a 2 hour film. It would be possible to retain the current rule, extend the period to somewhere between 30-45 minutes, or implement the AVMS provision in full. However, the AVMS Directive would prevent Ofcom from implementing the same rules that apply to other programmes.



### *Ofcom Proposal*

A4.72 We propose to allow one advertising break for every period of 30 minutes in films.

#### *Impact on viewers*

A4.73 Given that viewers are already used to more frequent breaks in other types of programmes, we do not believe that a move to allow breaks in films after a period of 30 minutes would have a significant impact on them. Minimising the difference between the way advertising breaks are regulated in films and other programmes would help to simplify regulation. Moreover, it would enable those broadcasters which secure additional advertising revenue to invest in the acquisition or production of better programming.

#### *Impact on broadcasters and advertisers*

A4.74 The ability to schedule an additional advertising break in a 2-hour film could be expected to result in an increase in a broadcaster's delivery of commercial impacts and with it its share of commercial impacts. This should in turn result in an increase in advertising revenue for the broadcaster, all other things being equal. For instance, in discussions one channel has suggested that relaxing the current restrictions along the lines provided for in the AVMS Directive could increase its advertising revenue by several millions of pounds a year.

A4.75 Relaxing this restriction would be of particular benefit to dedicated film channels (such as Film4 and True Movies) but could also be of benefit to other channels that make use of films in their schedule (e.g. ITV1, ITV2, Sky One, Channel 4, UKTV Gold and Five).

A4.76 Advertisers would benefit from additional opportunities to reach demographic groups attracted by different film genres, although the overall impact is likely to be modest.

### News, documentary, children's and religious programmes

A4.77 Section 3.2 of RADA requires that advertisements must not be inserted in the course of any broadcast of:

- a) a news or current affairs programme of less than half an hour scheduled duration;  
or
- b) a documentary of less than half an hour scheduled duration;
- c) children's programme of less than 30 minutes; and
- d) religious programmes of less than 30 minutes.

A4.78 These rules give effect to Article 11(5) of the TWF Directive, though the Directive refers only to programmes of religious services, not to the wider term 'religious programmes' which may include some religious documentaries. The effect of the AVMS Directive is to drop the restrictions on current affairs programmes, but to retain the remaining restrictions. Indeed, no advertising breaks are permitted in children's programmes unless their scheduled duration is greater than 30 minutes.

### *Ofcom Proposal*

A4.79 We propose dropping the current restrictions on advertising in current affairs programmes, and limiting the ban on advertising in religious programmes to those comprising religious services.

#### *Impact on viewers*

A4.80 We do not consider that this is likely to have an adverse effect on viewers. Indeed, it is possible that it might help viewers who would value more current affairs and religious programming by removing one of the disincentives on broadcasters to schedule such programming. However, we do not necessarily expect any particular increase in such programming.

#### *Impact on broadcasters and advertisers*

A4.81 The benefits to broadcasters are likely to be very modest. There are very few religious programmes on advertising-funded channels, and current affairs programmes tend to be scheduled at times when audiences are relatively low so that little advertising revenue is at stake.

A4.82 In the same way it is unlikely that advertisers would benefit significantly from access to the audiences for such programming. Ofcom is not aware that audiences to these sorts of programming are overly specialised or difficult to reach.

### **Prohibition on advertising in certain programmes**

A4.83 Section 3.2 of RADA requires, amongst other things, that advertisements must not be inserted in the course of any broadcast of:

- a) a programme designed and broadcast for reception in schools;
- b) a religious service or other devotional programme;
- c) a formal Royal ceremony or occasion;
- d) live transmission of Parliamentary proceedings; or
- e) such other programmes as Ofcom may from time to time specify in particular or general terms, for example, programmes of a particularly harrowing or sensitive nature.

A4.84 Section 3.4 of RADA requires that no advertising may follow epilogues and other religious items that appear before a closedown.

A4.85 The AVMS Directive drops most of the genre-specific prohibitions on the inclusion of advertising in programmes, with the exception of a continuing ban in Article 11(2) on advertising and teleshopping during religious services. In addition, the ban on advertising in children's programmes that are less than 30 minutes will apply equally to schools' programmes. The options available to Ofcom are to retain the existing rules or to drop them, subject to the continuing restrictions applying to children's programmes and religious services.

## Ofcom Proposal

A4.86 We propose to follow the AVMS Directive and to drop most of the genre-specific prohibitions, except those relating to formal Royal ceremonies and Parliamentary proceedings.

## Impact on viewers

A4.87 We do not think that dropping the rules referred to in paragraph A4.82 (a), (b) and (e) would have a significant impact upon viewers, for the following reasons:

- a) in practice, very few school programmes would have internal breaks, as most are less than 30 minutes. If children did see some advertising around schools programmes, the protections in the Advertising Code would apply in the same way as they apply to advertising during other children's programmes;
- b) epilogues are rarely if ever scheduled now, and in any case, Ofcom doubts that viewers would feel offended if advertisements were screened after they were shown. We believe that broadcasters would wish to avoid causing offence, and would seek to avoid the scheduling of advertisements that the audiences for epilogues might regard as inappropriate; and
- c) the rule allowing Ofcom to exclude advertising from specified programmes has not, to the best of Ofcom's knowledge been used. In any case, broadcasters are incentivised not to insert advertising in programmes where this would cause offence to viewers and hence upset advertisers.

## Impact on broadcasters and advertisers

A4.88 In general, we do not anticipate any particular impact on broadcasters or advertisers. Indeed there may be some incremental benefit from removing unnecessary regulation. However, Channel 4 has suggested that it would suffer adverse financial consequences if it was permitted to insert advertising around schools programmes, and thus ceased to benefit from the special arrangements from transferring unused minutage from around schools programmes. We have invited Channel 4 to provide evidence on this point.

A4.89 Subject to this proviso, Ofcom considers that the rules in RADA which go beyond what is required by the AVMS Directive are unnecessary, and sees no significant benefit to viewers or broadcasters in retaining them.

## **Limits on the length of advertisements and advertising breaks**

A4.90 Ofcom's proposals (see paragraphs 6.64 to 6.68) would result in the removal of rules restricting PSBs to a maximum duration of:

- a) 7 minutes for a single advertisement (unless permission was given by Ofcom); and
- b) 3 minutes 50 seconds for an internal advertising break.

## Impact on viewers

A4.91 Ofcom does not consider that lifting the 7 minute limit on advertisements on PSB channels would have any practical impact on viewers. Very few advertisements

exceed a minute or two, and Ofcom is not aware of consumer concern about the broadcast of advertisements that are longer than normal. By the same token, Ofcom does not think it likely that lifting the limit on internal advertising breaks on PSB channels is likely to result in any significant impact on viewers, given the economic incentives on broadcasters and advertisers to have shorter and more frequent breaks (see paragraph 6.33 above).

### Impact on broadcasters and advertisers

A4.92 Clearly, the removal of the limit would provide broadcasters and advertisers with additional flexibility, but Ofcom would not expect them to benefit significantly. It appears that there is little commercial demand for long advertisements, other than in the form of teleshopping windows, which may be no shorter than 15 minutes, which are already permitted on non-PSB channels. Similarly, Ofcom doubts that removing the limit on the duration of internal advertising breaks on PSB channels would have a significant impact on broadcasters and advertisers, given the economic incentives described above to schedule shorter rather than longer advertising breaks.

*Q IA2: Do you agree with the broad assessment of the impact on different stakeholders of changes to the rules on the distribution of TV advertising set out in Part 2? If not, please set out your reasoning.*

### Part 3 – Assessing the potential impact of changes to advertising minutage

A4.93 In this part, we consider the potential impact of changes to the amount of TV advertising airtime. As explained earlier, this section does not set out specific options that Ofcom is consulting on. Rather it sets out a discussion of the approach that we have developed for modelling changes in the amount of advertising that is permitted and considers the various issues that any changes might create.

#### Modelling Approach

A4.94 The basic model structure we have adopted is first to determine how changes in the minutage rules might affect the volume of commercial impacts delivered by commercial broadcasters. The model then looks to translate this change in commercial impact into changes in NAR for each channel being considered.

A4.95 The basic structure of the model is illustrated in Figure 4 below.

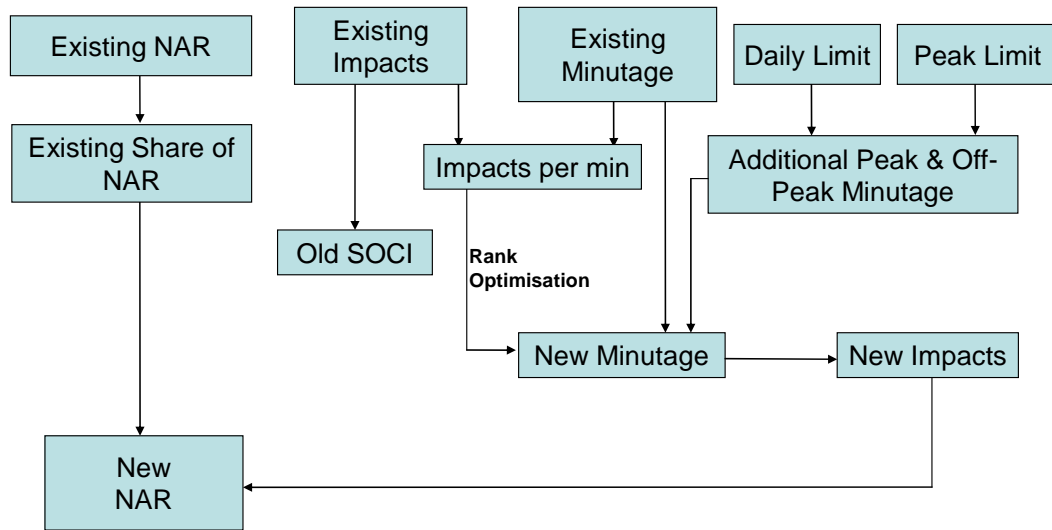
A4.96 In terms of data for commercial impacts, the model uses impacts and minutage data from Nielsen for each individual clock hour averaged over the period 1<sup>st</sup> January 2007 - 31<sup>st</sup> December 2007<sup>62</sup>. In terms of revenue data, the model uses data on Net Advertising Revenue (“NAR”) obtained from broadcasters’ licence information submitted to Ofcom covering the period January 2006 to December 2006: data on NAR for 2007 is not yet available across all licensees.

A4.97 We recognise that in terms of timing this means that the two data sets are not consistent. However, we anticipate that when it comes to making specific proposals later in the year we will be in a position to make use of revenue data for 2007 as well<sup>63</sup>.

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<sup>62</sup> We have used 30-second ratecard weighted all individual impacts. In terms of averaging over the year, we have not made a distinction between weekday and weekend.

<sup>63</sup> Another effect of using revenue from licensee returns is that we end up with a smaller set of channels than is reported on in the Nielsen impact data. We have thus used the smaller dataset of channels for which we have both Nielsen impact data and data on NAR.

**Figure 4: RADA Review Minutage Model**

### Stage 1: Calculating the new volume of impacts

A4.98 In order to calculate how a change in minutage rules might affect the delivery of impacts it has been necessary to make a number of assumptions.

#### Optimisation of additional minutage

A4.99 We take as our starting point the assumption that a rational broadcaster will want to allocate additional advertising minutage to those clock hours which deliver the highest number of additional impacts in order to maximise the value of the additional minutage.

A4.100 Our modelling approach attempts to capture this by allocating additional minutage to clock hours ranked in descending order of impacts per minute<sup>64</sup>, subject to the 12 minute cap and the new minutage rules. That is, any additional minutage is initially allocated to the clock hour with the highest impacts per minute until the additional minutage is exhausted or there is a maximum of 12 minutes of advertising in that hour. Any remaining additional minutage is then allocated to the clock hour with the next highest impacts per minute until the additional minutage is exhausted or there is a maximum of 12 minutes of advertising in that hour and so on until all the additional minutage is used up.

<sup>64</sup> Impacts per Minute for a given clock hour are simply the number of commercial impacts in that clock hour divided by the amount of advertising minutage in that clock hour.

- A4.101 When it comes to modelling relaxation of the peak minutage restrictions<sup>65</sup>, it is assumed that PSBs will fully utilise any extra minutage available to them in peak before allocating minutage to other parts of the day. Where necessary, the model allocates extra minutage in peak by removing minutage from off-peak hours in ascending order of impacts per minute so broadcasters are assumed to rebalance their schedules by removing minutage from the clock hours which are least effective at delivering impacts. We believe that this is a reasonable approximation for most of the scenarios we are considering, in that peak hours tend to have the highest number of impacts per minute<sup>66</sup>.
- A4.102 The new volume of commercial impacts in any clock hour is calculated by taking the existing average number of impacts per minute of advertising in any clock hour and multiplying by the new minutage.
- A4.103 We have used the current pattern of impact delivery – we have not tried to predict how broadcasters might choose to adjust the way in which they schedule programmes in response to changes in the RADA rules. We also recognise that the way in which broadcasters do schedule advertising can differ according to the day of the week, whether it is weekday or weekend, or the time of the year. We have chosen to take the daily average over a 12 month period in order to smooth over these differences.

*Q IA3: Do you consider that our optimisation approach is a reasonable approximation as to how additional advertising minutage would be used by broadcasters in practice? If not, please set out how you would approach this modelling issue and what assumptions you would adopt.*

### **Ability to sell Additional Minutage**

- A4.104 We have assumed that the current airtime sales rules which require PSBs to offer all their available minutage are maintained and that they are able to sell that available minutage for a positive price i.e. the PSBs do not have to “give away” their minutage.
- A4.105 As mentioned in Part 1, we have noted that not all non-PSB channels sell the full amount of advertising airtime that they could under the existing rules. This would suggest that RADA is not a binding constraint and/or that those channels are using a combination of advertising and other sources of funding.
- A4.106 In order to address this issue, we have used different assumptions according to the extent to which the non-PSB channels are currently exploiting the maximum limits on the amount of advertising minutage allowed by the rules. Non-PSB channels are divided into three groups based on the proportion of their airtime which they currently sell.
- A4.107 Non-PSB channels are categorised as “sold out” if they are currently selling all their advertising inventory. That is, they are using the full 9 minutes an hour daily

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<sup>65</sup> Morning peak (7am to 9am) and evening peak (6pm to 11pm) are defined separately in RADA. Given their respective broadcasting hours, GMTV only has a morning peak, and ITV1 only has an evening peak.

<sup>66</sup> This may be less appropriate in those scenarios where there are large increases in peak minutage; in some cases, minutes could be allocated away from off-peak clock hours even though they have higher impacts per minute.

average that is permitted under TWF. For channels that are classified as sold out it is assumed that there is excess demand for their airtime such that they would be able to sell any additional minutage that would come from a relaxation of the rules that pertain to them.

- A4.108 Correspondingly, channels are classified as having “unsold inventory” if they sell less than 90% of the overall 9 minutes an hour daily average. This could be because the channels are explicitly using a hybrid funding strategy and for them the optimum level of advertising is below the level of the current RADA limits. As these channels are not currently using up all their existing airtime, we assume that the current rules do not constrain their ability to sell airtime and so they would not benefit from any relaxation in the minutage rules that apply to non-PSBs.
- A4.109 Finally, there is a third category of channels which currently using between 90 - 100% of the current overall 9 minutes an hour daily average. These are classified as “nearly sold out”. We have used this category to capture channels which may not sell their entire inventory of airtime due to operational constraints so that in effect selling between 90-100% of their inventory is equivalent to being sold out and they might be able to take some advantage of additional minutage. In considering whether these channels would benefit from a relaxation in the minutage restrictions, this category of channels are assumed to sell a constant proportion of their inventory. That means that a 24-hour channel which is able to sell 95% of the inventory available to them under the current rules (i.e. 95% of 216 = 205 minutes) would then be able to sell 95% of the maximum allowed if the overall daily average were increased to 10 minutes (i.e. 95% of 240 = 228 minutes).
- A4.110 We recognise that the 90% cut-off point is essentially is a working assumption although in the course of earlier modelling work on HFSS Food Advertising, a number of non-PSB channels suggested that, in effect, they regarded 90% as being in effect “sold out”.

*Q IA4: Do you consider dividing non-PSB channels into the three categories of “sold out”, “nearly sold out” and “unsold inventory” reflects the realities of the TV advertising market for non-PSB channels. If not, how would you suggest we approach this issue in modelling terms?*

### **Impact on audiences of increased advertising**

- A4.111 It is possible that as the volume of advertising increases so to does audience irritation or annoyance such that a point could be reached where viewers switch away or off and audiences start to decline as advertising increases. This would obviously have an important knock-on effect on the delivery of commercial impacts.
- A4.112 Although we have recognised the possibility of this effect, it is not clear how we could take it into account in the modelling. For instance, we do not have any data on how this “drop-off” effect might actually apply with an increase in the volume of advertising nor indeed how it might affect different channels. It is, of course, also possible that if the volume of advertising were to be reduced then audiences might actually increase.
- A4.113 For the purposes of this modelling exercise, we have assumed that audiences do not decline even if there is an increase in the volume of advertising. That is, we have assumed that there is no “drop-off” effect over the range of changes we are examining. For small changes in advertising minutage this might not be an unreasonable assumption to make – particularly for increase in advertising



minutage at peak times when audiences are already exposed to nearly 12 minutes an hour in some hours. However, we do recognise that for more radical changes in the overall volume of advertising this assumption would be less reasonable.

A4.114 This would tend to suggest that the results of our modelling should be regarded as upper estimates of the likely impact on SOCI of any positive changes in minutage.

*Q IA5: Do you agree that the assumptions of no drop-off effect is a reasonable assumption to make for the purposes of this modelling exercise? If you disagree, please explain your reasoning and provide data to support any alternative assumptions that you would use.*

## Scenarios considered

A4.115 In terms of the impact of different changes to advertising minutage there are basically two key restrictions to consider: the overall daily minutage per hour limit and – in the case of PSBs – the specific restrictions on advertising minutage in peak.

A4.116 Against that background we have identified several possible scenarios that would be possible within the constraints set by the AVMS Directive:

- a) increasing the overall daily average minutage limits for PSBs from the current 7 minutes per hour up to the current limit for non-PSBs of 9 minutes per hour (but retaining the current peak time restrictions for PSBs) (Scenario 1);
- b) increasing the existing peak time limits for PSBs but retaining the overall daily average minutage per hour limits at their current levels (Scenario 2);
- c) increasing the overall average daily minutage per hour limits for PSBs (7 minutes per hour) combined with increases to the existing peak time restrictions up to and including a complete levelling up to the non-PSB limits (i.e. no specific peak time restrictions) (Scenario 3);
- d) complete liberalisation for PSB and non-PSBs (i.e. up to a full 12 minutes an hour with no other restrictions) (Scenario 4); or
- e) reducing the current average daily limit on non-PSBs (9 minutes per hour) to the current limits on PSBs (Scenario 5).

*Q IA6: Do you consider that this range of scenarios is appropriate? Are there any other types of scenarios that you believe we should explore as part of our modelling work?*

## Relaxing existing restrictions on PSBs

### Scenario 1: increasing daily average minutage

A4.117 We started by looking at the impact of Scenario 1 (increasing the PSB daily average from 7 minutes per hour to 8 or 9 minutes an hour, with no change to current restrictions on peak advertising). These results are set out below in Table 1. Moving to nine minutes an hour would basically bring PSBs into line with non-PSBs with the exception of the peak time restriction. There would not be any corresponding relaxation in the rules applying to non-PSBs.

**Table 1: Impact of relaxing the daily minutage restrictions on PSBs**

		8 minutes per hour		9 minutes per hour	
Broadcaster / Sales House	Current SOCI <sup>67</sup> (%)	% increase in impacts	New SOCI (%)	% increase in impacts	New SOCI (%)
ITV1	32.4	5.8	32.9	8.0	33.0
ITV Sales	40.2	4.7	40.3	6.4	40.3
Channel 4	13.9	10.2	14.7	13.6	14.9
Channel 4 Sales	19.1	7.5	19.6	10.0	19.8
Five	8.8	8.2	9.1	11.1	9.2
Five Sales	10.4	7.0	10.7	9.4	10.7
GMTV	2.4	11.8	2.5	23.6	2.8
S4C	0.2	12.9	0.2	19.6	0.2
Other non-PSBs	27.8	0.0	26.7	0.0	26.2

A4.118 In this scenario there is no change in the minutage rules applying to the non-PSB channels and the clear beneficiaries would be the PSBs. However, there are differences in the extent to which the different PSBs might benefit from this type of change.

A4.119 For instance, ITV1's audiences are heavily concentrated in evening peak. Thus in the order of 66% of its current impact delivery is concentrated into the 18:00-23:00 period. That means that an initial relaxation in the overall daily minutage to 8 mins per hour allowance but without any corresponding change in the peak restriction produces only a relatively small percentage increase – just under 6% - in the volume of impacts it delivers.

A4.120 In contrast, Channel 4's delivery of impacts is less skewed towards peak – around 50% of its impact delivery is focused on 18:00-23:00. This means that a relaxing of the overall daily average to 8 minutes per hour results in a greater delivery of impacts. We estimate that it would experience just over a 10% increase in the volume of commercial impacts. In terms of impact delivery as between peak and off-peak, Five sits somewhere between Channel 4 and ITV1 and so its volume of commercial impacts increases by just over 8%.

<sup>67</sup> As noted in footnote 63 above, the set of channels for which we have both Nielsen data on commercial impacts, and data on NAR from licensee returns to Ofcom, is smaller than the set of channels reported on by Nielsen. This means that our starting data on SOCI tends to overstate the actual position for the channels we are looking at.

A4.121 Given that there is no change in the rules applying to non-PSB channels, the impact of this increase in the volume of commercial impacts for the PSBs channels is to increase their Share of Commercial Impacts (“SOCl”) at the expense of the non-PSB channels. Thus, if the overall daily minutage limit is increased to 8 minutes per hour, ITV1’s SOCl could increase by 0.5 percentage points to 32.9% whereas Channel 4’s could increase by nearly one percentage point to 14.7%.

A4.122 However, because there is no change in the rules applying to non-PSB channels, there is an offsetting effect on the PSBs in that their portfolio of digital channels would be adversely affected. Although the main PSB channel might stand to increase its SOCl under these changes, there would be a reduction in SOCl for their other non-PSB channels so that the overall impact on their respective sales houses is mitigated.

### Scenario 2: relaxing peak-time restrictions

A4.123 We have then looked at the impact of relaxing the restrictions on peak advertising without changing the restrictions on the overall daily average of seven minutes per hour. This would in effect allow PSBs to move existing advertising airtime from out of peak into peak. Table 2 below sets out the results for moving to an average of 9 and 10 minutes advertising per hour in both morning and evening peaks.

**Table 2: Impact of relaxation of the peak time restrictions for PSBs**

		<b>Increase to 9 minutes per hour in peak (e.g. 45 minutes in evening peak)</b>		<b>Increase to 10 minutes per hour in peak (e.g. 50 minutes in evening peak)</b>	
<b>Broadcaster / Sales House</b>	<b>Current SOCl (%)</b>	<b>% increase in impacts</b>	<b>New SOCl (%)</b>	<b>% increase in impacts</b>	<b>New SOCl (%)</b>
ITV1	32.4	7.8	33.6	13.9	34.4
ITV Sales	40.2	6.3	41.0	11.2	41.6
Channel 4	13.9	7.1	14.3	12.7	14.6
Channel 4 Sales	19.1	5.2	19.2	9.3	19.4
Five	8.8	5.9	9.0	10.4	9.1
Five Sales	10.4	5.0	10.5	8.8	10.5
GMTV	2.4	3.6	2.4	7.2	2.4
S4C	0.2	7.0	0.2	12.8	0.2
Other non-PSBs	27.8	0.0	26.7	0.0	25.9

A4.124 Compared to the scenario in which only the daily average minutage rules are increased, it can be seen that relaxing the peak time restriction i.e. allowing PSBs more advertising in peak, has a greater benefit to ITV1 than relaxing the overall daily average. This is because a greater proportion of its total audience is delivered in peak.

### Scenario 3: relaxing both peak-time and daily minutage restrictions

A4.125 We then looked at the impact of relaxing the overall daily average minutage rules combined with a relaxation in the peak minutage rules. Table 3 below sets out the results for increasing the daily average minutage to 8 minutes per hour combined with an average of 9 minutes per hour in peak (i.e. 45 minutes in evening peak) and increasing the overall daily minutage to 9 minutes per hour combined with an average of 9 minutes per hour in peak as well. Again, there would not be any corresponding relaxation in the rules applying to non-PSB channels.

**Table 3: Impact of relaxation of average daily minutage and peak time restrictions for PSBs**

		<b>8mins per hour daily average with 9mins per hour in peak</b>		<b>9mins per hour daily average with 9mins per hour in peak</b>	
<b>Broadcaster / Sales House</b>	<b>Current SOCI (%)</b>	<b>% increase in impacts</b>	<b>New SOCI (%)</b>	<b>% increase in impacts</b>	<b>New SOCI (%)</b>
ITV1	32.4	13.7	34.1	16.4	34.2
ITV Sales	40.2	11.1	41.2	13.2	41.2
Channel 4	13.9	16.0	14.9	20.5	15.2
Channel 4 Sales	19.1	11.7	19.6	15.0	19.8
Five	8.8	14.2	9.3	17.9	9.4
Five Sales	10.4	12.0	10.8	15.1	10.9
GMTV	2.4	14.4	2.5	26.2	2.7
S4C	0.2	19.0	0.2	26.2	0.2
Other non-PSBs	27.8	0.0	25.7	0.0	25.2

A4.126 Under the scenario in which the average daily minutage allowance is increased to 8 minutes per hour and the peak time allowance is also increased by 1min per hour (to 9 minutes), ITV1 and five both enjoy approximately a 14% increase in their volume of commercial impacts. Channel 4 gains more under this scenario with an increase of 16% in the volume of commercial impacts.

A4.127 These changes in the volume of commercial impacts also translate into significant changes in SOCI for the main PSBs channels: ITV1 increases from 32.4% to 34.1%; Channel 4 from 13.9% to 14.9% and five from 8.8% to 9.3%. As before, the increase in SOCI of the main channels comes – in part - at the expense of a reduction in SOCI for their other digital channels so that the overall impact on their sales houses is more muted.

### Scenario 3: harmonising PSB restrictions upwards to non-PSB levels

A4.128 We also consider a scenario in which there is a complete levelling up for the PSBs i.e. the overall daily average is increased to 9 minutes per hour and there are no specific restrictions in peak beyond the cap of 12 minutes in any one clock hour.

**Table 4: Impact of harmonisation to non-PSB levels**

		<b>9 minutes per hour overall daily average, no restrictions in peak</b>	
<b>Broadcaster/Sales House</b>	<b>Current SOCI (%)</b>	<b>% increase in impacts</b>	<b>New SOCI (%)</b>
ITV1	32.4	34.3	36.8
ITV Sales	40.2	27.7	43.4
Channel 4	13.9	31.1	15.4
Channel 4 Sales	19.1	22.8	19.8
Five	8.8	29.7	9.7
Five Sales	10.4	25.2	11.0
GMTV	2.4	8.1	2.2
S4C	0.2	37.7	0.2
Other non-PSBs	27.8	0.0	23.5

A4.129 This scenario delivers significant increases in SOCI for most of the PSBs. However, GMTV is unable to maintain its current SOCI due to its limited broadcast hours. ITV1 gains the most under this scenario. This is mainly due to its ability to use additional minutage in peak to deliver a very high volume of impacts.

### Scenario 4: raising hourly limit to 12 minutes

A4.130 So far the scenarios we have considered have looked at relaxation of the rules that apply to the PSB channels. If Ofcom chose, it would be possible under the new AVMS Directive to relax the current rules on both PSB channels and non-PSB channels and just have a single rule which imposed a limit of no more than 12 minutes of advertising in any clock hour. The impact of this scenario is set out in Table 5 below:

**Table 6: Impact of raising hourly limit to 12 minutes**

		<i>Max. of 12 minutes per hour in any one hour</i>	
<b>Broadcaster/Sales House</b>	<b>Current SOCI (%)</b>	<b>% increase in impacts</b>	<b>New SOCI (%)</b>
ITV1	32.4	36.9	35.4
ITV Sales	40.2	31.4	42.1
Channel 4	13.9	37.2	15.2
Channel 4 Sales	19.1	29.7	19.7
Five	8.8	34.4	9.4
Five Sales	10.4	31.3	10.9
GMTV	2.4	55.3	2.9
S4C	0.2	54.1	0.2
Other non-PSBs	27.8	8.9	24.2

A4.131 As can be seen, the impact of full liberalisation could be a very significant increase in the volume of commercial impacts for individual channels e.g. this could represent an increase of in the order of 37% for ITV1 and Channel 4's volume of commercial impacts.

A4.132 It should be noted that the full liberalisation scenario results in a slightly lower increase in SOCI for ITV1 compared to the full "levelling up" scenario. This is because the marginal benefit of an additional minute in peak relative to an additional minutage in off-peak is much higher for ITV1 than for Channel 4 and Five.

A4.133 Even where there is a relaxation of the rules on advertising minutage for non-PSB channels so that they can increase the volume of commercial impacts they deliver, the above figures indicate this would be swamped by the increase in minutage on PSBs so that non-PSBs would still likely to see a significant reduction in their SOCI. The overall percentage increase in the volume of impacts for "Other non-PSB" channels may also seem low compared to the PSB broadcasters. This is because many of these channels are classified as having unsold inventory and so there is an assumption that they would not take advantage of increased minutage.

A4.134 It should be noted that where there are such dramatic changes in advertising minutage, our assumption that there is little change in the size of audiences as advertising minutage increases are likely to be less realistic.

#### Scenario 5: harmonising non-PSB restrictions downwards to PSB levels

A4.135 We have also considered a scenario in which the non-PSB daily average is harmonised downwards to the current PSB daily average of 7 minutes. The impact of this scenario is outlined in Table 6 below:

**Table 6: Impact of harmonisation downwards of non-PSB daily average to current PSB daily average**

		<i>7 mins per hour daily average for non-PSBs</i>	
<b>Broadcaster/Sales House</b>	<b>Current SOCI (%)</b>	<b>% increase in impacts</b>	<b>New SOCI (%)</b>
ITV1	32.4	0.0	33.6
ITV Sales	40.2	-1.8	40.9
Channel 4	13.9	0.0	14.4
Channel 4 Sales	19.1	-1.3	19.5
Five	8.8	0.0	9.1
Five Sales	10.4	-0.6	10.7
GMTV	2.4	0.0	2.4
S4C	0.2	0.0	0.2
Other non-PSBs	27.8	-4.1	26.2

A4.136 The impact of this scenario is broadly the same as scenarios in which the PSB channels are allowed to sell more minutage i.e. the SOCI of non-PSB channels falls. The fall in SOCI is mitigated as non-PSB channels reduce their minutage in clock hours which receive relatively low audiences.

A4.137 The effect on PSB channels is clearly positive as, although our working assumption is that as PSB minutage rules are unchanged their impact delivery is unaffected, the reduction in non-PSB channel impact delivery improves the SOCI positions of PSBs. The reduction in total impacts in the advertising market means that the SOCI for all PSB channels increases by the same proportion. The gain in SOCI for PSBs is mitigated by the reduction in SOCI for their portfolio channels so the overall increase in SOCI for PSB saleshouses is smaller but still positive.

*Q IA7: Is the modelling of the changes in the volume of commercial impacts/share of commercial impacts for these different scenarios broadly in line with any modelling work you have carried out? If not, we would be interested to understand what results you have obtained in modelling these scenarios.*

## **Stage 2: Translating the change in the volume of commercial impacts into a change in NAR**

### **Alternative perspectives**

A4.138 In order to fully explore the potential impact on broadcasters from changes to the rules on the amount of advertising minutage we need to consider how we might translate changes in the volume of commercial impacts and/or SOCI into changes in income from advertising.

- A4.139 Discussions with broadcasters and agencies in the pre-consultation phase have elicited two sets of arguments in relation to the way in which the TV advertising market operates. The first is that a fall in price would not lead to any change in the demand for advertising. The argument here is that if the volume of commercial impacts increased then that results in a fall in the price – as measured by the Cost Per Thousand (“CPT”) – of impacts. Broadcasters and agencies then argue that a reduction in CPT would not result in existing advertisers choosing to increase the amount of advertising nor would it lead to new advertisers deciding to advertise on television. In the case of existing advertisers they would recognise that they could achieve a given delivery of commercial message for a lower cost and simply choose to spend less. In the case of new advertisers, broadcasters and media buying agencies argue that the price of TV advertising is not a barrier to advertisers choosing the medium. The range and variety of digital channels means that advertisers have a number of points of access. New advertisers could always choose to start advertising with non-PSB channels at a cost significantly lower than that of the commercial PSBs so that a fall in CPT would not bring in new advertisers. It is thus argued that increasing the volume of advertising would have a deflationary impact on the industry as a whole.
- A4.140 The other argument is that, historically, TV advertising expenditure has tended to follow SOCI. That is, because advertising contracts tend to be negotiated on an annual basis, the focus of negotiations has been on the *proportion* of an agency’s total budget for TV advertising that the agency is prepared to commit to a particular broadcaster rather than specific level of expenditure. In these negotiations the agency is focused on securing access to the channels which its clients – the advertisers – are likely to want to use to promote their products i.e. popular channels or channels delivering particular types of audiences. As such the focus of these negotiations becomes the broadcaster’s audience share or specifically its SOCI. Thus agencies share of broadcast tends to follow a broadcaster’s SOCI and this in turn will help to determine that broadcaster’s share of NAR.
- A4.141 This relationship between SOCI and share of broadcast underlies the ratchet mechanism in the CRR Remedy which applies to ITV1. Under the ratchet mechanism, there is a one-for-one relationship between changes in ITV1’s SOCI and the share of broadcast that any one agency has to maintain with ITV1.
- A4.142 It is not the case that there is automatically a one for one relationship across all broadcasters but the basic idea that share of NAR follows SOCI appears to be commonly adopted. A number of broadcasters have told us that an effect of the CRR Remedy has been to translate this ratchet mechanism to all broadcasters. The effect of this feature of the market is to suggest that the effect of changes in the volume of commercial impacts is basically to redistribute share of NAR between different broadcasters, with total NAR potentially increasing if the share of channels which command a premium increases.
- A4.143 In economic terms, there can be a difficulty in reconciling these two sets of arguments and certainly the first argument appears to be at odds with the available econometric evidence.
- A4.144 The first argument – that an increase in the volume of minutage would not result in an increase in demand – would imply that what the industry is describing is a situation where the level the demand for advertising airtime is inelastic. That is, in response to a given percentage increase in the volume of commercial impacts, there would be a more than proportionate reduction in the price of airtime with the result that revenue actually falls. It is possible that what the industry have in mind is



that in the very short-run, the elasticity of demand for advertising is less than one or that they focus on the impact on a specific broadcaster.

A4.145 Alternatively, it could be that the industry is describing what is in effect one outcome of a negotiation, following an increase in commercial impacts. It is possible that, in response to a reduction in price, if advertisers chose simply to purchase the same volume of impacts they would have to commit less revenue in order to achieve a given level of commercial impacts. Equally, it may also be possible in a negotiation that some advertisers would choose to take advantage of the fall in price to increase the amount of commercial impacts they purchase, with the result that the impact on revenue is less dramatic or could even be positive.

A4.146 Nevertheless, the outcome where revenue actually falls would be at odds with the conclusions of the PwC<sup>68</sup> report which found that the price elasticity of demand for PSB and non-PSBs channels was elastic i.e. they had a price elasticity of demand that was greater than one. The PwC study did find that in the short-run<sup>69</sup> the price elasticity of demand for PSBs was close to 1. For instance, the PwC study found that the short-run price elasticity for the PSBs was 1.18 and suggested that the demand for non-PSB channels was likely to be more elastic. Even so, an elasticity of greater than 1 would still imply that revenue would increase with an increase in the volume of commercial impacts.

A4.147 In the longer-run, the PwC study estimated that the price elasticity of demand for the PSBs was 1.44 and for non-PSBs it was between 3 and 4. Again, the fact that the elasticity is over one means that increases in the volume of advertising should lead to an increase in advertising revenue i.e. the proportionate increase in the volume of impacts is greater than the proportionate fall in price.

A4.148 The second argument - that share of broadcast follows SOCI – is not necessarily inconsistent with the available econometric evidence in that it is not possible to infer *ex ante* what the mechanism by which share of NAR tends to follow SOCI implies for the price elasticity of demand for advertising: that will depend on the change in the volume of commercial impacts. We would be interested in continuing the discussions with the industry to understand the underlying drivers of this effect. However, it does tend to suggest that there is a positive revenue response to an increase in the volume of commercial impacts which would in turn imply that the demand for TV advertising is elastic.

## Modelling approaches

A4.149 In order to try to take into account these different views on the responsiveness of NAR to changes in the volume of commercial impacts, we started by considering three possible modelling approaches to translate a change in the volume of commercial impacts/change in SOCI into a change in NAR:

- a constant price premium approach
- a unitary price premium approach
- an economic approach which focuses on price elasticity

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<sup>68</sup> PwC Report: Forecasting UK TV Advertising Revenue 2004-2014. (Ofcom 2004)

<sup>69</sup> In the PwC study the short-run was defined in terms of the effect after one quarter.

## Constant Price Premium

A4.150 The constant price premium approach takes as its starting point an assumption that share of NAR follows share of SOCI on a one-for-one basis. One justification for this could be that the effect of the CRR Remedy has de facto “locked” all broadcasters into the ratchet mechanism. It assumes that the price premium<sup>70</sup> which channels currently enjoy is maintained after any changes to the volume of impacts. That is, we assume that the percentage change in SOCI for a channel translates into the same percentage change in that channel’s share of NAR. This would imply that where there is an increase in SOCI for a channel, the broadcaster is able to persuade agencies/advertisers to commit the increase their share of broadcast to that channel by the same percentage.

A4.151 It should be emphasised that this is not the same as saying that there is no change in the effective price of advertising: the broadcaster’s CPT will adjust to the change in the volume of impacts and the change in NAR.

- This approach has the advantage of being consistent with our understanding of how the TV advertising market works insofar as SOCI is the base for negotiations and different broadcasters sell at different premia relative to their SOCI.
- The implied price elasticity of demand for TV advertising does vary according to the scenario being considered but broadly speaking this approach seems to imply that the price elasticity of demand is higher (i.e. more elastic) than the price elasticity estimates derived from the PwC study. This would imply that – for a given change in the volume of commercial impacts - the proportionate change in price under this approach is *less* than that implied by the PwC study.
- This approach does not in itself generate a zero sum result<sup>71</sup>, especially where a greater increase in SOCI is going to channels with a price premium. However, except for very large increases in commercial minutage, the implied increase in overall industry NAR from this approach is relatively modest.
- We recognise that the price premium might change in that agencies might be not be prepared to continue to maintain their share of broadcast with a particular PSB. For instance, they might be concerned with increased clutter, or in the case of daily average minutage changes on PSBs, the scheduling of additional minutage in less desirable day-parts. However, equally as the ability of a channel to reach a large audience or to provide regional products is not necessarily affected by minutage changes *per se* there could be an argument that the price premium would remain constant.
- Taking these factors into account, we consider that this modelling approach is likely to represent an upper limit to potential revenue changes that would result from changes to the existing minutage rules

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<sup>70</sup> The price premium for a broadcaster or channel is defined in terms of their current share of NAR divided by their current SOCI. If a channel’s SOCI was the same as its share of NAR then its price premium would be 100. ITV1 and Channel 4 have historically enjoyed a price premium in that their share of NAR has been higher than their SOCI. For other channels, particularly the cab-sat channels, the position can be reversed i.e. their share of NAR is less than their SOCI and they sell at a discount to the market average.

<sup>71</sup> It is possible to force this approach to a zero-sum game if that was felt to be an accurate representation of the operation of the market by reducing all NAR changes proportionately. However, we have avoided this in that it can give rise to counter-intuitive results in certain instances by artificially constraining gains and losses.

*Q IA8: To what extent do you think that is reasonable to assume a constant price premium in light of changes to minutage restrictions? If you think that this could be unreasonable, please set out what you think might happen and how that could be modelled. .*

### Unitary Price Premium

A4.152 An alternative approach would be a unitary price premium approach. That is we could make an assumption that the price premium on any additional impacts was equal to 100. This means that if a channel's SOCI increases by 1 percentage point it achieves a 1 percentage point increase in share of NAR.

- This approach does produce a zero-sum result. The sum of all percentage point changes to SOCI by definition must sum to zero, and therefore all changes to share of NAR must sum to zero.
- A unitary price premium on additional impacts may prove a reasonable approximation for channels which already have a price premium greater than 100 in that media buyers may not be prepared to maintain share of broadcast commitments if they perceive the increase in minutage to be accompanied by increased clutter or less lucrative day-parts. For these channels the effect of an increase in volume of impacts would be to reduce the overall price premium as the price premium is a weighted average of the existing price premium for existing impacts and a unitary price premium for new impacts.
- However, the unitary price premium approach may not be a reasonable approximation for the majority of non-PSB channels which are already selling at a premium less than 100. This approach would imply that in response to increases in advertising minutage on PSBs, advertisers and agencies would actually increase their commitment to non-PSBs, presumably because they consider that advertising on the PSBs has become less effective.
- Taking these factors into account we are not minded to pursue this modelling approach any further.

*Q IA9: To what extent do you think that this approach would be a reasonable modelling approach to adopt?*

### An Economic, Price Elasticity Approach

A4.153 In 2004 Ofcom commissioned PwC to conduct an economic analysis of the UK TV advertising market. PwC built a structural econometric model which generated price elasticity of demand estimates for PSB and multi-channels. If we assume that these price elasticity estimates can be applied to the PSB channels individually, then it would be possible to use the change in the volume of impacts calculated in Stage 1 to calculate the percentage change in price and from that to calculate changes in NAR for each individual channel

A4.154 This third approach therefore uses the existing econometric data on the price elasticity of demand and focuses on the changes in the volume of commercial impacts delivered (and the corresponding price effects) rather than focussing on SOCI.

- The report showed that these estimates are statistically robust over a period in which there were several structural changes which delivered large increases in

the number of impacts e.g. the launch of Channel 4 and the growth of satellite TV, and therefore they could be robust to the structural change in minutage rules.

- The PwC report provided point elasticity estimates. That is, the estimates represent the price elasticity at a particular point on the demand curve – they are not necessarily representative of the elasticity along the entire demand curve. This means that they are likely to be reasonable approximations for relatively small changes in the volume of impacts from the current position but that they are likely to become less reliable the greater the change in the volume of impacts. In order to address this issue, we have treated the PwC price elasticity estimates as estimates of “arc elasticity<sup>72</sup>”. This should allow the larger changes in the volume of impacts under some of the scenarios we explore to be modelled on a consistent basis.
- Another important issue is that the PwC report did not provide any estimates on cross price elasticities which would allow us to quantify how an increase in the volume of impacts for a channel may affect the revenue of another channel. We have attempted to address this issue by assuming that the relative price of non-PSB channels to PSBs is constant. While this might be a reasonable approximation across all non-PSBs in general, it will not pick up the specific details of individual channels.

*Q IA10: To what extent do you think that is reasonable to make use of the elasticity estimates derived from the PwC study? Are they in line with your own views as to the operation of the TV advertising market? If not, please explain your reasoning.*

*Q IA11: To what extent is there evidence to support the argument that an increase in advertising minutage could reduce overall advertising expenditure on TV, i.e. that the advertising market is inelastic?*

A4.155 The advantages and disadvantages of each modelling approach considered are summarised in the table below.

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<sup>72</sup> For the purposes of this modelling exercise we have used the arc price-elasticity formula, which is usually used in situations where price or output changes significantly. It gives the average elasticity between two points on the demand curve by calculating the elasticity at the midpoint. We have used this formula with the PwC point elasticity estimates to calculate the change in price implied by a given change in impacts. In doing so we are implicitly assuming that the price elasticity is constant along the demand curve. We recognise that this assumption is likely to be less valid in the scenarios when the impact changes are particularly large.

**Table 6: Pros and cons of the different modelling approaches**

<b>Modelling Approach</b>	<b>Potential Advantages</b>	<b>Potential Disadvantages</b>
<b>Constant Price Premium</b>	In line with industry view of how market operates.  Sets upper limit of impact of changes in advertising minutage.	With much more commercial clutter the assumption that advertisers are likely to reward SOCI increase at the same price premium as before could be less valid.
<b>Unitary Price Premium</b>	Yields a zero-sum result, consistent with some industry views of impact of changes at an industry level.	Assumption of a price premium of 100 for additional minutage is not appropriate for non-PSB channels already selling at a discount to the market average.
<b>Elasticity Approach</b>	Consistent with PwC Study and standard economic analysis.	The econometric analysis carried out using data ending in 2003. The analysis may not reflect industry developments since then (e.g. impact of CRR).

A4.156 Taking into account the above discussion, we do not consider that it is worth taking forward the unitary price premium approach in that it does not seem to have any basis in the underlying economic framework. At this stage, while we are in the process of exploring what lies behind the views expressed by the industry in the pre-consultation stage, we do not have a preferred modelling approach as between the constant price premium approach and the elasticity approach. In the following section we therefore model the revenue impact of the different scenarios using both these approaches.

A4.157 It should be noted that the price elasticity approach tends to produce smaller increases in revenue for the PSB channels compared to the constant price premium approach. However, the price elasticity approach tends to produce larger reductions in the revenue of the non-PSB channels. This is driven by our assumption about the constant relative price of non-PSB channels and the scale of the price reductions implied by the price elasticity approach.

### **Application of constant price premium and elasticity approaches to different scenarios**

#### **Scenario 1: raising overall daily average limits**

A4.158 The scenarios that result in an increase in SOCI for PSBs (i.e. relaxing the RADA rules on (i) the overall daily average (ii) the peak time restrictions (iii) a combination

of the overall daily and peak time restrictions) result in an increase in advertising revenue for the PSBs and at the same time a reduction in NAR for the non-PSBs.

- A4.159 The extent of the increase in NAR for PSBs and the distribution of this increase between the PSBs will depend on how far the rules are relaxed. For instance, Channel 4 would tend to benefit more from a relaxation in the overall daily average rather than peak restrictions compared to ITV1.
- A4.160 Using the constant price premium approach we estimate increasing the overall daily average minutage limits from 7 minutes per hour to 8 minutes per hour could result in an increase in NAR for all the PSB channels of up to £72 million with Channel 4 as the main beneficiary of this relaxation. However, after taking account of a loss in revenue from their digital channels the net increase could be expected to be up to £61 million or around 2.3% of their existing NAR. The loss to the other non-PSB channels i.e. those not linked to one of the PSBs would be up to £26 million overall (representing around 4.2% of their existing NAR).
- A4.161 Using the price elasticity approach, the increase in revenue for the PSB channels overall are lower – up to £53 million. Using the price elasticity approach, there would be less of a difference between ITV1 and Channel 4. The net increase for the PSB sales houses would be around £40m (around 1.5% of their existing NAR).and the loss to the other non-PSB channels would be £31 million (around 4.9% of their existing NAR).
- A4.162 In the scenario where the overall daily average limit is increased to 9 minutes per hour for PSBs, then the increase in revenue for the PSBs could be up to £96 million using the constant price premium approach. Again Channel 4 would benefit more than the other PSBs. After taking into account the loss of revenue to their digital channels, the net increase in revenue would be up to £80 million, or 3% of their existing NAR. The loss to the other non-PSB channels i.e. those not linked to one of the PSBs would be up to £36m, or around 5.7% of their existing NAR.
- A4.163 Using the price elasticity approach, the increases in revenue are again lower. Our modelling suggests that the impact on PSBs could be up to £73 million. After taking into account the loss of revenue to their digital channels, the net increase in revenue would be up to £54 million (around 2% of existing NAR) whereas the loss to the other non-PSB channels would be up to £43 million (around 6.8% of existing NAR).

### Scenario 2: relaxing peak-time restrictions

- A4.164 The effect of relaxing just the existing peak time restrictions can produce a shift in the beneficiaries within the PSBs. For instance, under the constant price premia approach, increasing the peak time minutage to 9 minutes per hour results in an increase in revenue for the PSB channels overall of up to £73 million. However, in this case ITV1 becomes the main beneficiary with Channel 4 doing significantly less well compared to an increase in the overall daily average to 9 minutes per hour. After taking into account the impact on their digital channels the net increase in revenue to the PSBs is estimated to be up to £62 million, around 2.3% of their existing NAR. The loss to the other non-PSB channels is estimated to be up to £25 million, around 4% of their existing NAR.
- A4.165 Using the price elasticity approach, the changes in revenue are again lower. Our modelling suggests that the impact on PSBs could be up to £52 million. After taking into account the loss of revenue to their digital channels, the net increase in

revenue would be up to £39 million (around 1.5% of their existing NAR) whereas the loss to the other non-PSB channels would be up to £30 million (around 4.7% of their existing NAR).

### Scenario 3: relaxing both overall daily average and peak-time restrictions

- A4.166 As might be expected from the above discussion, the financial impact of relaxing the rules on both the overall daily average and the peak time average together could be significant. In a scenario in which the overall daily average for PSBs is increased to 8 minutes per hour and the peak time average increased to 9 minutes per hour, then the increase in revenues for the PSB channels could be up to £136 million. Under this scenario both ITV1 and Channel 4 are the main beneficiaries. After taking into account the impact on their other digital channels, the net increase in revenue for the PSBs is estimated to be around £115 million, around 4.3% of their existing NAR. The loss to the other non-PSBs is estimated to be around £49 million, around 7.7% of their existing NAR.
- A4.167 Using the price elasticity approach, our modelling suggests that the impact on PSBs could be up to £101 million. After taking into account the loss of revenue to their digital channels, the net increase in revenue would be up to £77 million, around 2.9% of their existing NAR, whereas the loss to the other non-PSB channels would be up to £57 million, around 8.9% of their existing NAR.
- A4.168 If we consider the scenario in which there is full “levelling up” for PSBs, then the increase in revenues for the PSBs could be up to £283 million, under the constant price premia approach. After taking into account the impact on their other digital channels, the net increase in revenue could be up to £240 million (around 9% of existing NAR), with other non-PSB channels losing up to £98 million, around 15.6% of their existing NAR.
- A4.169 Using the price elasticity approach, the increase in revenues to PSBs could be up to £216 million. After taking into account the impact on their other digital channels the net increase might be up to £168 million, with the other non-PSBs losing up to £110 million.
- A4.170 As was emphasised earlier, for these very significant changes in the volume of commercial impacts it is not clear that our initial starting assumptions about the impact on audiences would remain valid.

### Scenario 4: complete liberalisation for PSB and non-PSBs

- A4.171 Under the scenario in which there is full liberalisation up to the maximum allowed by the AVMS (i.e. non-PSBs are also able to increase their own minutage), this has the effect of constraining the increase in revenue to the PSBs. Using the constant price premia approach, the increase in revenue for the PSBs is estimated to be up to £222 million with ITV1 a particular beneficiary. Even allowing for the impact on their digital channels, the net increase in revenue for the PSBs is estimated to be up to £183 million, around 6.9% of their existing NAR. The loss to the other non-PSB channels is estimated to be up to £84 million, around 13.3% of their existing NAR.
- A4.172 We have not quoted figures for the impact of the price elasticity approach because we believe that the change in the volume of impacts for PSB channels implied by this scenario are such that the price elasticity estimates we have been using may no longer be reasonable.

### Scenario 5: reducing the current average daily limit on non-PSBs to the current limits on PSBs

A4.173 As set out above the PSB channels' SOCI is increased under this scenario. Under the constant price premium approach the revenue of the PSB channels is estimated to increase by £86 million. However given that the PSBs' digital channels experience a reduction in impact delivery and SOCI, the net increase in revenue to PSBs is £76 million, around 2.8% of their existing NAR. Other non-PSB channels experience a loss of up to £26 million, around 4.1% of their existing NAR.

A4.174 Under the price elasticity approach the losses to non-PSB channels are estimated to be up to £17 million, around 2.7% of their existing NAR. and the losses to PSB digital channels are estimated to be up to £6 million, around 0.2% of their existing NAR. Given that under this scenario there is no change in the volume of impacts delivered by the PSB channels we have assumed that there is no change in their revenue. We would anticipate returning to this issue in light of responses to the consultation.

*Q IA12: To what extent do you consider that these estimates of the financial impact of changes to the rules on the amount of advertising minutage provide an indication of the potential overall scale of any changes as well as the distribution of the impact between PSBs and non-PSBs? Are they in line with your own views as to how the TV advertising market would adjust to such changes? If not, please explain your reasoning.*

*Q IA13: The discussion of the modelling approach set out above has focused on the potential impact on different types of broadcasters. To what extent could there be an impact on other stakeholders, particularly media buying agencies and their clients, the advertisers? What is the attitude of these stakeholders to changes in the volume of advertising minutage?*

## **Part 4 - Restrictions on teleshopping**

A4.175 As set out in main document, the teleshopping sector comprises dedicated teleshopping channels offering a range of products (e.g. QVC, Ideal World, price-drop tv etc); dedicated teleshopping channels specialising in particular products (e.g. Gems TV, JJB Sports TV); and some general channels that carry teleshopping windows at particular times of the day (e.g. UK TV Documentaries, Crime & Investigation Network).

A4.176 In accordance with provision in the TWF Directive, section 8 of RADA limits:

- a) teleshopping spots to a maximum duration of 20% of daily transmission time, including the maximum permitted allowance of 15% of daily transmission time for spot advertising; and
- b) teleshopping windows on channels not exclusively devoted to teleshopping to no more than eight, each with a minimum uninterrupted duration of 15 minutes, together comprising no more than 3 hours of daily transmission time.

A4.177 RADA also excludes PSB channels from the provisions described in (b) above. Although PSB channels may carry teleshopping and long-form advertisements between midnight and 6am, these must be included in the permitted allowance for general advertising.



A4.178 The AVMS Directive maintains the overall restriction on teleshopping spots of 20% of daily transmission time, and the minimum duration for teleshopping windows of 15 minutes. However, it removes the limitations on the amount of teleshopping on channels not exclusively devoted to teleshopping. It is therefore open to Ofcom to maintain existing teleshopping provisions, liberalise them to the extent permitted by the AVMD Directive, or impose stricter rules on the amount of teleshopping.

A4.179 We deal first with the options for non-PSB channels, then with the options for PSB services.

## **Non-PSB Channels**

A4.180 We have identified a range of options in respect of non-PSB channels:

- a) maintaining the status quo (Option 1), that is allowing dedicated teleshopping channels to show as much teleshopping content as they wish, but limiting other non-PSB channels to 3 hours a day;
- b) increasing the amount of teleshopping content allowed on non-PSB channels not exclusively dedicated to teleshopping from the current three hours to a longer period (Option 2);
- c) reducing the amount of teleshopping allowed on channels not exclusively devoted to teleshopping (Option 3);
- d) removing the restrictions on the amount of teleshopping on non-PSB channels not exclusively devoted to teleshopping, so that they would be free to decide for themselves how much teleshopping to schedule (Option 4).

### **Option 1 – maintaining the status quo**

#### Impact on viewers

A4.181 Given that some viewers find teleshopping services useful, maintaining the status quo would not detract from that position. However, it would not deliver any additional benefits.

#### Impact on broadcasters and advertisers

A4.182 Teleshopping is a useful source of revenue for some broadcasters, in particular those channels which serve niche interests.

A4.183 However, it is possible that the existing restrictions of no more than 3 hours a day of teleshopping for non-PSBs limit their ability to make more use of teleshopping at times of the day when there is currently little advertising e.g. between 01:00-05:00. The existing rules may thus restrict the ability of broadcasters to develop other sources of revenue.

A4.184 The effect on advertisers would be neutral. However, they would not benefit from any additional competition for teleshopping services.

## **Option 2 – increasing the 3-hour limit**

### Impact on viewers

A4.185 There is a potential benefit to viewers in that increasing the current 3-hour limit for non-PSBs might encourage more broadcasters to consider offering a teleshopping service and this would expand the choice available to viewers. However, any additional benefit would be limited if non-PSBs simply chose to simulcast the programming of an existing teleshopping channels.

### Impact on broadcasters and advertisers

A4.186 Non-PSBs would benefit from greater flexibility to use teleshopping to generate revenue at times when few people are watching. However, there would be costs attached to developing new teleshopping services which might make this option of only limited interest. If non-PSBs did develop their own teleshopping services then there would be increased competition with the dedicated teleshopping channels. As a matter of principle, we would tend to assume that increased competition would increase innovation and help to ensure that broadcasters were efficient.

A4.187 If non-PSBs chose simply to simulcast the programming of dedicated teleshopping channels then there might only be limited incremental revenue. Rather expenditure on teleshopping services might just be spread between more channels. In addition, this benefit might be further limited if the rules on the PSBs were relaxed at the same time (see discussion below).

A4.188 Advertisers would benefit from more competition in the provision of airtime for teleshopping.

## **Option 3 – reducing the 3-hour limit**

### Impact on viewers

A4.189 Given that some viewers do derive some benefit from being able to access teleshopping services on non-PSB channels, imposing additional limits on the amount of teleshopping allowed on channels not exclusively devoted to teleshopping would appear to be a retrograde step. However, to the extent that such channels are doing no more than simulcasting the services of dedicated teleshopping services this would not actually reduce viewers' ability to access teleshopping services.

### Impacts on broadcasters and advertisers

A4.190 General channels that offer some teleshopping programming would be likely to suffer a reduction in revenue. Ofcom does not have the data to quantify how significant income from offering teleshopping windows might be on particular broadcasters but it does consider that this option would restrict the flexibility on non-PSBs to develop alternative sources of revenue.

A4.191 Those teleshopping services that currently derive some additional revenue from making their service available for simulcast would also be adversely affected, if the new limit forced general channels to reduce the length of their teleshopping simulcast windows.

A4.192 Advertisers would have fewer opportunities for teleshopping, and might also face increased costs.

## **Option 4 – removing the 3-hour limit entirely**

### Impact on viewers

A4.193 We consider that the position in respect of the nature and scale of the potential benefits would be similar to those set out in the discussion of Option 2 above.

### Impact on broadcasters and advertisers

A4.194 As with the impact on viewers, the benefits of this option would be similar to those set out in the discussion of Option 2 with the exception that non-PSBs would now have complete flexibility to decide between the balance of funding from teleshopping and from the sale of advertising/subscriptions around editorial programming. This flexibility could be important to broadcasters thinking about pursuing this route.

A4.195 As with Option 2 it could increase the extent of price competition in the provision of teleshopping services, which would be likely to benefit advertisers.

*QIA 14: Do stakeholders agree with the analysis of the impact of these options on non-PSB channels? If not, please set out your reasons, providing evidence to support your analysis wherever possible.*

## **PSB channels**

A4.196 We have identified three options in respect of PSB channels:

- a) maintaining the status quo (Option 1) i.e. maintaining the existing restrictions on PSB channels to take advantage of teleshopping;
- b) allowing PSB channels to provide teleshopping under the same arrangements as apply to non-PSB channels (Option 2); and
- c) allowing PSB channels to operate under the same arrangements for teleshopping as other channels between midnight and 6am (Option 3).

A4.197 The way in which PSB channels used “quiz” programmes until recently rather than spot advertising to generate revenue<sup>73</sup> during the night suggests that the option of broadcasting teleshopping services overnight rather than conventional programming could well appeal to them. It is against that background that we evaluate these options.

## **Option 1**

### Impact on viewers

A4.198 Overall we think that this is likely to leave viewers unaffected. It is possible that there may be some viewers that do not currently have access to digital television and who are thus unable to access dedicated teleshopping channels that might

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<sup>73</sup> Broadcasters obtained a share of the price paid by viewers to call premium rate telephone numbers. Quiz programming offered by PSBs accounted for the majority of the quiz TV revenue.

derive a benefit from having access to teleshopping services offered on PSBs. Equally, if PSBs were to offer teleshopping there would be viewers that do watch ordinary programming through the night that would no longer have access to the same range of programming as before.

A4.199 We are not in a position to evaluate the relative positions of these two groups but we assume that the overall impact would be broadly neutral.

#### Impact on broadcasters and advertisers

A4.200 The option would prevent PSBs from generating additional revenues. It would protect other channels that are offering teleshopping services from the increased competition that teleshopping services on PSBs would offer.

A4.201 The impact on advertisers would be neutral. However, they would not benefit from any additional competition to provide teleshopping opportunities.

### **Option 2**

#### Impact on viewers

A4.202 Given complete freedom to offer teleshopping services, it is possible that PSBs might consider offering such programming instead of (say) some types of daytime programming if the revenue from teleshopping was expected to exceed revenue from advertising and sponsorship. We consider that this would offer little in the way of additional benefits to viewers (even those interested in teleshopping), but would represent a significant reduction in choice for many more viewers that would otherwise value conventional programming.

#### Impact on broadcasters and advertisers

A4.203 As set out above, if the expected revenue from teleshopping exceeded that from advertising and sponsorship it is possible that PSBs would choose to offer teleshopping services instead of editorial programming. This would represent an increase in revenue for PSBs. However, it seems unlikely in most cases that PSBs would be able to generate more revenue from teleshopping than spot advertising. Moreover, we consider that PSB channels might be concerned about the adverse effects on their brand from broadcasting teleshopping outside night-time hours.

A4.204 To the extent that PSBs did broadcast teleshopping, then, having regard to the quiz TV example and the large reach of PSB channels, this could significantly constrain the opportunities for non-PSB channels to develop their own teleshopping services.

A4.205 Dedicated teleshopping services could face increased competition from teleshopping services on PSB channels. On the other hand, dedicated teleshopping services could benefit if PSBs agreed to simulcast their services, instead of managing their own teleshopping services.

A4.206 Advertisers could expect to benefit from competition from PSBs to provide teleshopping services, both in terms of the price paid, and the opportunities to reach larger audiences.

### Option 3

#### Impact on viewers

A4.207 As set out in Option 1, it is not clear what direct benefit this would offer to viewers. To the extent that teleshopping services generated revenue which was then reinvested into television programming, there could be some additional benefit to viewers.

#### Impact on broadcasters and advertisers

A4.208 Limiting teleshopping services to night-time hours would give PSBs some additional flexibility to generate additional revenue. However, it would still be likely to constrain the opportunities for non-PSB channels to develop their own teleshopping services. A more limited teleshopping window might make it more likely that PSBs would choose to simulcast the service from an existing dedicated teleshopping channel instead of developing their own service. This would reduce the impact on competition.

A4.209 As with Option 2, advertisers could expect to benefit from competition from PSBs to provide teleshopping services, both in terms of the price paid, and the opportunities to reach larger audiences.

*QIA15: Do stakeholders agree with our analysis of the impact on PSB channels of these three options? If not, please explain your reasons, providing evidence to support your analysis wherever possible.*

## Annex 5

# Draft Code on the Amount and Distribution of Advertising

## Introduction

1. This Code sets out the rules with which broadcasters must comply when carrying advertising. These rules give effect to the provisions of the Audio Visual Media Services Directive and those policies determined by Ofcom following consultation. In accordance with Article 20 of the Directive, Ofcom may disapply some or all of the rules to channels that are not receivable outside the United Kingdom. The Code replaces Ofcom's Rules on the Amount and Distribution of Advertising with effect from xx [month] 2008<sup>74</sup>.
2. Broadcasters must also comply with the Television Advertising Standards Code issued by the Broadcast Committee on Advertising Practice of the Advertising Standards Authority<sup>75</sup>.

## Definitions

3. In this Code:
  - a) 'Advertising' or 'television advertising' means any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes by a public or private undertaking or natural person in connection with a trade, business, craft or profession in order to promote the supply of goods and services, including immovable property, rights and obligations, in return for payment;
  - b) the 'broadcasting day' for the purposes of this Code is deemed to start at 6am and run for the following 24 hours;
  - c) 'Parliamentary proceedings' include proceedings on the floor of either House and Parliamentary Committees;
  - d) 'Public service channels' means those television services designated in accordance with section 310 of the Communications Act 2003;
  - e) a 'formal Royal ceremony' means a formal ceremony or occasion of which the Sovereign or members of the British Royal Family enjoying the prefix 'Royal Highness' are the centre. It applies to occasions such as the State Opening of Parliament and Trooping the Colour;
  - f) 'Self promotion' means advertising for the broadcaster's own products and services; and
  - g) 'Teleshopping' means television advertising which includes direct offers to the public with a view to the supply of goods or services, including immovable

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<sup>74</sup> The Code makes no substantive change to the rules on the amount of advertising, as these are the subject of a separate consultation. Subject to the outcome of that consultation, Ofcom may make further changes to the provisions on the amount of advertising.

<sup>75</sup> This can be found at [http://www.asa.org.uk/asa/codes/tv\\_code/tv\\_codes/](http://www.asa.org.uk/asa/codes/tv_code/tv_codes/).

property, rights and obligations, in return for payment. It includes self-promotion channels, devoted to the promotion of the licensee's own goods or services. Teleshopping may appear in teleshopping windows with a minimum uninterrupted duration of 15 minutes, or in teleshopping spots alongside conventional advertising.

### **Allowances for advertising and teleshopping**

4. The total allowance for advertising and teleshopping spots:
  - a) on any channel in any one hour must not exceed 12 minutes;
  - b) on public service channels must not exceed a daily average of 7 minutes per hour for every hour of transmission time across the broadcasting day, subject to a maximum average of 8 minutes an hour between 7am to 9am and 6pm to 11pm; and
  - c) on other channels must not exceed a daily average of 12 minutes an hour for every hour of transmission time across the broadcasting day (subject to a maximum daily average for advertising spots of 9 minutes an hour across the broadcasting day).
5. Teleshopping windows must be at least 15 minutes long. On:
  - a) public service channels, time used for teleshopping must be counted as part of the advertising spot allowance;
  - b) dedicated teleshopping and self-promotional channels, there are no restrictions on the amount of teleshopping, and such channels may also make use of the allowances for spot advertising described in paragraph 4;
  - c) other channels, no more than 3 hours a day of teleshopping is permitted.
6. Channels licensed by Ofcom:
  - a) which are available only in an area served by a Restricted Service Licence or distributed under a Television Licensable Content Licence within contiguous areas served by a single cable headend; and
  - b) which are not receivable outside the United Kingdom,

may use all or part of their teleshopping windows for local advertising features that do not include direct offers for sale, provided that a significant proportion of each feature refers specifically to the locality in which it appears.

### **Transfer of minutage**

7. If broadcasters have been unable to use their full allowance for advertising and teleshopping spots for reasons of good programme presentation, or because of unforeseen technical or human errors, they may transfer the unused minutage to other parts of the schedule on the same or any other day within 7 days, provided that they comply with the rules in paragraph 4. If a proposed transfer would result in a breach of the rules in paragraph 4 (b) or (c), the broadcaster should seek Ofcom's prior permission. Transfers that would result in a breach of paragraph 4(a) are not permissible.

## Identification of advertising and teleshopping breaks

8. Broadcasters shall ensure that television advertising and teleshopping shall be readily recognisable and distinguishable from editorial content and kept distinct from other parts of the programme service. This shall be done by optical, acoustic or spatial means.

## Advertising and teleshopping breaks during programmes

9. Where advertising or teleshopping is inserted during programmes, licensees shall ensure that the integrity of the programme is not prejudiced, having regard to the nature and duration of the programme, and where natural breaks occur.

10. To avoid excessive abruptness, transition between live coverage of Parliamentary proceedings and advertising should take place where natural breaks occur via a programme presenter in sound or vision. Programme directors / editors must have the discretion to reschedule or cancel breaks to avoid artificial interruptions in live proceedings. Breaks should be dropped altogether where this would be incompatible with editorial responsibility, for example in coverage of matters of great gravity or emotional sensitivity.

## Scheduling restrictions

11. Isolated advertising and teleshopping spots, other than in the transmission of sports events, shall remain the exception.

12. There are no restrictions on advertising breaks between different kinds of programmes. However, in the case of internal breaks in programmes<sup>76</sup>:

- a) of films and news, advertising and teleshopping breaks may not be inserted more than once for each scheduled period of at least 30 minutes;
- b) for children (including schools programmes), advertising and teleshopping breaks may not be inserted more than once for each scheduled period greater than 30 minutes;
- c) featuring a religious service, no advertising or teleshopping breaks may be inserted during the service;
- d) covering a formal Royal ceremony, no advertising or teleshopping breaks are permitted;
- e) featuring live Parliamentary proceedings, advertising and teleshopping breaks may not be inserted in programmes of a scheduled duration of 30 minutes or less; and
- f) included in a live programme feed from an overseas broadcaster, the break pattern of the originating broadcaster may be taken. The broadcaster retransmitting the feed from the UK remains responsible for ensuring compliance with the Television Advertising Standards Code (see paragraph 2 above).

13. In the case of other programmes, broadcasters (with the exception of public service channels) may insert one internal break for every scheduled period of 20 minutes of a

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<sup>76</sup> In the case of news programmes, and programmes for children (excluding schools programmes), this restriction will come into force on [xx] December 2009. Until then, sections 3.2(i) and 3.2(iii) of RADA will apply.



programme, plus one further break for the remainder of the programme. In the case of public service channels, the maximum number of breaks in a programme is set out in the table below:

**Number of internal breaks permitted in programmes on PSB channels**

<b>Scheduled duration of programme</b>	<b>Number of breaks</b>
21 – 44 minutes	One
45 – 59 minutes	Two
60 – 89 minutes	Three
90 – 119 minutes	Four
120 – 149 minutes	Five