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What do you want Ofcom to keep confidential?:

Keep nothing confidential

If you want part of your response kept confidential, which parts?:

Ofcom may publish a response summary:

Yes

I confirm that I have read the declaration:

Yes

Ofcom should only publish this response after the consultation has ended:

You may publish my response on receipt

Question 1: 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?:

Question 2: Do stakeholders agree that the new Code should discontinue detailed genre-specific rules on natural breaks?:

Question 3: 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?:

Yes, we agree that breaks signalled by sound or vision should be allowed for both advertising and teleshopping.

Question 4: 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?:

Question 5: Do stakeholders agree that the rule requiring a 20-minute interval between advertising breaks should be scrapped?:

Question 6: Do stakeholders agree that there should be limits on the number of advertising breaks within programmes of a given scheduled duration?:

Question 7: Has Ofcom identified the right options for break frequencies? What issues should Ofcom take into account in formulating proposals for consultation?:

Question 8: 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? :

Question 9: 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?:

Question 10: 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?

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Question 11: Do stakeholders agree that the rules limiting the length of individual advertisements on PSB channels should be discontinued?:

Question 12: Do stakeholders agree that the new Code should discontinue rules on the length of breaks on PSB channels?:

Question 13: 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?:

Yes, we agree that separation of editorial and advertising or teleshopping content should be marked by optical, acoustic or spatial means and we agree that the code should be no more prescriptive than this in its definition of the relevant degree of separation.

Question 14: 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?:

Question 15: What views do stakeholders have on the possible approaches to advertising minutage regulation outlined above?:

Question 16: What views do stakeholders have on the teleshopping options and preliminary assessment outlined above in relation to non-PSB channels?:

Buongiorno feels that either option 2 (increasing the amount of Teleshopping allowed on non-PSB channels not exclusively dedicated to teleshopping from the current 3 hours to a longer period) or option 4 (removing the volume restrictions on teleshopping on non-PSB channels) would be the best approach to this area of the code.

It is clear from non-PSB broadcaster's activities to date that there is a significant interest in the use of teleshopping within the advertising mix and this demand is potentially set to grow significantly subject to the outcome of other OFCOM inquiries.

Under its separate consultation, 'Participation TV Part 2: Keeping advertising separate from editorial?', OFCOM proposes to reclassify certain genres of currently editorial content (such as Quiz TV) as teleshopping. In addition, there is a separate OFCOM process (Proposal to reclassify TV gambling channels as teleshopping services) which looks to bring TV gambling under the teleshopping umbrella.

Were these outcomes to occur, non-PSB channels would very likely be keen to use content of these types within their teleshopping allowances, thus putting pressure on the currently restricted teleshopping airtime available. Thus, to create a joined-up set of outcomes to the two different OFCOM processes, it would seem sensible to extend the permitted allowances for non-PSB channels.

The reclassification of other content types as teleshopping also overcomes some of OFCOM's stated concerns regarding impact on consumers and dedicated teleshopping channels.

If, as Buongiorno believes they will, non-PSB broadcasters dedicate some proportion of their teleshopping windows to 'non-traditional' teleshopping content such as Quiz TV, then the dedicated teleshopping channels would not necessarily be threatened by any extension in non-PSB teleshopping allowances.

In addition, by not simply simulcasting existing teleshopping channels, non-PSBs which choose to use some part of their teleshopping allowances for content such as Quiz TV will be increasing choice for viewers and thus generating a positive outcome. Viewer and participation figures demonstrate that there is currently a demand for Quiz TV as editorial content and thus its increased ability to broadcast under extended teleshopping allowances would be beneficial.

Of the two options Buongiorno has a strong preference for option 4, the removal of restrictions on teleshopping on non-PSB channels. Apart from the difficulty of defining what would be an appropriate limit on these volumes, Buongiorno feels that the market will itself provide a limit on the total amount of teleshopping content that a non-PSB not dedicated to teleshopping will show.

Variety is a key aspect to maintaining viewer interest and therefore the overuse of teleshopping as a content source on a non-PSB broadcaster would likely damage audience figures and thus the revenues to be gained from teleshopping. In this way, the economics of the broadcaster would themselves define a natural limit on teleshopping volumes.

Question 17: What views do stakeholders have on the teleshopping options and preliminary assessment outlined above in relation to PSB channels?:

Buongiorno feels that options 2 (allowing PSBs to provide teleshopping under the same arrangement applying to other channels) and 3 (allowing PSB channels to operate under the same arrangements for teleshopping as other channels between midnight and 6.00am) are the best approaches to take in the drafting of the code.

The current regulations are excessively restrictive and prevent PSBs from taking advantage of what has proven itself to be a popular customer service that has the potential to generate significant revenues for broadcasters. In addition, as the consultation highlights, with the reclassification of gambling as teleshopping (and potentially also the reclassification of Quiz TV as teleshopping), two further important revenue generating services would be out of reach to PSBs without a change in their teleshopping allowances.

OFCOM's stated fear that an increase in teleshopping allowances would work against the interests of consumers if this meant that PSB channels substituted programmes with teleshopping at times when significant numbers of people are watching is, Buongiorno believes, unfounded.

It is likely that the economics of ad-funded editorial compared to teleshopping (whether traditional, Quiz TV or gambling) would mean that editorial will continue to be the most profitable output at times when significant numbers of people are watching. As is proved by the (currently unregulated) scheduling of Quiz TV, content requiring viewer's direct economic participation tends to gravitate towards the edge of the schedules, generally within the timescales defined within option 2, as a result of the economics of this content and the nature of this viewing demographic.

Of the two options above, Buongiorno most strongly supports option 2 (allowing PSBs the same restrictions as other channels), not only on the basis of presenting a level playing field for all broadcasters, but also on the basis that the economics of the market will define appropriate timing and limits for teleshopping content.

Question 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.:

Question 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.:

Question 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.:

Question 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?:

Question 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.:

Question 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?:

Question 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.:

Question 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.:

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

Question 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.:

Question 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?:

Question 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.:

Question 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?:

Question IA14: 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.:

Buongiorno broadly agrees with the analysis of the impact of these option on non-PSB channels.

It agrees that the impact on viewers of option 4 would be approximately equivalent to that of option 2 and thus, given the extra flexibility and potential economic benefits inherent in 4, it feels that OFCOM's analysis identifies this as the best possible route.

One point, however, is that OFCOM restricts itself to discussion of non-PSB's either developing their own teleshopping content, with the attendant costs, or else simulcasting existing services, which brings up concerns over viewer choice.

However, the consultation fails to take into account the potential for other teleshopping services (or services which are likely to be reclassified as teleshopping) already being produced by independent production companies. For example, services such as Quiz Call, produced by Buongiorno subsidiary Ostrich Media, are potentially to be reclassified as teleshopping under the 'Participation TV Part 2' consultation and their impact on this process should also be considered.

It is Buongiorno's contention that, if these services were to be reclassified as teleshopping, then their presence in broadcaster's teleshopping content portfolio would not only increase viewer choice and generate revenues, it would also reduce fears of competition with existing dedicated teleshopping channels.

Question IA15: 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.:

Buongiorno agrees with much of OFCOM's analysis of the impact of the different scenarios on PSBs. We agree with the assertions in options 1 and 3 that these changes in PSB teleshopping allowances would be unlikely to have a significant negative impact on viewers.

Furthermore, we would argue that the same can be said for option 2. OFCOM feels that there is a risk that, under option 2 (parity of regulation between PSBs and non-PSBs) PSBs would substitute some editorial content for teleshopping. However, Buongiorno believes that this would not be the case. OFCOM itself states the belief that the relative economics of spot advertising and teleshopping and the risk of brand damage would prevent the widespread substitution of editorial for teleshopping and Buongiorno concurs with this belief. It is likely that, were PSBs to be allowed more teleshopping capacity, this capacity would be self-restricted to time periods that would not otherwise show content of significant editorial interest.

The other concern voiced by OFCOM, that teleshopping on PSBs would represent a

constraint on non-PSB teleshopping activity, is also, Buongiorno feels, misplaced. In various places in the document OFCOM stresses the importance of competition in driving innovation. Buongiorno feels that competition from PSBs in the teleshopping arena would simply drive non-PSB broadcasters looking to benefit from teleshopping to innovate with new formats and approaches to the market ? benefiting broadcasters, advertisers and viewers.

Additional comments:

As a note on the deployment of any changes to the RADA regime, Buongiorno believes that thought should be given to the progress of other OFCOM initiatives that might impact on this consultation. In particular, the Participation TV Part 2 consultation currently underway would reclassify certain genres as teleshopping. Given the potential impact of changes in the teleshopping allowances of PSBs and non-PSBs on the outcome of this inquiry, Buongiorno feels that implementation of the two inquiries results should be co-ordinated.

If, for example, Quiz TV is reclassified as teleshopping, this reclassification should be synchronised with the implementation of any increases in teleshopping allowances to minimise business disruption.