



## COSTA trial waiver for film break lengths on PSBs

Statement

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## Section 1

# Statement

## Background

- 1.1 In December 2010, Ofcom published its Statement *Broadcasting Code Review: Commercial references in television programming*<sup>1</sup> (the “December Statement”) which included new rules setting standards for product placement in television programming. These rules implement changes to UK legislation to permit product placement in accordance with the Audiovisual Media Services Directive (the “AVMS Directive”)<sup>2</sup>. Amongst other things, the Statement clarified that single dramas fall within the definition of “films made for television” and therefore can include placed products.
- 1.2 In addition Ofcom confirmed its view that the intention of Article 20 of the AVMS Directive<sup>3</sup> is that single dramas should also be classified as films made for television for the purposes of the film break pattern rules derived from the AVMS Directive, and set out in rule 16(a) of Ofcom’s Code on the Scheduling of Television Advertising (“COSTA”)<sup>4</sup>. This has the effect of reducing the number of breaks permitted in single dramas as the AVMS Directive restricts advertising breaks during films made for television to one in respect of every 30 minutes.

## Consultation proposal

- 1.3 Ofcom considered carefully the potential impact, both on broadcasters that schedule significant volumes of acquired dramas, and on those that commission or produce dramas themselves. Ofcom noted concerns raised in response to the consultation<sup>5</sup> that the potential benefits of product placement may not outweigh the loss of income from advertising as a result of a reduction in the number of permitted breaks for these programmes. Ofcom also acknowledged that, while non-public service channels could extend their advertising breaks under the COSTA rules to compensate for the reduced number of permitted breaks, public service channels are subject to tougher restrictions and so would be prevented from doing this.
- 1.4 Under COSTA, PSBs are not permitted to schedule internal ad breaks longer than 3’50”, of which no more than 3’30” may be advertising (making the COSTA rules more restrictive than the minimum restrictions required under the Directive). Removing this additional restriction on PSBs for breaks during films could help to mitigate the effect of the reduction in the overall number of advertising breaks available, for example, by lengthening the remaining advertising breaks to 4 minutes and 30 seconds.

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<sup>1</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/724242/statement/statement.pdf>

<sup>2</sup> Article 11(3)(a) AVMS states that product placement is prohibited but Member States may derogate from this general prohibition by choosing to permit it in: “cinematographic works, films and series made for audiovisual media services, sports programmes and light entertainment programmes”.

<sup>3</sup> Article 20(2) of the AVMS Directive requires that “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 30 minutes...”.

<sup>4</sup> COSTA Code <http://stakeholders.ofcom.org.uk/binaries/broadcast/other-codes/tacode.pdf>

<sup>5</sup> paragraph 4.42 *Broadcasting Code Review: Commercial references in television programming* Ofcom December 2010 – web link at footnote 1

- 1.5 In our December Statement, we therefore proposed to waive the limit on ad break lengths in respect of films shown on public service channels for a trial period of 6-12 months, starting with the introduction of the new product placement rules (for which the classification of single dramas as “films made for television” is also relevant) on 28 February 2011. We invited views on this proposal by 28 January 2011.

## Overview of consultation responses

- 1.6 Ofcom received five responses to its proposal to implement a trial waiver of the break length rule for PSBs in respect of advertising breaks in films. These included responses from the following organisations: Five, Satellite and Cable Broadcasters’ Group (SCBG) and UKTV.
- 1.7 Two broadcasters requested confidentiality and are not therefore identified in the list. Responses from those organisations which did not request confidentiality have been published on Ofcom’s website <sup>6</sup>.
- 1.8 With regards to the proposal respondents made the following comments:
- 1.9 PSBs broadly welcomed the proposed waiver, and said that they expected it would wholly (Five), largely (a PSB) or partly (a PSB) mitigate the losses resulting from fewer ad breaks in single dramas. However one PSB considered that the potential for audience dilution and viewer sensitivity as a result of longer commercial breaks in films and single dramas would temper both PSBs’ and non PSBs’ ability to maximise commercial benefit from longer breaks.
- 1.10 One PSB welcomed the flexibility to decide break lengths in films other than single dramas, and suggested this would provide insight into how audiences will react to longer breaks on PSB channels. However another stated that it was not clear whether PSBs would chose to increase break lengths in films (other than single dramas) as other better advertising opportunities existed elsewhere in the schedules.
- 1.11 Five and another broadcaster suggested that the waiver was only likely to have a marginal affect on the overall volume of advertising impacts in the market.
- 1.12 Non-PSBs (SCBG and UKTV) opposed the waiver, on the grounds that Ofcom should not single out PSBs for mitigation measures. They were sceptical that non-PSBs would be able to mitigate the loss of advertising breaks by extending the length of the remaining breaks, and suggested (along with another broadcaster) that viewers would respond negatively to longer breaks, limiting their commercial value.
- 1.13 SCBG also argued that Ofcom’s trial waiver proposal did not adequately consider the cost of re-versioning single dramas and the loss of promotional airtime.
- 1.14 Most respondents suggested that Ofcom should review its decision to classify single dramas as films. However, no new arguments not already considered in the statement were advanced.
- 1.15 Five said that long lead times on transmission schedules meant it would take some time for PSBs to benefit from the trial waiver; they (and another PSB) asked for early confirmation that it would proceed, and that it would endure for a significant period.

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<sup>6</sup><http://stakeholders.ofcom.org.uk/consultations/bcrtv2010/costa-trial-waiver/>

- 1.16 Three broadcasters (UKTV and two others) sought clarity as to how Ofcom would assess the success or failure of the trial waiver.

## Ofcom's analysis of responses

- 1.17 Ofcom welcomes the PSB broadcasters' assessments that the trial waiver is likely to mitigate (in part or entirely) the reduction in the number of breaks permitted in single dramas.
- 1.18 We note the broadcasters':
- a) supposition that longer breaks may dilute audiences;
  - b) varying opinions on the potential benefits for PSBs, of longer breaks in films other than single dramas; and
  - c) anticipation that the trial waiver will have a minimal effect on the overall volume of advertising impacts in the market;
  - d) intention to assess the reaction of audiences to longer breaks.
- 1.19 Ofcom notes the non-PSBs arguments against proceeding with the trial waiver. However Ofcom considers that non-PSBs already benefit from the ability to decide the length of ad breaks (in all programmes, not just films), and many do schedule breaks exceeding the limit imposed upon PSBs.
- 1.20 Ofcom notes SCBG's assertion that the trial waiver would not mitigate the potential costs incurred by broadcasters choosing to re-version single dramas, but considers that these costs arise from Ofcom's decision that single dramas are included within the definition of films made for television, not from the proposal for trial waiver in respect of PSB channels.
- 1.21 We agree with Five's view that a six month trial may be inadequate. A twelve month trial, however, would allow ample time for the PSBs to reconfigure their schedules, assess audience reaction, and for the broadcasters' to test their hypotheses outlined in 1.17 and 1.18.

## Conclusion

- 1.22 Talking into account the comments from respondents Ofcom has decided to suspend the application of COSTA rule 14<sup>7</sup> in respect of content falling within the definition of 'films'<sup>8</sup> for a trial period of 12 months from 28 February 2011. The trial waiver is without prejudice to any changes that may be made to COSTA as the result of a future consultation.
- 1.23 Ofcom will seek feedback on the impact of the suspension of COSTA rule 14 during the period of the trial and, towards the end of the trial period. We will take these any submissions into account when considering whether or not to make the waiver permanent.

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<sup>7</sup>: "breaks during programmes on public service channels may not exceed 3 minutes 50 seconds, of which advertisements may not exceed 3 minutes 30 seconds." Rule 14 COSTA

<sup>8</sup> 'films' means cinematographic works and films made for television (including single dramas), but excludes series, serials and documentaries Rule 3f COSTA