

Response to the Ofcom Consultation on Participation TV by the Electronic Retailing Association UK

Introduction

ERA UK (Electronic Retailing Association) welcomes this Ofcom consultation into an area of broadcasting that has led to considerable disquiet amongst the public, damaged the trust of the public in broadcasters and has undermined one of the key principles of TWF and the Ofcom Broadcasting Code, which is the separation of commercial content from editorial.

Though most teleshopping licensees, who operate under the Advertising Standards Code, are not directly involved in Participation TV we recognise that this is an important area of television regulation. The confusion as to what is a commercial service and what is editorial is undermining the principles behind TWF and the Ofcom Broadcasting Code. It is already putting some of the PRS service channels designated as teleshopping (chat and dating) at a disadvantage to those licensed as editorial (chat, adult and psychic). This is because of specific prohibitions within the Advertising Standards Code which limit what can be advertised and the way a service or product can be promoted. Editorial services have been making use of the greater freedoms allowed under the Ofcom Broadcasting Code to stretch the rules to the limit and beyond to maximise their earnings with only limited interventions by Ofcom on the content of the programmes and none at all on the use of the premium rate numbers.

Part of the confusion about the acceptability or not of these PRS services has been the division of responsibility between Ofcom and ICSTIS. Ofcom has concentrated on the content of the broadcast output whilst ICSTIS has taken responsibility for the PRS service and how it is promoted on-screen. This may partly explain the slow response to the abuses that occurred in Quiz TV where Ofcom concentrated on the game mechanics whilst ICSTIC dealt with complaints about the premium rate numbers used. In the early stages there seemed to be a lack of understanding that Quiz TV was no more than a commercial service providing revenue for broadcasters, and for these services to succeed they needed to continuously promote on-screen premium rate numbers. It is interesting to note that since there has been a more joined up approach by ICTIS and Ofcom, following the bad publicity these services generated in the press, that subsequent to the implementation of various on-screen changes most services have been withdrawn or collapsed. But as has already been noted adult and psychic services have hardly featured until now due to the lack of complaints about their output. In the view of the ERA this has been unacceptable due to the flouting by a number of broadcasters of the basic principles of TWF, the Communications Act and the Ofcom Broadcasting Code rules to separate commercial messages from editorial.

In the ERA's view doing nothing is an option.

ERA Responses to questions

Q1. Do you agree that television broadcasters should be directly responsible for PRS in programmes and also for other forms of communication where viewers seek to interact with programmes? Please explain why.

We agree that it would simplify the present lines of responsibility for PRS to make the broadcasters directly responsible for PRS promoted within their programmes. This is already the case with advertising and should be applied to editorial. Part of the difficulties that have arisen, particularly in viewer competitions and Quiz TV, is that responsibility has been split between the broadcaster and the premium rate number provider with the broadcaster seemingly not aware, in some cases, of what was happening with the management of calls.

Q2. If so, do you agree that a variation to television licences would be the most appropriate way of ensuring that broadcasters are responsible for such PRS compliance?

Whilst we agree that it should be a condition of channels classified as editorial we feel it is unnecessary for channels classified as advertising as the Advertising Standards Code adequately covers this area. This variation of licences for channels classified as editorial should ensure that the promotion and management of these PRS will be taken far more seriously than has been apparent over the last few years.

Q3. Do you agree that there is a need for broadcasters to obtain independent, third party verification that they are in fact complying with the draft licence obligations set out in Paragraph 2 of the draft licence variation? If so, which of the options for verification discussed in Section 4 do you think is most appropriate? Are there other appropriate options? Again, please provide reasons.

Whilst accepting, with two important caveats (some broadcasters never use premium rate services of any kind and therefore should be excluded from this requirement to set up an audit system, and advertising channels are already covered under the Advertising Standards Code), a broadcaster should obtain independent third party verification that they are meeting their licence obligations, it is our view that this should be done under Option A.

Option B and C will be more expensive and will require considerably more staff time to operate effectively than Option A. When broadcasters are under increasing financial and time pressures it makes little sense to increase these burdens when Option A should effectively provide the protection for the viewers that Ofcom is seeking. Option A allows Ofcom, when it wishes, to test whether the licence conditions are being met. This power is likely to be more than enough to ensure compliance by most broadcasters.

Q4. Do you have any comments on the draft licence variation set out in Annex 5? Please support your comments with adequate explanation and provide drafting proposals as appropriate.

None

Q5. Do you agree that the draft licence obligations should not be limited to television but should also apply to radio broadcasters? Please provide reasons.

No comment

Which of the options proposed in Section 6 do you believe is most appropriate to ensure separation of advertising from editorial content? Please explain why.

Option 4 is our preferred option. 10.3 of the Ofcom Broadcasting Code states "products and services must not be promoted in programmes". It has been clear since the start of programmes and channels that promoted premium rate numbers through most of their transmission that they had been created to raise revenue. They only existed and still exist on the basis they are commercial enterprises. It is interesting to note that with all the new on-screen rules that apply to Quiz TV and the bad publicity they received that most have now gone out of business. Without the level of call revenue required to make them a commercial success the reason for their existence has ended. Unfortunately the same public examination of the other premium rate service channels has not taken place. These mainly consist of adult and psychic channels which continuously promote premium rate numbers within their programming. There is evidence that many callers do not get through to the programme but are diverted to other adult or psychic premium on-line services. In effect the channels and programmes are no more than an advertising medium for these premium rate number services.

It strikes us that the fact there have been very few complaints to Ofcom about these channels is irrelevant. The key issue has to be whether they presently breach the Ofcom Broadcasting Code (10.3) and undermine the principle of the separation of advertising from editorial enshrined in both TWF and the soon to be implemented AVMS Directive. In our view these channels are clearly advertising and should be classified as teleshopping and subject to the Advertising Code.

Do you have any comments on the draft new rules and guidance in respect of Options 2, 3 and 4 set out in Annex 6? Please support your comments with adequate explanation and provide drafting proposals as appropriate.

We feel the draft rules as laid out for Options 2 and 3 are acceptable. There are no draft rules for Option 4, which is our preferred option.

10.9 Premium rate numbers will normally be regarded as products or services, and therefore not appear in programmes, except where:

- they enable viewers or listeners to participate in or otherwise directly contribute to or influence the editorial content of the programme;
- they fall within the meaning of programme related material;
- they do not become unduly prominent within a programme and their use is editorially justified.

Etc.

The draft guidance would remain the same as Option 2 with one addition:

- No premium rate number should remain on-screen longer than is necessary to enable callers to phone the programme. All on-screen references to a premium rate number should be editorially justified.

Do you agree that Option 2 clarifies the existing provisions of the Broadcasting Code and therefore should not be limited to dedicated PTV only, but should apply to all editorial content (on both television and radio) which invites viewers to pay to take part? Please give reasons.

Yes, it makes sense for the amended rules and guidance to apply to the use of all premium rate numbers within editorial content.

Has Ofcom correctly identified, in Section 6 and the Impact Assessment in Annex 7, the various impacts arising from each option for dedicated PTV? Again, please give reasons.

No comment

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