The Scheduling of Television Advertising

Approaches to enforcement

This is the non-confidential version. Confidential information has been redacted. Redactions are indicated by ✂

Statement

Publication date: 9 July 2015

About this document

Ofcom sets rules that restrict the amount of television advertising that broadcasters can transmit and where such advertising can be scheduled. These rules are intended to protect viewers and, in some cases, are based on requirements stipulated in European law.

In July 2014, Ofcom published a consultation on: i) options available to secure effective and consistent enforcement of rules that restrict advertising interruptions in programmes; and ii) changes to the advertising scheduling rules, designed to make them clearer and easier to follow.

This document sets out Ofcom's decisions on the issues set out in the July 2014 consultation.

Contents

Section 1

Executive summary

Background to our review

1.1 Under European law, national regulatory authorities like Ofcom are required to maintain and enforce a set of rules about the content and scheduling of advertising on television services. These rules are intended to protect the interests of television viewers and safeguard the specific character of European television.

1.2 Ofcom fulfils part of this requirement through its Code on the Scheduling of Television Advertising ("COSTA"). Among other things, COSTA contains specific rules limiting the amount of advertising that television services may show and the extent to which advertisements may interrupt programme content.

1.3 Advertising breaks which interrupt programme content are known as "internal breaks". The number of internal breaks permitted in a programme is determined by a range of factors including the programme's genre and its "scheduled duration", a term set out in European legislation but not otherwise defined. Effective enforcement of the rules, therefore, requires Ofcom to adopt a transparent and consistent methodology for determining a programme's scheduled duration.

1.4 Traditionally Ofcom had used information from published programme listings, such as electronic programme guides ("EPGs"), in order to assess scheduled duration. In practice this means that scheduled duration is measured by reference to the programme slot shown in published listing services – an approach broadly accepted by industry stakeholders for many years.

1.5 However, more recently some broadcasters have argued that Ofcom should adopt an alternative approach, determining scheduled duration on the basis of information recorded in logs which set out each aspect of a programme's transmission – including the start and end of editorial content and the timings of internal breaks – to the nearest second.

1.6 Because the rules which specify how many internal breaks may be scheduled depend on this measurement, the consequences for broadcasters and viewers of the different approaches were potentially significant, possibly affecting the ability of broadcasters to generate advertising revenue and/or the level of advertising material to which viewers are exposed.

1.7 In light of these concerns, in July 2014, we published a consultation entitled *The Scheduling of Advertising – Approaches to Enforcement* (the 'July 2014 consultation')[1] setting out the implications of these alternative options and inviting the views of stakeholders.[2] The responses we received on this issue and our

[1] The consultation can be found at: http://stakeholders.ofcom.org.uk/binaries/consultations/scheduling-adverts/summary/scheduling-adverts.pdf

[2] We received 16 responses in total to the July 2014 consultation. The non-confidential responses have been published on our website. See http://stakeholders.ofcom.org.uk/consultations/scheduling-adverts/?showResponses=true

assessment of the approaches available to Ofcom are described in Section 3 of this document.

1.8 Because broadcasters of children's programmes have claimed that enforcement of scheduled duration using the EPG approach would substantially affect their advertising revenues, we conducted a detailed analysis of the potential impact, relative to their current practice. We have updated that analysis in light of the comments we received from certain children's broadcasters – this is presented in Annex 1 of this document.

1.9 In addition, Ofcom proposed a number of minor amendments to COSTA in the July 2014 consultation. This is because, since Ofcom last updated COSTA in 2010, we have made a number of policy decisions that have had an impact on the application of rules in the code, which have not been codified. At the same time, we also considered that the layout of COSTA could usefully be revised, and a range of definitions added, to help broadcasters to apply the rules consistently. The responses we received from stakeholders about our proposed amendments and our conclusions in each case are described in Section 4 of this document.

Our decisions

1.10 Having undertaken an assessment of the relevant evidence, and following consideration of responses to our consultation proposals, we have decided that the continued use of the EPG approach to the measurement of scheduled duration best achieves outcomes that fulfil Ofcom's statutory duties. Specifically, we consider that the EPG approach:

1.10.1 appropriately balances Ofcom's duty to ensure the availability of a wide range of television services with ensuring that viewers, particularly children, are afforded the required level of protection;

1.10.2 offers greater transparency than the alternative options, uses information that is readily accessible, and provides clear parameters on which to make enforcement decisions; and

1.10.3 represents an appropriate basis for assessing compliance with the requirements of European legislation.

1.11 We have also decided to:

1.11.1 include text in COSTA to set out the specific exemptions which apply to breaks on public service channels and minutage rules on certain local television services;

1.11.2 amend a range of definitions within COSTA, such as those which apply to teleshopping and films, to make the code clearer and easier to follow; and

1.11.3 revise the layout of COSTA.

1.12 The revised code will come into force on **1 November 2015**. Broadcasters should be aware that Ofcom will enforce the COSTA rules by reference to the EPG approach to the measurement of scheduled duration from that date.

Section 2

Legal framework

Introduction

2.1 In considering the issues addressed in the July 2014 consultation and this Statement, we have taken into account our statutory duties, as set out in the Communications Act 2003 ("the Act").

2.2 In this section we explain the specific nature and purpose of our duties, insofar as they relate to the issues covered by the July 2014 consultation and this Statement, referring to the relevant regulatory objectives and principles set out in the Act and in European legislation.

Communications Act 2003

2.3 Ofcom's principal duty, set out in Section 3(1) of the Act, is to further the interests of:

2.3.1 citizens in relation to communications matters, and

2.3.2 consumers in relevant markets, where appropriate by promoting competition.

2.4 Specifically, Section 319(1) of the Act places a duty on Ofcom "to set, and from time to time to review and revise, such standards for the content of programmes to be included in television and radio services as appears to [it] best calculated to secure the standards objectives".

2.5 These standards objectives include:

2.5.1 "that persons under the age of eighteen are protected" (S319(2)(a)); and

2.5.2 "that the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with" (S319(2)(i)).

2.6 Section 321 of the Act also specifically provides that in setting standards to secure the standards objectives set for the protection of under-18s and the objectives for advertising, including complying with our international obligations, the standards set by Ofcom:

2.6.1 must include general provision governing standards and practice in advertising; and

2.6.2 may include provision prohibiting advertisements and forms and methods of advertising (whether generally or in particular circumstances).

2.7 In addition, section 321(4) of the Act makes clear that Ofcom shall, in relation to programme services, have a general responsibility with respect to advertisements and methods of advertising.

2.8 Section 322 of the Act gives Ofcom supplementary powers relating to advertising and sets out that the regulatory regime for services licensed by Ofcom must include a condition which requires the provider of the service to comply with every direction given by Ofcom with regard to:

2.8.1 the maximum amount of time to be given to advertisements in any hour or other period;

2.8.2 the minimum interval which must elapse between any two periods given over to advertisements;

2.8.3 the number of such periods to be allowed in any programme or in any hour or day; and

2.8.4 the exclusion of advertisements from a specified part of a licensed service.

2.9 It also provides that directions under this section:

2.9.1 may be general or specific;

2.9.2 may be qualified or unqualified; and

2.9.3 may make different provision for different parts of the day, different days of the week, different types of programmes or for other differing circumstances.

2.10 In giving a direction, Ofcom must take account of such of the international obligations of the United Kingdom as the Secretary of State may notify to Ofcom for the purposes of these provisions.

European legislation

2.11 The international obligations referred to in section 319(2)(i) of the Act include those set out in the AVMS Directive.[3] This Directive sets out the European Union framework for the regulation of television services. It amended the Television Without Frontiers ("TVWF") Directive, which introduced minimum common standards of advertising regulation in order to facilitate a single market in broadcasting services.

2.12 The requirements of the AVMS Directive that are of particular relevance to the issue of advertising breaks in programmes, discussed in Section 3 of this document, are contained in Article 20. This states:

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 concerned, 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 30 minutes. The transmission of children's programmes may be

[3] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:095:0001:0024:EN:PDF

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."

2.13 The Directive contains a number of Recitals to guide Member States in their application of the legislation. Relevant to our consideration of the issues addressed in this document are the following:

"(41) Member States should be able to apply more detailed or stricter rules in the fields coordinated by this Directive to media service providers under their jurisdiction, while ensuring that those rules are consistent with general principles of Union law. (…)

"(83) In order to ensure 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 Member States must maintain the right to set more detailed or stricter rules and, in certain circumstances, to lay down different conditions for television broadcasters under their jurisdiction.

"(84) Member States, with due regard to Union law and in relation to broadcasts intended solely for the national territory which may not be received, directly or indirectly, in one or more Member States, should be able to lay down different conditions for the insertion of advertising and different limits for the volume of advertising in order to facilitate these particular broadcasts.

"(85) Given the increased possibilities for viewers to avoid advertising through the use of new technologies such as digital personal video recorders and increased choice of channels, detailed regulation with regard to the insertion of spot advertising with the aim of protecting viewers is not justified. While the hourly amount of admissible advertising should not be increased, this Directive should give flexibility to broadcasters with regard to its insertion where this does not unduly impair the integrity of programmes.

"(86) The Directive is intended to safeguard the specific character of European television, where advertising is preferably inserted between programmes, and therefore limits possible interruptions to cinematographic works and films made for television as well as interruptions to some categories of programmes that need specific protection."

European Case law

2.14 There are also a number of relevant judgments from the European Court of Justice relating to the equivalent provisions in the TVWF Directive. Although these cases considered the TVWF Directive rather than the AVMS Directive, we consider them to be useful in the context of the decisions taken in this document. A summary of the relevant judgments is set out in Annex 3.

Balancing Ofcom's duties and other relevant considerations

2.15 In carrying out its statutory duties to further the interests of citizens in relation to communications matters and to further the interests of consumers in relevant markets, where appropriate by promoting competition, Ofcom is required by Section 3 of the Act to have regard in all cases to a variety of factors, including:

2.15.1 the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and

2.15.2 any other principles appearing to Ofcom to represent best practice.

2.16 In addition, s3(2) of the Act requires Ofcom to secure certain objectives in carrying out its statutory functions, including:

2.16.1 the availability throughout the United Kingdom of a wide range of television and radio services which (taken as a whole) are both of high quality and calculated to appeal to a variety of tastes and interests; and

2.16.2 the maintenance of a sufficient plurality of providers of different television and radio services.

2.17 In carrying out its duties, Ofcom must also have regard to certain matters listed in s3(4) of the Act, as appear to Ofcom to be relevant in the circumstances, including:

2.17.1 the desirability of promoting competition in relevant markets;

2.17.2 the desirability of encouraging investment and innovation in relevant markets;

2.17.3 the vulnerability of children and others whose circumstances appear to Ofcom to put them in need of special protection;

2.17.4 the opinions of consumers in relevant markets, and of members of the public generally; and

2.17.5 the extent to which, in the circumstances of the case, the furthering or securing of the matters mentioned in paragraphs 2.3 and 2.4 above is reasonably practicable.

2.18 In performing its duty to further the interests of consumers, Ofcom is also required to have regard in particular to the interests of those consumers in respect of choice, price, quality of service and value for money.

2.19 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.[4]

2.20 Ofcom is also required to keep the carrying out of its functions under review to ensure that regulation does not involve the imposition of burdens which are unnecessary or the maintenance of burdens which have become unnecessary.

Impact assessment and equality impact assessment

2.21 The analysis presented in our July 2014 consultation constituted an impact assessment as defined in section 7 of the Act. This statement sets out the corresponding decisions having taken all representations into account.

[4] Communications Act, Section 3(5)

2.22 Impact assessments provide a valuable way of assessing different options for regulation and showing why a preferred option was chosen. They form part of best practice policy-making. This is reflected in section 7 of the Act, which sets out that we have to carry out impact assessments 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 impact assessments in relation to the great majority of our policy decisions. For further information about our approach to impact assessments, see our impact assessment guidelines.[5]

2.23 Ofcom is also required to assess the impact of our functions, policies, projects and practices on particular groups such as those identified by age, race, religion, disability, maternity, gender and sexual orientation. Equality Impact Assessments also assist us in making sure that we are meeting our principal duty of furthering the interests of citizens and consumers.

2.24 The July 2014 consultation noted that the enforcement methodologies consulted on, and the proposed COSTA revisions, were unlikely to have a detrimental impact on any such group. Stakeholders were invited to provide information or evidence about any potential equality impacts they identified that are associated with the options set out in the consultation document. No respondents commented on this aspect of the consultation.

[5] Ofcom, *Better policy making: Ofcom's approach to impact assessment*, 21 July 2005, http://stakeholders.ofcom.org.uk/binaries/consultations/ia_guidelines/summary/condoc.pdf

Section 3

Enforcing the rules on the scheduling of advertising breaks

3.1 This section sets out:

3.1.1 the background to our consultation on our approach to enforcing advertising scheduling rules, including the EU rules and domestic regulation;

3.1.2 the options considered in our 2014 July consultation;

3.1.3 the framework we have used to assess the suitability of different enforcement approaches;

3.1.4 a summary of stakeholders' views on the approaches subject to consultation, and the stakeholder proposals for an alternative 'hybrid' enforcement approach;

3.1.5 our assessment of the different approaches to enforcement, having regard to our framework for assessment and stakeholder responses; and

3.1.6 our decision on the enforcement methodology we will use going forward.

Background to our consultation

3.2 The AVMS Directive sets out a number of rules with which EU member states must comply in their regulation of television (and other audiovisual) matters. These include a set of minimum standards applying across the EU on the content and placement of television advertising. In particular, they include restrictions on the amount of advertising which broadcasters may show, as well as specific rules on how often programmes in certain genres may be interrupted by advertising. The genre-specific restrictions are shown in Figure 1 below:

Figure 1: Genre-specific restrictions in the AVMS Directive (Article 20 AVMS)

Type of content	Advertising break requirement set out in AVMS Directive
Films	One advertising interruption permitted for each scheduled period of at least 30 minutes.
News	One advertising interruption permitted for each scheduled period of at least 30 minutes.
Children's programmes	One advertising interruption permitted for each scheduled period of at least 30 minutes provided the scheduled duration of the programme is **greater than 30 minutes**

3.3 Taken as a whole, the restrictions are intended to protect the interests of television viewers and to safeguard the specific character of European television by limiting the extent to which advertising may interrupt programme content.[6]

3.4 Restrictions on advertising breaks in specific programme genres were first introduced in 1989 by the TVWF Directive. The AVMS Directive, which came into force in 2009, changed these particular rules.

3.5 In the case of films and news, the change from TVWF to AVMS was a deregulatory one – i.e. under TVWF advertising breaks were permitted in films only once every 45 minutes, whereas under AVMS the relevant period is 30 minutes.

3.6 In the case of children's programmes, however, the requirements in EU legislation became more restrictive. Under TVWF, an internal break was permitted in children's programming with a 'scheduled duration' *of 30 minutes or more*. In the discussions leading to the adoption of the AVMS Directive, the European Commission initially proposed a restriction on internal breaks within children's programmes with a scheduled duration under 35 minutes. This proposal was rejected by the European Parliament and the rule ultimately adopted in the AVMS Directive permitted one advertising interruption for each scheduled period of at least 30 minutes, provided that the scheduled duration of a children's programme is "*greater than 30 minutes*".

3.7 COSTA implements the requirements of the AVMS Directive into UK law. By virtue of the conditions in each broadcaster's relevant licence, broadcasters are required to comply with the COSTA rules applicable to them.

3.8 In addition to the restrictions on advertising breaks in specific programme genres (films, news and children's programming), COSTA includes rules restricting advertising interruptions in most other programme genres.[7] These rules also limit the number of internal advertising breaks a programme may contain, based on its scheduled duration.

3.9 The basis for determining a programme's scheduled duration therefore affects whether, and if so to what extent, it can be interrupted by advertising. Although the AVMS Directive uses the term 'scheduled duration' (notably in the context of the restriction on advertising interruptions in children's programming), it does not define it and nor does it prescribe how it should be measured. Ofcom has enforced the COSTA rules using information from electronic programme guides ("EPGs") as a proxy for a programme's scheduled duration (e.g. a programme that is listed as starting at 07:00 followed by a programme starting at 07:30 would have a scheduled duration of 30 minutes). We refer to this as the "EPG approach". The EPG approach has worked well for the majority of programmes, but the more restrictive rules introduced by the AVMS Directive, as described above, have raised an issue in relation to children's programmes.

3.10 At present, the practice of several children's broadcasters is to place internal breaks in programmes that are scheduled in 30 minute EPG slots. They do so on the grounds that they consider these programmes to have, according to their own transmission data, a scheduled duration which is greater than 30 minutes (possibly

[6] See in particular Recital 86 of the AVMS Directive.
[7] Recital 41 of the AVMS Directive permits Member States to apply more detailed or stricter rules to media services under their jurisdiction. The additional advertising scheduling rules can be found at in Annex 2.

by a matter of seconds). These broadcasters have highlighted to Ofcom that a practical consequence of determining a programme's scheduled duration using the EPG approach is that a children's programme would need to be within an EPG slot of at least 31 minutes before it can contain an interrupting advertising break. This is because, as a matter of presentation, EPGs display times in increments of a minimum of 1 minute, although some broadcasters have argued that only 35 minute EPG slots would be practical.

3.11 Consequently, the children's broadcasters have argued that the EPG approach places a regulatory burden on them that goes beyond the requirements of the AVMS Directive. They have asserted that enforcement on such a basis would lead to a significant loss of advertising revenue, with negative consequences on their ability to invest in children's programming, including original production.

3.12 As a result, many of these broadcasters have submitted that Ofcom should use an enforcement methodology that takes account of other, more granular, sources of information, so that the duration of a programme can be calculated to the nearest second (for example, by using a broadcaster's own transmission logs). The children's broadcasters claimed that, if Ofcom were to use such information for enforcement purposes, their children's programming could be shown to have a scheduled duration that is greater than 30 minutes and accordingly these programmes would be entitled to an internal break under European and COSTA rules.

3.13 In July 2014 we consulted on whether Ofcom should continue to use the EPG approach to enforcing the COSTA rules or adopt an alternative approach based on using more granular information.

Options considered in the July 2014 consultation

3.14 The July 2014 consultation considered a number of approaches to enforcing the COSTA rules based on a programme's scheduled duration. Having set out our views on the relative advantages and disadvantages of the various approaches, we invited stakeholders to give us their views on the enforcement approaches discussed, including the approach they considered Ofcom should adopt.

3.15 The different possible approaches identified by Ofcom and assessed in the July 2014 consultation are summarised below.

The EPG Approach

3.16 Under the EPG approach, the 'scheduled duration' of a programme equates to the slot in which it is scheduled. Measuring a programme's scheduled duration in this way includes both the duration of the programme's editorial content and the duration of any material broadcast during the breaks in and around the programme. This is because EPGs do not distinguish between editorial content and advertising or other material. Further, the approach necessitates that a programme's scheduled duration is calculated using the units of time reflected by EPGs (i.e. which may be to the nearest one or five minute junction). Under this approach, an internal break would not be permitted in a children's programme scheduled in a 30 minute EPG slot as it would not have a scheduled duration "greater than" 30 minutes. However, an internal break would be permitted if the children's programme was in an EPG slot of at least 31 minutes.

3.17 The July 2014 consultation noted that, with the exception of a group of children's broadcasters, the EPG approach is widely used by broadcasters when scheduling advertising. Therefore, we explained that if this approach was used as an enforcement tool:

3.17.1 the amount of advertising to which viewers would be exposed would remain broadly at current levels;

3.17.2 broadcasters' advertising revenues, and therefore their willingness and ability to invest in content production, would be unlikely to be significantly impacted. However, children's broadcasters may lose some advertising revenue as a result of fewer advertising interruptions and, as a consequence, investment in children's programming might be impacted negatively;

3.17.3 the approach would offer Ofcom a transparent basis on which to make enforcement decisions. The relevant information is easily accessible for the majority of broadcasters that Ofcom licenses. However, it is reliant on content produced by third parties (i.e. EPG providers), which may indicate a programme's scheduled length in different ways. Furthermore, available information may not always be up to date; and

3.17.4 would be likely to lead to outcomes that are consistent with the minimum requirements of the AVMS Directive. However, the approach may be seen to place a regulatory burden on children's broadcasters that goes beyond the requirements of the AVMS Directive, as they consider that the AVMS Directive permits internal advertising breaks in children's programmes of 30 minutes and several seconds duration.

The TX Approach

3.18 An alternative approach is to measure a programme's scheduled duration on the basis of information obtained from the broadcaster's own internal transmission ("TX") logs. Broadcasters use this information for a range of purposes, including audience measurement and schedule planning. The July 2014 consultation referred to this as "the TX approach". Unlike the EPG approach, which reflects planned programme timings, the TX approach uses post-transmission data which reflects out-turn timings.

3.19 Transmission logs are capable of providing detailed information about the timings of programmes, allowing duration to be determined to the nearest second. As such, they offer alternatives for determining what content is included within a programme's scheduled duration. In the July 2014 consultation we considered three possible ways of determining a programme's scheduled duration using the TX approach:

3.19.1 *Slot Duration* – interpreted in this way, a programme's scheduled duration is equivalent to the slot in which it is broadcast (i.e. it includes all programme, advertising and promotional material transmitted between the start of one programme until the start of the next); or

3.19.2 *Programme Duration* – interpreted in this way, a programme's scheduled duration is inclusive of editorial content *and* all material shown during internal breaks (i.e. from the start of the programme to the end of the programme); or

3.19.3 *Editorial Only* – interpreted in this way, a programme's scheduled duration includes editorial content exclusively (i.e. from the start of the programme to the end of the programme excluding advertising and promotional material broadcast in internal breaks).

3.20 The July 2014 consultation noted that by relying on more granular data the TX approach would enable a programme's scheduled duration to be measured more precisely than under the EPG approach. Therefore, if used as an enforcement tool, the approach could potentially provide scope for including an internal break in a children's programme scheduled in a 30 minute EPG slot (provided the scheduled duration could be shown to be greater than 30 minutes – e.g. 30 minutes and 1 second – when determined using TX data). As a consequence, the approach may in theory deliver potential benefits to viewers of children's programmes by helping to protect advertising revenues and therefore sustain the current supply, quality and range of children's programmes and channels.

3.21 However, in the July 2014 consultation we noted that the TX approach would:

3.21.1 require many broadcasters to change the way they plan advertising schedules; and

3.21.2 lack transparency as the relevant information is not publicly available. Further, access to data may be limited and its accuracy questionable. We highlighted a number of concerns in relation to the data that would need to be used under this approach in Annex 6 of our 2014 consultation.[8]

3.22 Further, we also noted that the TX approach raises the question of what period equates to a programme's scheduled duration (e.g. a programme slot, programme duration or editorial only). Depending on the period measured, the approach could:

3.22.1 reduce significantly the number of advertising breaks broadcasters are entitled to transmit across all programme genres and consequently reduce viewer exposure to advertising;

3.22.2 negatively impact on the range and quality of programmes across all channels as the potential loss of advertising revenues may reduce incentives to invest in programmes; and / or

3.22.3 raise questions in relation to the approach's compliance with the AVMS Directive.

Framework for assessing suitability of enforcement approaches

The July 2014 consultation

3.23 The July 2014 consultation set out our proposed framework for assessing the above options, based on our statutory duties. We provisionally concluded that we should base our assessment on the following broad criteria:

3.23.1 Consumer interests;

3.23.2 Practicality of enforcement; and

[8] Available at http://stakeholders.ofcom.org.uk/binaries/consultations/scheduling-adverts/summary/scheduling-adverts.pdf

3.23.3 Regulatory certainty.

Stakeholders' responses

3.24 We asked stakeholders whether they agreed with this approach. Stakeholders were in broad agreement that the framework was thoroughly considered and covered the relevant issues.

Ofcom's conclusions on the relevant assessment criteria

3.25 As well as the precise nature of the legal obligation contained in the AVMS Directive, in considering the appropriateness of the above enforcement options we have been guided by our statutory duties, as set out in Section 2 of this Statement.

3.26 In many cases there may be no clear-cut answer to a particular regulatory question, and different factors, taken in isolation, may point to alternative outcomes. It is the duty of Ofcom to assess the likely impact of regulation on a range of stakeholders such as consumers, citizens, broadcasters and advertisers and, where necessary, strike a balance between them to ensure that an appropriate and proportionate set of rules are in place.

3.27 In the July 2014 consultation, we noted that the question of a programme's scheduled duration has particular implications for certain stakeholders. Specifically, because of the prohibition on internal breaks in children's programmes unless they are greater than 30 minutes, certain approaches, which may have little or no effect on other broadcasters, may have a negative impact on the revenues of children's broadcasters. In turn, this may affect viewers insofar as children's broadcasters could have reduced incentives to invest in high quality programmes or in a range of channels.

3.28 We also noted that it was important that the approach taken must serve to provide a framework for practical enforcement by Ofcom to ensure that we give effect to the AVMS Directive. The AVMS Directive establishes the need to protect the interests of consumers as television viewers, especially in relation to some categories of programming (including children's programming) that need special protection. An enforcement methodology therefore needs to provide a means of delivering this objective.

3.29 We have concluded that the assessment criteria in Table 1, on which we consulted in July 2014, are appropriate and consistent with our statutory duties and the matters outlined above.

Table 1: Assessment criteria

Consumer interests	Relevant factors include the extent to which an option has an impact on: • the level of viewer exposure to advertising during programming;[9] • in particular, the frequency of advertising interruptions in children's programmes; and • advertising revenues resulting in reduced incentives for investment in a wide range of good quality programmes.
Practicality of enforcement	Relevant factors include the extent to which information used for enforcement purposes: • is consistent and sufficiently robust; • is transparent; • does not impose an unnecessary burden on industry; and • can be readily accessed by Ofcom.
Regulatory certainty	Relevant factors include the extent to which an option: • clearly secures statutory objectives; and • is supported by relevant case law.

Stakeholder views on the options considered in the July 2014 consultation

The EPG Approach

3.30 Many respondents noted the benefits associated with the EPG approach, as set out in the July 2014 consultation and summarised in paragraph 3.16.

3.31 Channel 4's view was that the EPG approach provides the most robust, consistent and relevant method for calculating the scheduled duration of a programme. It noted that the data from published programme guides is readily available and transparent. It considered that, from a practical perspective, the EPG captures a reliable indication of the "hard junctions" within a broadcaster's schedule that reflect the duration of a

[9] i.e. the number of times a programme is interrupted by advertising.

programme and consequently the permitted amount of advertising minutage. This view was shared by MSM Sony Asia.

3.32 Channel 4 disagreed with Ofcom's view, set out in the consultation, that EPG data may not always be up to date. It emphasised the importance of EPG guides in helping viewers to navigate through large amounts of programming information and plan their viewing experience, and noted that "all platforms [had] invested significant effort in creating enhanced graphical user interfaces". As a result, Channel 4 stated that in its experience the vast majority of broadcasters kept the information supplied to EPG providers as accurate and up to date as possible – with a number of EPGs being able to update their displays up to one hour prior to transmission.

3.33 ITV noted that the EPG approach could be characterised as an ex ante approach, relying on planned (and easily verifiable) scheduling information. Its view was that the EPG approach is well established, and meets the Ofcom assessment criteria in relation to the consumer interest, practicality and certainty.

3.34 BT also considered the EPG approach to be the most effective enforcement approach for the vast majority of broadcasters, for Ofcom and for viewers. It noted that enforcing on the basis of the EPG approach would ensure that interruptions would not increase during programming, meaning viewers' enjoyment would not be affected.

3.35 S4C noted that the EPG approach enabled broadcasters to schedule advertising breaks in an orderly fashion. UKTV also believed that the only workable approach was to maintain the EPG approach for the vast majority of the industry.

3.36 The Commercial Broadcasters Association ("COBA") agreed that the EPG is a useful enforcement tool for measuring scheduled duration in the first instance. However, it noted that the EPG is effectively a proxy for, rather than the definitive version of, a broadcasting schedule. It believed that Ofcom would face a number of challenges if it relied solely on the EPG approach. For example, in the case of a live programme that over-ran. This position was supported by Turner.

3.37 Similarly, Sky recognised the advantages of using the EPG approach but highlighted what it considered to be practical difficulties associated with the use of published EPG schedules for enforcement purposes. It noted that EPG schedules are the public-facing output of broadcasters' internal scheduling systems, created to be user-friendly for viewers and are not designed to display detailed information. It said that scheduling is in fact done at a more granular level than published EPG schedules can accommodate. For example, the scheduling system it used could be programmed to the second, yet when it is converted to become the EPG schedule, seconds are rounded up or down to the nearest minute. Equally, where a programme ends at 7.01pm, this is not explicitly reflected in the EPG grid on the Sky EPG (which only shows the duration to the nearest five minute interval).

3.38 Further, Sky said that an EPG schedule may not always mirror exactly what is on a channel. For example, it explained that programmes of less than two minutes duration cannot be indicated on the Sky EPG grid, and that an "i" icon, rather than the title, is displayed for programmes between two and five minutes in length. In such cases, the programme title is only displayed within the programme synopsis area when the programme is highlighted on the EPG or when the 'now and next' banner is shown. Using the published EPG schedules in isolation could therefore, in Sky's view, affect the number of breaks that broadcasters can have, for example when there is a short programme that cannot be displayed by the EPG.

3.39 Viacom acknowledged that the EPG approach was likely to satisfy most of the industry as it is already used by the majority of broadcasters. It considered that the enhanced flexibility which the EPG approach provides was greatly valued and should not be abandoned in the interests of regulatory neatness. However, Viacom submitted that the impact of using the EPG approach in isolation would be significant for children's channels.

3.40 Viacom stressed that it was a keen supporter of investment in UK-originated content and was passionate about making local content that can then be distributed globally through its network. However, it said that the business reality is that if advertising revenues are reduced, expenditure must also be reduced. The use of the EPG approach on children's channels would therefore result in a reduction in investment in UK-originated children's programming in all genres (pre-school, live action, and animation). It therefore believed that Ofcom should consider the use of different enforcement approaches that satisfy the needs of all of its stakeholders.

3.41 The potential loss of revenues to children's channels and associated reduction of investment in UK-originated content if children's channels were obliged to accept the EPG approach was a key concern shared by COBA, a number of children's broadcasters and the Producers' Alliance for Cinema and Television ("PACT"). As the July 2014 consultation identified, many children's broadcasters currently place internal breaks in programmes that are scheduled in 30 minute EPG slots on the basis that, according to their own transmission data, these programmes have a scheduled duration that is greater than 30 minutes, even if just by one second. Prior to the July 2014 consultation, COBA asserted that enforcement using the EPG approach would lead to a significant loss of advertising revenue, with negative consequences on their members' ability to invest in children's programming.

3.42 ✂ noted that in order to retain internal breaks in children's programmes, if the EPG approach was adopted, broadcasters may schedule programmes in 31 minute instead of 30 minute EPG slots. It believed that re-establishing EPG listings so that programmes commence at, for example, 10:31; 11:02; 11:33, was likely to be confusing for viewers. ✂ considered that this could have considerable impact on moving audiences away from linear to non-linear programmes.

3.43 Turner submitted its view on the difficulty of relying on the EPG approach to measure scheduled duration across all the territories in Europe in which Ofcom licensees broadcast. Turner said that it currently holds 28 Ofcom licences and only four of these licences are for channels dedicated exclusively to UK broadcast. It continued that the rest of Turner's Ofcom-licensed channels broadcast throughout Europe on a large number of different platforms and that each platform may have different specifications. This was likely to cause difficulties when trying to monitor the EPG data from each of these platforms.

The TX Approach

3.44 There was no support from respondents for the adoption of an industry-wide enforcement approach that used only TX data.

3.45 Channel 4's view was that none of the three variants of the TX approach set out in the July 2014 consultation provided the same levels of robustness and transparency as the EPG approach. For example, it believed that data for non-BARB[10] registered

[10] BARB is the Broadcasters' Audience Research Board

channels would not be easily available. In addition, where BARB data was available, there was likely to be significant variation in how information and data was recorded, leading to variable standards of transparency by broadcaster.

3.46 Channel 4 also considered there to be a number of issues created by each of the variants of the TX approach presented in the July 2014 consultation. For example, should the approach adopted equate a programme's scheduled duration to the period between the start and end of the programme (including internal breaks), there could be a significant reduction in the number of internal breaks that broadcasters would be entitled to schedule during the majority of programmes. It noted that the consultation suggested that broadcasters could adopt strategies that would enable them to retain internal breaks in programmes, e.g. by moving advertising from end breaks to internal breaks. However, it submitted that this is a remedy that would not be available to PSB[11] channels, as current regulation caps the length of internal breaks on these channels to 3 minutes and 50 seconds, of which only 3 minutes and 30 seconds can be spot advertising.[12]

3.47 Channel 4 therefore submitted that any change from the established, and widely accepted, method of EPG enforcement to a TX model would inevitably lead to significant financial impact on both Ofcom and the majority of broadcasters. This was because it considered additional resources would be needed and extensive amendments would need to be made to planning, scheduling and airtime sales systems to accommodate the new way of working.

3.48 ITV noted that the TX approach offered three variants based on a post-broadcast assessment, which would rely on broadcasters' transmission logs. It considered these to be less satisfactory with regard to enforcement, both from a broadcast operational and a regulatory perspective. ITV recognised that transmission data provides detailed programme slot duration measurement, but believed it would be challenging for broadcasters to plan schedules in advance with this approach. As such, ITV considered that the TX approaches would suffer from a lack of certainty and issues in relation to practicality of enforcement.

3.49 S4C advised that many of its programmes arrived late, especially in the case of current affairs programmes, which often arrive on the day of transmission. Actual duration information is therefore not available sufficiently in advance for it to plan accurately advertising breaks on the basis of transmission times. S4C said that although programme producers are required to adhere to agreed run times, in practice the actual length can vary according to editorial requirements and that it could accommodate small variations through increasing or reducing continuity announcements, programme promotions or, if necessary, individual advertisements. S4C said that dealing with the last-minute loss of a whole advertising break is much harder to accommodate and could have adverse implications for its advertising revenues. To avoid this would require strict and rigid adherence to programme running times by its programme suppliers. S4C questioned how realistic it would be to implement this in practice, especially with live broadcasts. It believed that a situation could be created where editorial decisions were compromised by advertising considerations if the TX approach was used.

3.50 UKTV said that a move away from the EPG approach would place a significant burden upon broadcasters in the course of their day-to-day practice. It noted by way

[11] Public Service Broadcasters
[12] See Rule 5 in Annex 2

of example late changes to schedules, stating that if calculations were to be made on the basis of transmission logs, this would mean that a programme of the exact same duration would need to replace a programme that, for whatever reason, had to be removed at a late stage. It said that late changes are often made in the interest of viewers – e.g. the removal of programmes due to news events. It believed that enforcement on the basis of the TX approach would be contrary to consumer interests and would place an unnecessary burden on broadcasters.

3.51 COBA expressed concern that any approach that equated a programme's scheduled duration to the duration of editorial content only would have a significant and widespread negative impact across the entire broadcasting sector, disrupting businesses, materially damaging revenues, and putting substantial levels of investment in content at risk. Its view was that it is absolutely clear that the 'gross principle' – i.e. including advertising and other elements within the scheduled duration – is widely accepted across Europe. It said that if Ofcom were to favour a radically different approach to enforcement, such as determining that scheduled duration should only include editorial content, it would be highly concerned. In these circumstances, it believed that before any decision could be finalised, Ofcom would need to undertake a detailed assessment of the impact on the wider broadcasting sector.

3.52 BT considered that the TX approach had significant disadvantages as it: relies on information from BARB and, as the majority of Ofcom licensees are not BARB-registered, Ofcom would not have a robust and universal enforcement measure in place; means that the vast majority of broadcasters would have to alter existing systems and processes which would require additional investment; contradicts (in one scenario) a previous European ruling; and could reduce (in one scenario) the number of internal breaks that broadcasters are currently entitled to, resulting in lower advertising revenue.

3.53 Viacom said that an enforcement approach that relied solely on TX logs would have a negative impact on the way it manages its airtime and on viewers' experience, which would lead to loss of revenues. It considered that, while an approach based on transmission logs would satisfy the needs of children's channels and protect their investment in content, this would have a disruptive impact on the rest of the market.

3.54 PACT said that it favoured the TX approach over the EPG approach for the enforcement of advertising scheduling rules with regards to children's programming. It urged Ofcom to consider the economic impact of any options proposed in the July 2014 consultation on UK children's broadcasters that invest in original UK children's programming. It submitted that this was an important public service sector, which was already facing economic pressures.

Proposals for alternative enforcement approaches

3.55 A number of respondents proposed alternative enforcement approaches, which although not expressly identified in the July 2014 consultation, have features in common with the approaches consulted on.

3.56 Disney believed that, rather than rely on post-broadcast transmission data, careful consideration should be given to using broadcasters' own scheduling systems (i.e. pre-broadcast internal scheduling information). Disney said that this information is submitted to EPG providers and forms the basis of the information displayed in EPGs. Such systems show timings to the nearest second. It contended that, as scheduled duration can be verified within internal schedules, these would provide an effective enforcement tool.

3.57 Noting the benefits of the EPG approach for most broadcasters and those of the TX approach for children's broadcasters, five respondents[13] suggested that Ofcom adopt an enforcement approach which combined both. This approach would involve Ofcom using EPG information to make an initial assessment of a programme's scheduled duration. In those cases where a programme did not pass the COSTA requirement using EPG information, they proposed a more granular measurement, using a secondary source of data. Stakeholders suggested that this secondary source of information could be TX data, or internal scheduling information (as suggested by Disney and referred to above). We refer to this as 'the Hybrid approach'. Views expressed by stakeholders on the hybrid approach are set out below.

The Hybrid Approach

3.58 COBA, supported by Turner, considered that in some cases it would be entirely appropriate (and indeed necessary) for Ofcom to refer to more detailed data in addition to using information from the EPG. It set out two options for this:

3.58.1 an enforcement approach under which Ofcom would refer to the EPG schedule in the majority of cases, but, where necessary for practical purposes, would refer to a broadcaster's own internal schedule (which would provide duration expressed in seconds); or

3.58.2 an enforcement approach which used the EPG schedule in the majority of cases, but where Ofcom would refer to transmission logs where appropriate.

3.59 COBA said that it understood that Ofcom may have concerns about whether using the EPG approach together with a different set of data, such as that based on transmission logs, provides consistency. It said that it appreciated the need for consistency and believed that the key point was that the same approach should be applied to all licensed broadcasters, not that an approach should necessarily limit itself to one tool.

3.60 Viacom noted that, while Ofcom may wish to have one approach that fits all channels, this was not practicable if Ofcom also intended to limit harm caused by its enforcement approach and ensure the approach is proportionate and consistent with the specific provisions of the AVMS Directive. Viacom did not believe that the AVMS Directive required Ofcom to have one enforcement methodology for all channels. It believed that it is within Ofcom's powers to enforce the COSTA rules on children's channels using the TX approach, whilst enforcing COSTA rules for non-children's broadcasters using the EPG approach. It felt strongly that this approach would adhere to Ofcom's own assessment criteria of 'consumer interests', 'practicality of enforcement', and 'regulatory certainty'.

3.61 Sky also suggested a similar approach. It proposed that where the EPG slot did not provide sufficient information for enforcement purposes, Ofcom could use one of the following sources to determine the exact length of the slot: i) information shown in the 'now and next' banner on the Sky EPG/equivalent on non-Sky EPGs, since this is capable of showing the exact start and finish time of a scheduled slot down to the

[13] COBA, Turner, Viacom, Sky and Discovery

nearest minute (giving further programme details over and above those shown in the published listings); or ii) the schedules from broadcasters' internal scheduling systems, as these can be programmed to the second. Sky considered that these options would provide an adequate compromise between Ofcom's objective to achieve a consistent enforcement methodology and the need to ensure a workable approach for broadcasters.

3.62 Discovery recognised the concerns put forward by some stakeholders regarding the measurement of scheduled duration. It considered that an approach that would require all broadcasters to provide detailed information to demonstrate a programme's scheduled duration was likely to be excessively onerous. For this reason, it also advocated a hybrid approach. It considered that this would minimise operational burdens for the majority of broadcasters while allowing Ofcom the flexibility to ask for more detailed information where necessary. UKTV, while not proposing the use of a hybrid approach, said that it would not object to the adoption of such an approach.

Ofcom's assessment

3.63 The following section sets out our assessment of the enforcement approaches considered, including the hybrid approach, having regard to the views expressed by stakeholders and the evidence we have gathered during the course of our review.

3.64 We first conclude on the advantages and disadvantages of the EPG approach in general terms based on the assessment criteria adopted.

The EPG Approach

3.65 The EPG approach is in effect the status quo for the majority of broadcasters (only the children's broadcasters claimed that they have followed a TX approach).

<u>Consumer interests</u>

3.66 For viewers, the EPG approach is unlikely to have widespread implications. This is because the majority of broadcasters will not be required to alter their advertising scheduling practices. As a result

3.66.1 viewers' exposure to advertising interruptions in most programmes will remain at current levels; and

3.66.2 the range of programmes available is unlikely to be broadly affected. This is because, for most broadcasters, advertising revenues will remain unchanged and, hence, the approach is unlikely to have any impact on their ability and incentive to invest in content.

3.67 However, the EPG approach has implications for viewers of children's programmes. In particular, we believe that enforcement using the EPG approach is likely lead to fewer advertising interruptions in children's programmes. Limiting advertising interruptions in children's programmes is clearly aligned with the objective of Article 20 of the AVMS Directive, which is to "*safeguard the specific character of European Television, where advertising is preferably inserted between programmes, and therefore limits possible interruptions to … some categories of programmes that need specific protection*".

3.68 Although the EPG approach could help achieve this objective, the extent to which viewers benefit depends on how broadcasters react to enforcement on this basis.

3.69 It would be a concern if the EPG approach led to a significant reduction in advertising revenues which limited investment in children's programmes, resulting in a reduction in the quality and range of programmes available to viewers. We have examined this in detail in Annex 1.

3.70 As previously stated, a number of broadcasters have been transmitting internal breaks in children's programmes scheduled in 30 minute EPG slots on the basis that they believe the scheduled duration of these programmes is greater than 30 minutes when the programme slot is measured using transmission data. These broadcasters have claimed that they would suffer a substantial loss of advertising revenues by adhering to the EPG approach. In light of this, as part of the July 2014 consultation, we analysed how the revenues of these broadcasters could be affected by enforcement using the EPG approach, relative to their current practice.

3.71 For a number of reasons our analysis indicates that the impact is likely to be materially less than submitted by the children's broadcasters. First, only some children's broadcasters rely solely on advertising revenues. For others, which also rely on subscription revenues, the impact of not having internal breaks in programmes scheduled in 30 minute EPG slots would affect only a portion of their total revenues. We have therefore expressed our results as a proportion of all, not just advertising, revenues.

3.72 Second, and more importantly, there are a number of available strategies that affected broadcasters would be able to adopt to mitigate the impact of applying the EPG approach in order to comply with the COSTA rules. In the July 2014 consultation we identified the following mitigation strategies:

3.72.1 *Moving programmes into longer EPG slots*, for example, by adding self-promotional material to internal breaks and end breaks in order to retain an internal break;

3.72.2 *Splitting programmes into two* so that rather than broadcasting one programme with an internal break, licensees would schedule two programmes, each with an end break;

3.72.3 *Bundling two programmes into a longer one* by combining two programmes into a longer programme that would be entitled to contain an internal break;[14] and

3.72.4 *Moving advertisements from internal breaks to end breaks* so that advertising from any 'lost' internal breaks is redistributed.

3.73 Although the affected broadcasters have questioned the effectiveness of some of the mitigation strategies outlined in our consultation, they have provided little convincing evidence to back up their statements.[15]

[14] For example, a broadcaster could lose an end break but be able to retain two internal breaks (provided the resulting programme was scheduled in at least a 60 minute EPG slot). We considered this strategy to be possible only for clearly-connected programmes adjacent in the schedule, for example two episodes of a single programme shown one after the other.

3.74 Third, we have adopted a set of conservative assumptions in estimating the potential impact of the EPG approach. These include an assumption that:

3.74.1 each affected broadcaster would apply only the single most effective mitigation strategy to each of its channels;[16] and

3.74.2 any resulting decline in the volume of advertising would not affect its price.

3.75 Overall, and taking account of the mitigation strategies identified above, we consider the potential revenue impact of adopting the EPG approach is likely to be much smaller than claimed by the children's broadcasters. Our estimate, based on what we consider to the most reliable (and conservative) set of assumptions, is that complying with COSTA under the EPG approach would lead to a revenue reduction of 5-7% relative to the TX (slot measurement) approach .

3.76 Furthermore, there is no certainty that a loss of revenue by these broadcasters would significantly impact on the quality and range of original programming available to viewers. As highlighted in Ofcom's third review of public service broadcasting,[17] while the multi-channel sector is broadcasting large volumes of programming, including some first run originations, it has grown primarily through animation (both UK and non-UK) and imports rather than UK-specific non-animation programming. A reduction in the volume of output from the sector as a result of any loss of revenue would not automatically reduce the range and quality of the sector's output given its focus on cartoons and imports.

3.77 We note ✂ concern that children's broadcasters seeking to mitigate the impact of the EPG approach may introduce irregular programme slots leading to viewer confusion. This view appears to be based on the assumption that broadcasters of children's programming will in all cases move programmes previously scheduled in 30 minute EPG slots to 31 minute EPG slots. Although this is a possible consequence of one of the mitigation strategies, for the reasons discussed in Annex 1, we consider that broadcasters would be likely to adopt a mix of different approaches.

Practicality of enforcement

3.78 For the majority of broadcasters the use of the EPG approach would not be burdensome as it would allow them to continue to use current scheduling systems. We recognise that the approach can help facilitate smooth and effective planning of broadcast schedules because it provides broadcasters with clarity when determining how many internal breaks they are permitted to schedule in a particular programme in advance of its transmission. We also recognise that the EPG approach provides broadcasters with flexibility to accommodate changes to a programme's duration (e.g. because of an unexpected under run in a live programme) without having to alter the number of internal breaks scheduled.

---

[15] Our consideration of stakeholder responses to our views on mitigation strategies is set out in Annex 1.

[16] In practice, we believe that affected broadcasters would be able to adopt different mitigation strategies for each programme on each channel. In our revenue assessment, we applied this more granular method to the broadcaster that was likely to be most affected by the EPG approach. This shows a substantially reduced impact on its revenue relative to our estimate.

[17] http://stakeholders.ofcom.org.uk/consultations/psb-review-3/statement/

3.79 The EPG approach also offers transparency and certainty from an enforcement perspective. Information is publicly available: programme times are displayed in an established format that is accessible to, and easily understood by, viewers. Further, EPGs provide Ofcom with clear and unambiguous information on which to assess a programme's compliance with COSTA.

3.80 Some respondents raised concerns about the limitations of the EPG approach in relation to: different specifications and accessibility of EPG platforms, particularly those outside of the UK; short programmes; and programmes which overrun.

3.81 In relation to the concern regarding EPG platforms, for reasons of practicality of enforcement and administrative efficiency, Ofcom would use as its primary source of information an EPG that displays the most comprehensive list of Ofcom-licensed services and which accurately reflects the schedules provided by broadcasters. For licensees not on this platform (including channels broadcast outside the UK), we would look to appropriate alternatives (e.g. programme guides on broadcasters websites).

3.82 In relation to COBA's concern about the impact of using the EPG approach on live programmes, we consider that any potential impact would be minimal. Firstly, COSTA exempts many live programmes that are likely to overrun (e.g. live sport) from rules limiting advertising interruptions. Secondly, under the EPG approach a programme that runs over its scheduled duration would not be entitled to fewer breaks than if its length had been as planned. In any event, in circumstances where an issue is identified, Ofcom would undertake an assessment on a case-by-case basis and adopt a proportionate approach to enforcement.

3.83 Sky raised concerns about the limitations of the EPG approach when determining the scheduled duration of short programmes (e.g. Sky referred to programmes of less than two minutes duration). To date, we have experienced no difficulties in enforcing rules that limit advertising interruptions in relation to programmes that may not be listed on EPGs, on the grounds that they are short. The number of such programmes is extremely limited, the number featuring advertisements even more so. Therefore, if necessary, we would be able to assess any issues on a case-by-case basis.

3.84 Although the July 2014 consultation noted that we have no control over the information displayed on EPGs and that information may not always be up to date, these did not appear to be material issues for stakeholders. As noted in paragraph 3.32, Channel 4 disagreed that the EPG approach risks using out of date information on the basis that many EPG platforms are able to update information up to one hour prior to transmission. We further note that all of the enforcement approaches examined in this document, utilise information produced by third parties over which we have no control. We consider that the EPG approach therefore carries no particular risks in this regard.

Regulatory certainty

3.85 We consider that the EPG approach provides an effective means of meeting our statutory duties in relation to ensuring compliance with the AVMS Directive. Although there is no case law addressing the use of EPG information to determine a programme's scheduled duration, previous communication with the European Commission on the UK's transposition of the AVMS Directive, would suggest that published programme slots provide an acceptable means of doing so.

Conclusion

3.86 Although we acknowledge that certain stakeholders broadcasting children's programmes are impacted by this approach, taking all of the above points into consideration, we are of the view that the EPG approach has performed, and will continue to perform, well against the assessment criteria. Accordingly, we consider that adopting the EPG approach would be a proportionate means of enforcing the relevant COSTA rules.

3.87 We next consider how the TX approach performs relative to the EPG approach.

The TX approach

3.88 In the July 2014 consultation we considered the benefits and disadvantages of the TX approach taking 'scheduled duration' on three alternative bases: 'slot duration'; 'programme duration'; and 'editorial only' (see paragraph 3.19).

3.89 As identified by respondents to our consultation, particularly COBA and Channel 4, these three approaches have differing consequences for the number of internal breaks permitted in various genres of programmes. This is because the scheduled duration of a single programme may differ significantly depending on the measurement used.

3.90 Under the 'TX editorial only' approach (and, to a lesser extent, the application of the TX approach on the basis of 'programme duration'), many programmes would qualify for fewer internal breaks than currently permitted. We recognise that adopting these variants of the TX approach would have wide-ranging implications for many broadcasters (not just broadcasters of children's programming). We also note that we have not, as part of this review, considered in detail the impact of such approaches for the broadcasting sector and any resultant implications for viewers through changes to levels of investment.

3.91 We have therefore focussed our assessment on the potential effectiveness of the TX approach using the 'slot duration' measure ('TX slot approach'). This approach would use transmission data to determine the duration of editorial content and all material shown during and after the programme and would therefore be most favourable to broadcasters of children's programming.

Consumer interests

3.92 In terms of the level of viewer exposure to advertising interruptions during programmes, and in particular the frequency of advertising breaks in children's programmes, we recognise that the TX slot approach has the potential to maximise a broadcaster's ability to insert internal breaks into children's programming. This is because, under this approach, using more granular information could allow a children's programme with a scheduled duration of 30 minutes and one second to qualify for an internal break. This potentially has a number of implications for viewers of children's programming relative to the EPG approach.

3.92.1 First, the TX slot approach could have the potential to lead to a wider range of better quality programmes for children. This is because greater flexibility in the scheduling of internal breaks could have a positive effect on the revenues of broadcasters of children's programming and thereby their ability to invest in content. If this occurred, it would be an advantage relative to the EPG approach as far as children's content is concerned.

However – as summarised in paragraph 3.73 and discussed in more detail in Annex 1 – we consider that this is unlikely to be substantial in percentage terms in comparison with the EPG approach. Further, there is no certainty that any additional revenues obtained in this way would be invested in children's programmes. No respondent provided evidence that greater revenues gained as a result of measuring scheduled duration using the TX slot approach has led or would lead to increased levels of investment.

3.92.2 Second, in comparison to the EPG approach, the TX slot approach could also increase the level of exposure of children to advertising during children's programming. Having regard to the objective of the AVMS Directive, we consider that the level of viewer exposure to advertising interruptions during children's programming is an important consideration. Article 20 of the AVMS Directive places limitations on advertising interruptions in programmes deemed to require "*specific protection*". These programmes are films, news and children's programmes. Although the AVMS Directive permits an internal break in news and films that have a scheduled duration of 30 minutes, it specifically requires children's programmes to have a scheduled duration of "*greater than 30 minutes*" before an internal break is permitted. It is therefore the clear intention of the AVMS Directive to place an extra restriction on children's programmes in comparison with these and other genres. It is not clear therefore that the TX slot approach, under which a children's programme slot may need to be only 30 minutes and 1 second (measured using detailed data) before the programme would be permitted to contain an internal break, fully complies with the intention of the AVMS Directive.

Practicality of enforcement

3.93 Having regard to the responses from stakeholders, we have concerns regarding the practicality of using the TX approach (in any of its variants) as a means of enforcing the COSTA rules. We note that a number of respondents agreed with Ofcom's analysis in the July 2014 consultation that the TX approach does not compare favourably with the EPG approach in terms of its practicality as an enforcement tool.

3.94 For many broadcasters, a move to a TX approach may increase operating costs as they would need to change their scheduling practices and invest in new scheduling systems.

3.95 In addition, and of critical importance, is the ability for Ofcom to obtain consistent and sufficiently robust data on which to monitor compliance and enforce where required. Although transmission data should in principle enable different content (e.g. editorial, advertising) to be identified clearly, our experience shows that, in practice, it can be difficult to isolate specific broadcasting time periods. As part of the July 2014 consultation we looked at the data supplied to BARB by a number of children's broadcasters (that analysis was presented in Annex 6 of the July 2014 consultation). In doing so, we found that some broadcasters had not adopted a consistent approach to recording the timings of programmes and advertising breaks, or the type of break transmitted (e.g. whether the break was scheduled during or around programming). Confirming the accuracy of transmission data, whether that of a BARB or non-BARB registered service, therefore creates an additional regulatory issue that is not raised if enforcement is based on the EPG approach.

3.96 In terms of transparency and accessibility of transmission data, we observe that such information is not available to viewers. Further, data is consistently available to Ofcom only for services which supply their transmission information to BARB. Therefore, we would need to obtain transmission data for non-BARB registered services, potentially by requiring these broadcasters (which are generally the smaller operators) to submit such information either to Ofcom or to a third party operating on our behalf. This is likely to increase regulatory costs for both Ofcom and the affected licensees.

3.97 Another important feature of our framework for assessment is that our enforcement methodology should not impose an unnecessary burden on industry. Many broadcasters highlighted the implications for operating costs and advertising revenues across the whole broadcasting sector. The TX approach would require the vast majority of broadcasters to adapt their scheduling systems and processes, which would be likely to require additional investment.

Regulatory certainty

3.98 The extent to which the TX approach will be seen to be as an acceptable way of complying with the requirements of the AVMS Directive is likely to depend on what content is considered to form part of a programme's scheduled duration. As stated in paragraph 3.19, the consultation identified that the TX approach could determine a programme's scheduled duration by measuring: i) slot duration; ii) programme duration; or iii) editorial only.

3.99 We note COBA's view that a TX slot approach accords with the 'gross principle', established by the ProSieben case (see Annex 3). We would note, however, that this case law – which relates to the equivalent provisions of the TVWF Directive – supports a measurement of scheduled duration that includes *interrupting* advertising. There is no case law to support a measurement which includes material broadcast *after* the end of a programme to justify the inclusion of an internal break within that programme where the scheduled duration on that basis exceeds 30 minutes by only a matter of seconds.

3.100 Further, we recognise that compared to the EPG approach, the TX approach provides less certainty for broadcasters that they are scheduling advertising in compliance with the COSTA rules. This is because the EPG approach provides set parameters to calculate the number of internal breaks to which a programme is entitled. By contrast, broadcasters using the TX approach would need to schedule advertising on the basis of a programme's *anticipated* scheduled duration, which may ultimately differ from the scheduled duration as determined by post-broadcast transmission data.

Conclusion

3.101 Taking the above points into consideration, we consider that the TX approach does not compare favourably against the assessment criteria in comparison with the EPG approach.

3.102 The principal advantage of the TX approach appears to be that one category of broadcaster – i.e. broadcasters of children's programming – would be allowed more freedom in terms of when and where to place internal breaks and this may increase their revenues relative to the EPG approach. However, it is debatable whether increased revenues would materially benefit consumers in the form of better quality and a wider range of children's programmes.

3.103 Moreover, we are concerned that adopting this approach would raise a number of practical difficulties for industry and Ofcom in ensuring that consistent, robust and readily accessible information is available. It is doubtful, therefore, that the TX approach could be an effective enforcement tool in practice. Further, we consider that the TX approach would impose operational and financial costs for many, if not all, broadcasters compared to the EPG approach.

3.104 In addition, we do not consider that the TX approach (on the basis of 'slot duration') would be consistent with the objective of the relevant provisions of the AVMS Directive to limit children's exposure to advertising interruptions in programmes.

Hybrid Approach

3.105 In light of the views expressed by respondents to our July 2014 consultation, we have also considered the adoption of an alternative two-tier hybrid enforcement approach, using EPG information to make an initial assessment of a programme's scheduled duration, and referring to a secondary source of data for a more granular measurement in those cases where a programme does not meet the COSTA requirement using EPG information.[18]

3.106 We have considered the adoption of such a hybrid approach by reference to our statutory duties and our framework of assessment. Given our assessment that the EPG approach performs more strongly against this framework than the TX approach, we have compared the Hybrid approach against the EPG approach.

3.107 In considering the appropriateness and effectiveness of the Hybrid approach as an enforcement tool, we have taken into account that the secondary measurement (using either transmission data or, alternatively, broadcasters' internal scheduling data) would be likely to be used only in circumstances where the primary measurement (using the EPG approach) suggests that a programme's scheduled duration does not support the number of internal breaks scheduled within the programme. In practice, based on broadcasters' current scheduling practices, this means this measure is likely to be utilised only to determine the scheduled duration of a children's programme scheduled in a 30 minute EPG slot.

3.108 However, the approach is likely to deliver higher revenues for children's broadcasters (and therefore potentially lead to higher quality programming) only if the period measured in the second phase is the programme slot. Consequently, our consideration of the Hybrid approach is based on equating the 'scheduled duration' to the entire programme slot including advertising broadcast in internal and end breaks.

Consumer interests

3.109 We consider that, as most programmes will be assessed using information from EPGs, the impact on viewers of using the hybrid approach will be very similar to that identified under the EPG approach (see paragraph 3.66).

[18] As set out in paragraph 3.56, Disney proposed using broadcasters' own scheduling systems instead of transmission data as a means of providing a granular measure of a programme's scheduled duration. We do not consider, however, that this is a distinct alternative to the TX approach which could perform more positively than that option when assessed against our consumer interest and regulatory certainty criteria. In addition, in relation to practicality of enforcement, it is unclear to us how Ofcom could monitor compliance on the basis of information held by many different broadcasters using a range of different scheduling systems.

3.110 However, for viewers of children's programmes, the Hybrid approach is likely to have the same impacts as the TX slot approach (as identified at paragraph 3.92.1). It potentially has scope to benefit viewers in terms of the quality of children's programmes and the range of channels available to them. However, the Hybrid approach, like the TX slot approach, has the potential to increase the level of exposure of children to advertising interruptions during programming, relative to the EPG approach.

Practicality of enforcement

3.111 A key difference between the Hybrid approach and the EPG approach is that the use of the Hybrid approach would mean that most broadcasters would not need to change their internal processes and mechanisms for compliance. This means that they would not need to change how advertising is currently scheduled in and around programmes. For most broadcasters a programme's scheduled duration will be determined on the basis of EPG information, whereas for the children's broadcasters in many instances (i.e. when programmes are scheduled in 30 minute slots) a secondary measure would be used. Therefore, this approach is broadly equivalent to continuing to apply the EPG approach to the majority of broadcasters, while carving out a special enforcement approach for broadcasters of children's programming.

3.112 Whilst this would negate the increased regulatory burden on many broadcasters as compared with the TX approach, the concerns identified above in relation to our assessment of the TX approach would continue to apply. For example, where either transmission data or internal schedules were used for the secondary measurement, the issues of transparency (as explained in paragraph 3.96) would apply. If transmission data was used, the robustness of the data is likely to be questionable (see paragraph 3.95). In addition, the hybrid approach will place an additional operational burden on Ofcom as it will require an additional assessment stage, looking at a second set of data to determine whether some (mostly children's) programmes comply with COSTA.

Regulatory certainty

3.113 The Hybrid approach raises questions in terms of regulatory certainty and consistency.

3.114 An effect of the Hybrid approach would be that there is no definitive single measurement of scheduled duration. Instead, as a matter of practice there would be a two-tier approach with one rule applying to most forms of programming and another applying to children's programming. We note COBA's argument that consistency is achieved if the same approach is applied to all licensed broadcasters regardless of the number of tools utilised in making a determination. However, we note in this regard that adopting the hybrid approach could lead to two programmes of identical duration being judged to have different scheduled durations for the purposes of COSTA.

3.115 The benefits for certain broadcasters of the hybrid approach relies on Ofcom reaching compliance decisions by accepting whichever measurement offers the greatest benefit to broadcasters. Having regard to the underlying objective of the relevant provisions of the AVMS Directive, which is to apply more restrictive rules to certain classes of programme (including children's programming), we do not consider it would be appropriate to establish a means of enforcement that essentially provided for the opposite, namely an approach that applied a more liberal set of rules applicable in practice to only a particular programme genre.

Conclusion

3.116 In conclusion, in our view when compared to the EPG approach the hybrid approach would perform in largely the same way as the TX approach. The principal advantage of the hybrid approach is it that it would not suffer from the same disadvantage as the TX approach in terms of practicality of enforcement for all the non-children's broadcasters. Nonetheless, we do not consider that it would be appropriate to adopt an approach to enforcement that effectively applied two sets of assessment criteria to the same rule. Not only would this increase the enforcement burden on Ofcom, but more importantly it would amount in practice to a more relaxed set of rules for broadcasters of children's programming. Having regard to the objectives of AVMS Directive, we do not consider that this would provide the protection intended by that legislation.

Overall Conclusion

3.117 Taking all factors into account, we consider that the EPG approach best achieves outcomes that fulfil Ofcom's statutory duties.

3.118 In terms of consumer interest, the EPG approach appropriately balances Ofcom's duty to ensure the availability of a wide range of television services with ensuring that viewers, particularly children, are afforded the required protection. Relative to the TX approach and the Hybrid approach, the EPG approach provides greater assurance in relation to limiting children's exposure to advertising interruptions. Although we recognise that adopting either the TX approach or the Hybrid approach would have the potential to slightly increase the revenues of the children's broadcasters relative to the EPG approach, this would be of particular relevance only insofar as it leads to benefits to consumers in terms of better quality and range of programmes. As discussed above, we consider this impact unlikely to be material and it is not certain that higher revenues will be necessarily reinvested in better quality programmes.

3.119 In terms of practicality of enforcement, the EPG approach offers greater transparency, uses information that is readily accessible, and provides clear parameters on which to make enforcement decisions (the information is consistent and robust). In contrast, the TX approach suffers in this respect such that we consider it unlikely that it could amount to an effective enforcement tool in practice.

3.120 Further, enforcement on the basis of the EPG approach will result in less disruption and costs to the broadcasting industry as a whole compared to the TX approach. As a less onerous means of enforcing the COSTA rules, we consider the EPG approach to be the proportionate option.

3.121 In terms of regulatory certainty, the EPG approach represents the status quo and is well understood by the industry. In addition, we consider that it represents an appropriate basis for assessing compliance with the requirements of the AVMS Directive and is consistent with the 'gross principle' for defining scheduled duration in EU case law. In contrast, we are concerned that the TX (slot duration) approach would not be consistent with the objective of the relevant provisions of the AVMS Directive to limit children's exposure to advertising interruptions in programmes.

3.122 In this regard we note the view of some respondents that the EPG approach places a regulatory burden on broadcasters of children's programmes that exceeds the requirements of the AVMS Directive. However, it is clear that the AVMS Directive provides scope for Member States to apply more detailed or stricter rules in the fields coordinated by the AVMS Directive to media service providers under their jurisdiction, provided that those rules are consistent with general principles of European law.[19] In relation to advertising interruptions in programmes, the purpose of AVMS rules is to safeguard the specific character of European television and to limit interruptions in programmes that are deemed to require special protection, such as children's programmes.[20] We consider the EPG approach is more consistent than the TX slot approach with these objectives.

3.123 In relation to the Hybrid approach presented by certain respondents, we recognise that this could be capable of combining some of the strengths of the EPG and TX approaches in certain circumstances. However, our principal concern in relation to the Hybrid approach is that it would, as a matter of practice, create a two-tiered system of regulation by which children's programming is subjected to a more relaxed enforcement regime. Having regard to the objectives of the AVMS Directive, we do not consider that this would provide the protection intended by the relevant requirements of European legislation.

3.124 In light of our assessment, broadcasters should be aware that Ofcom will enforce the COSTA rules by reference to the EPG approach to the measurement of scheduled duration when the revised code comes into force on **1 November 2015**.

[19] Recital 41, AVMS Directive
[20] Recital 86, AVMS Directive

Section 4

Revisions to the Code on the Scheduling of Television Advertising

4.1 In the July 2014 consultation we proposed a number of revisions to COSTA to reflect policy changes made since the Code was last updated in 2010, along with revisions designed to aid clarity and/or provide regulatory certainty.

4.2 This section sets out:

4.2.1 the background to the proposed revisions;

4.2.2 a summary of each proposed revision; stakeholders' views on that proposal, and our decision on the revisions to COSTA.

Background

4.3 Since COSTA was last updated in 2010, there have been a number of regulatory changes that have affected our application of COSTA rules. In addition, our day-to-day enforcement of COSTA has identified rules that we consider will benefit from revision to help aid clarity and/or help ensure regulatory certainty.

4.4 The changes to COSTA proposed in the July 2014 consultation relate to:

4.4.1 the definition of a 'clock hour';

4.4.2 the waiver of break restrictions for films on PSB channels;

4.4.3 the waiver of advertising minutage rules for local services;

4.4.4 the definition of teleshopping;

4.4.5 the definition of television films;

4.4.6 the definition of television advertising; and

4.4.7 a number of minor amendments to the wording of some rules and to the layout of COSTA.

4.5 The background to each proposed change is explained in more detail as part of our consideration of stakeholder responses to the proposals.

Definition of a clock hour

Proposal

4.6 The AVMS Directive states that the proportion of advertising a broadcaster can transmit "within a given clock hour shall not exceed 20%", although the term clock hour is not further defined. To date, Ofcom has enforced this requirement via Rule 4 of COSTA which stated that the "time devoted to television advertising and teleshopping spots on any channel in any one hour must not exceed 12 minutes."

4.7 In the July 2014 consultation we proposed an amendment to Rule 4, revising the term ‘any one hour’ to state ‘clock hour’ in line with the terminology used in the AVMS Directive. We also noted that Ofcom’s existing approach to assessing compliance on UK services had been based on calculating the amount of advertising transmitted by licences during a natural hour, i.e. a period commencing at 00:00:00 of an hour and ending at 00:59:59 of that hour. We therefore proposed the addition of a note in COSTA to clarify for broadcasters that a clock hour was “a period commencing at 00:00:00 of an hour and ending at 00:59:59 of that hour (e.g. 14:00:00 to 14:59:59 hours)” in line with our existing enforcement practice.

Stakeholder response

4.8 Channel 4, Sony Asia, ITV, UKTV, Disney and BT supported the proposal, although Channel 4 and Disney asked for additional clarification as to whether Ofcom would seek to apply restrictions on advertising minutage on a pro-rata basis. Channel 4 asked if – for example – one hour of programming allowed for 12 minutes of advertising, 90 minutes of programming would allow for 18 minutes of advertising. Disney asked how the rule should be applied if a broadcaster commenced or ended daily broadcasting at times other than at the start of natural clock hours (e.g. at 06:15).

4.9 COBA and Turner, as well as ISBA and Discovery disagreed with the proposal.

4.10 COBA considered a ‘clock hour’ should be viewed as a full 60 minute period, but did not believe it was necessary for it to begin “on the hour”, particularly as some channels may wish to adopt alternative approaches for organising advertising. It asked for greater clarity from Ofcom about the compliance issues raised by clock hours starting at other times (e.g. a period of 60 minutes starting at 14:20:00 and ending at 15:19:59).[21]

4.11 ISBA suggested that the proposal might unnecessarily restrict broadcasters’ flexibility and instead proposed that a clock hour was defined as “any period of exactly sixty minutes which does not overlap in any part whatsoever with any other similar period”.

4.12 Discovery considered that Ofcom’s proposal could have a negative impact on business, including in terms of financial revenue. It noted that an Interpretative Communication issued by the European Commission in 2004 – which had confirmed that approaches based on either natural or non-natural clock hours would be compliant with European legislation – made clear that the concept of a clock hour was intended to allow broadcasters flexibility in scheduling advertising breaks within the specified quantitative advertising limits. Discovery argued that strong technical solutions were now available to put a ‘hard stop’ on any attempt to schedule more advertising than permitted under COSTA and that, accordingly, Ofcom should not attempt to limit possibilities for broadcasters where they can prove they are able to measure and control the number of minutes advertising they show. Instead, they proposed that guidance on best practice for the use of non-natural clock hours should be developed by Ofcom in conjunction with industry.

[21] Different terms including an ‘irregular clock hour’ and an ‘overlapping clock hour’ have been used by respondents to describe this approach. For the sake of clarity, in this document a period of 60 minutes starting at a point other than minute zero of an hour is referred to as a ‘non-natural clock hour’.

4.13 TV Today considered that the concept of clock hour had little relevance to the way in which viewers accessed content, particularly in a genre such as news, where broadcasters were occasionally compelled to drop planned advertising breaks to include breaking stories.

Decision

4.14 The proposal to define ‘clock hour’ set out in the July 2014 consultation was intended to provide clarity for broadcasters about Ofcom’s current enforcement practice, given our intention to refer to ‘clock hours’ in COSTA rules for the first time.

4.15 In reviewing stakeholder responses to the proposal, we have in particular considered the following factors. Firstly, as noted by Discovery, it is the case that the Interpretative Communication permits the use by member states of an approach based on either natural or non-natural clock hours in order to ensure that consumers receive adequate protection from excessive advertising.[22]

4.16 Accordingly, the extent to which it is necessary to limit the flexibility of licensees to schedule advertising is dependent on whether consumer protection is currently achieved. The use of non-natural clock-hours could result in viewers seeing more advertising in certain programmes. However, because the approach has not been widely used, it is unclear to Ofcom at this time that consumer protection would be impacted either by excessive advertising in programming or practical difficulties for the regulator in securing effective and consistent enforcement.[23] We are also mindful that the absolute restriction on 12 minutes of advertising in a clock hour works in conjunction with a series of further measures set out in COSTA, including break scheduling restrictions, to provide protection to viewers.

4.17 In light of these factors, we do not consider it is necessary to proceed with the proposal set out in the July 2014 consultation at this time. We will consider whether further clarification is needed to secure adequate protection for consumers in the event that either further changes to the COSTA rules are required or enforcement issues arise.

4.18 In response to the points of clarification requested by respondents, we would note that Ofcom assesses compliance on the basis of a quantitative assessment of the amount of advertising shown during a clock hour, regardless of programme length or the start of a particular licensee’s broadcasting day. Broadcasters should be mindful, however, of the requirements in COSTA to ensure that the integrity of programming is not impacted by advertising scheduling and that they do not exceed that the average minutage limits set out in the rules.

[22] Ofcom conducted a survey in January 2015 of the enforcement approaches taken by different members of the European Platform of Regulatory Authorities. Of the 14 respondents, ten base regulation on a natural clock hour, while two regulate on the basis of a stricter measurement limiting advertising to 12 minutes in any 60 minute period. Although it is the case that two respondents did permit the use of non-natural clock hours, we note that one was considering reviewing this position. Further to discussion with Discovery on this topic, Ofcom understands that regulators in an additional member state also permit the use of overlapping clock hours.

[23] While we acknowledge Discovery’s point that technical solutions may exist to prevent the broadcast of advertising in excess of the existing quantitative rules, it is not clear to Ofcom that – by themselves – these are sufficient to ensure compliance. Between January and May 2015 alone, Ofcom recorded breaches of advertising minutage rules against 18 different licensees, including a number of large broadcasters with access to sophisticated playout facilities.

4.19 Finally, while we understand TV Today's argument that viewing patterns are changing and that consumers do not select content on the basis of the clock hour, limits on quantitative advertising continue to remain a key part of the legislative framework.

Waiver of break restrictions for films on public service channels

Proposal

4.20 The duration of internal breaks transmitted during programmes broadcast on PSB channels is limited by Rule 14 of COSTA to 3 minutes 30 seconds. Since February 2011, a trial waiver of this rule has been in place in respect of films. The July 2014 consultation proposed to codify the waiver to make it permanent.

4.21 The waiver was introduced following Ofcom's 2010 consultation on revisions to the Broadcasting Code, which led to new rules permitting product placement in programmes. These new rules made it possible for broadcasters to place – in certain programme genres – references to products in return for payment. These programme genres include films, TV series, sports programmes and light entertainment programmes. The 2010 consultation also led to clarification that the definition of films (as set out in COSTA) includes single dramas.[24]

4.22 One of the effects of the clarification was that the tighter restrictions which apply to advertising interruptions during films would apply to single dramas. Rule 16(a) of COSTA permits only one advertising or teleshopping break in films for each scheduled period of at least 30 minutes.

4.23 When introducing the clarification, Ofcom noted that broadcasters affected by any reduction in the number of internal breaks they scheduled in films would be able to mitigate this impact by increasing the duration of remaining internal breaks. However, this strategy would not be available to public service channels because of the requirements of Rule 14. To enable PSBs – as well as other broadcasters – to mitigate the impact of this clarification, the trial waiver was introduced.

Stakeholder response

4.24 ITV, Channel 4 and ISBA supported the proposal.

4.25 UKTV said that, although it had no specific concerns, it would welcome transparency from Ofcom on the information that had been assessed before concluding that the trial had no detrimental effect. COBA asked Ofcom to clarify what analysis it has undertaken of the commercial benefit to PSBs of this change and whether this benefit has been reflected in its calculation of the value of the commercial PSB licences.

Decision

4.26 As stated in the July 2014 consultation, Ofcom is not aware of any adverse impact resulting from the introduction of the waiver. We have received no evidence from stakeholders of material negative impact over the last four years the waiver has been in operation.

---

[24] See http://stakeholders.ofcom.org.uk/binaries/consultations/724242/statement/statement.pdf

4.27 Further, by reference to our statutory duties, we consider that the introduction of the waiver was unlikely to have any adverse impact. For example, we consider that the waiver does not provide any material advantage to PSBs, when compared to non-PSBs, for the following reasons: i) films are only a small part of programming on public service channels and hence of their advertising revenues; and ii) public service channels are already at the cap in terms of the overall amount of advertising minutes they broadcast and therefore any increase in advertising minutes scheduled during films (which was made possible by the introduction of the waiver) must be moved from other spots in the schedule. In conclusion, we are of the view that the effect of the waiver on the amount or distribution of advertising revenues overall is unlikely to be discernible and therefore any advantage for the PSBs is likely to be negligible.

4.28 Further, the trial also provided Ofcom with the opportunity to assess audience reaction to possible extended breaks in films broadcast on public service channels. There has been no discernible impact on the volume of complaints about the duration of breaks in films shown on these channels following the introduction of the trial waiver.

4.29 On this basis, we have decided to formalise the exemption in the revised COSTA.

Waiver of advertising minutage rules for local services

Proposal

4.30 The July 2014 consultation proposed to include a statement in the revised COSTA reflecting that local digital television programme services ("L-DTPS") – not receivable outside the UK – are exempt from the rules that: limit the amount of advertising a broadcaster can transmit in a clock hour; limit the average hourly amount of advertising broadcasters can transmit; and limit the duration of internal breaks on public service broadcasters. The proposed amendment reflected the decision to this effect set out in Ofcom's Statement in May 2012 on *Licensing Local Television*.[25]

Stakeholder response

4.31 BT supported the proposal.

4.32 Channel 4 questioned the policy decision to create an exemption, which it believed, combined with the prominent EPG position "gifted" to L-DTPS, delivered a "hugely valuable" commercial advantage to such services. Because the exemption was designed in part to ensure local content was made available to viewers, it believed that if Ofcom consulted on any request by L-DTPS licence holders to relax their programme commitments, it should, at the same time, consider whether it would remain appropriate for that L-DTPS to retain the exemption. This position, in the respondent's view, should be reflected in COSTA.

4.33 ISBA questioned the need to exempt L-DTPS services from the COSTA requirements.

Decision

4.34 Channel 4 and ISBA's comments refer to the decision to exempt L-DTPS (not receivable outside of the UK) from certain COSTA rules. Ofcom consulted on this

[25] See http://stakeholders.ofcom.org.uk/binaries/consultations/localtv/statement/local-tv-statement.pdf

policy in December 2011 and made its decision in the May 2012 Statement *Licensing Local Television*.[26] The July 2014 consultation did not seek to review this policy but rather considered the way in which the exemption should be reflected in COSTA.

4.35 No respondents objected to our proposal in this respect. We therefore intend to introduce the reference to the exemption in the way set out in the consultation.

Definition of teleshopping

Proposal

4.36 The July 2014 consultation proposed an amendment to COSTA's definition of 'teleshopping' to:

> '*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*.

4.37 This represented a minor change from the existing wording, which stated that "'*teleshopping' means television advertising <u>which includes</u> 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*." The purpose of changing the definition was to reflect more closely the wording of the AVMS Directive, and to clarify that for material to be treated as teleshopping, the direct offer (e.g. on-screen display giving product, price and ordering details) should form the basis of the content rather than a subordinate part of it.

Stakeholder response

4.38 No respondents objected to the proposal. However, ITV proposed that, for the avoidance of doubt, Ofcom should retain the term "advertising" within the definition – as this reinforces the status of teleshopping as a form of advertising.

4.39 ISBA considered the definition would benefit from including an explanation of what constitutes a direct offer (e.g. on-screen display giving product, price and ordering details). Discovery submitted that there should be further guidance as to what constitutes a direct offer.

Decision

4.40 We consider that this change, although seemingly small, is important to ensure that there is clarity for licensees over what constitutes different types of advertising.

4.41 Although teleshopping is a form of advertising, we recognise the need for broadcasters to understand the distinction between teleshopping and traditional spot advertising. This is because, subject to certain conditions, broadcasters can transmit teleshopping outside of the advertising limits set out in COSTA. We have therefore previously published a 'Note To Broadcasters' providing detailed guidance on what constitutes teleshopping content, including what qualifies as a direct offer.[27]

[26] http://stakeholders.ofcom.org.uk/consultations/local-tv/
[27] This guidance can be found in Ofcom's Broadcast Bulletin 193 at http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb193/obb193.pdf

4.42 In relation to ITV's comment, we consider that the proposed definition of teleshopping, along with its positioning in COSTA, makes it sufficiently clear that teleshopping is a form of advertising.

4.43 We have therefore decided to make the proposed change to the definition in COSTA.

Definition of television films

Proposal

4.44 To ensure COSTA transposes appropriately the requirements of the AVMS Directive in relation to the scheduling of advertising breaks during films, the July 2014 consultation included a proposal to revise COSTA's definition of 'films' as follows:

> 'films' means films made for television (including single dramas but excluding series, serials and documentaries) and cinematographic works.

4.45 This represented a slight re-ordering of the wording[28] to bring COSTA's definition in line with the AVMS Directive.

Stakeholder response

4.46 Eleven respondents agreed with the proposed change and four did not comment. COBA, while supporting the proposal, believed that it was disproportionate to apply the same restrictions to television films and dramas as those applicable to films intended for cinematic release. Channel 4, Discovery and TV Today welcomed the clarification but identified specific situations in which further consideration may be needed when determining whether content was subject to film break restrictions (e.g. a feature length documentary that had been given limited release at a film festival).

Decision

4.47 The requirement to restrict advertising interruptions in all films (not just those made for cinematic release) derives from the AVMS Directive. Article 20(2) of the Directive states 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 at least 30 minutes".

4.48 It is clear from Article 20(2) that the restriction does not apply to films made for television that are 'series, serials and documentaries' but does apply to all cinematographic works. The July 2014 consultation noted that the 'film' definition in COSTA could erroneously suggest that this is not the case and that the exemption for series, serials and documentaries also applies in respect of cinematographic works.

4.49 Ofcom is required to ensure the requirement set out in Article 20(2) is met. To this end, we therefore will include in the revised COSTA the definition of 'films' consulted on, and as set out in paragraph 4.44.

[28] Paragraph 3(f) of COSTA states: '*films' means cinematographic works and films made for television (including single dramas), but excludes series, serials and documentaries*

4.50 We recognise that there will always be content that does not easily fall within a specific genre and will continue to judge such content on a case-by case basis.

Definition of television advertising

Proposal

4.51 The July 2014 consultation proposed removing the footnote associated with the definition of advertising set out in COSTA. This footnote states that the definition "*is derived from Article 1(i) of the AVMS Directive. In accordance with Article 23(2) of the Directive, it does not include announcements made by a broadcaster in connection with its own programmes and ancillary products directly derived from those programmes*..."

4.52 This footnote could erroneously suggest that all announcements made by a broadcaster in connection with its own programmes and ancillary products directly derived from those programmes are not advertising and, as a result, are not subject to any of the COSTA rules. This is not the case.

4.53 Article 23(2) of the Directive allows broadcasters to exempt such announcements when calculating the hourly amount of advertising they are permitted to transmit. It does not exempt this material – where it meets the definition of 'advertising' – from the requirement to comply with the other COSTA provisions.

4.54 To make this position clearer, the consultation proposed removing the footnote and amending COSTA to make clear that the exemption for announcements made by a broadcaster in connection with its own programmes and ancillary products directly derived from those programmes relates only to those rules limiting the amount of advertising that broadcasters can transmit.

Stakeholder response

4.55 There was broad support from stakeholders for this clarification.

4.56 However, TV Today believed the proposal was unclear and required further explanation. In particular, it sought clarification on the position of announcements made by a broadcaster in connection with its own programmes and ancillary products directly derived from those programmes in relation to the "twelve minute rule".[29]

4.57 ISBA said that it had no issue with the clarification proposed provided that it did not somehow lead to the eventual conflation of what it called "advertising proper" and broadcasters' own announcements, to the eventual detriment of, or reduction to, advertising allowances

Decision

4.58 We recognise TV Today's desire for clarity over what material should be included when broadcasters are calculating the amount of advertising they are transmitting. We consider that the removal of the footnote, combined with the revised layout and additional wording of COSTA provides such clarification.

[29] See Rule 2, Annex 2

4.59 In response to ISBA's concerns, the proposed changes do not alter the existing regulatory position but instead seek to clarify it. For this reason we do not believe that adopting the proposal set out in the July 2014 consultation will lead to broadcasters changing the way they treat advertising and self-promotional content.

4.60 Having regard to the broad support received from stakeholders, we have decided to adopt the proposal. The revised text can be viewed in the revised COSTA (see text box above Rule 2 in Annex 2).

Other minor revisions and clarifications to COSTA

Proposal

4.61 The July 2014 consultation included a proposal to amend the layout of COSTA and make other minor revisions to the wording of certain of the COSTA rules. We included a proposal to amend the rule limiting the average amount of advertising a non-PSB channel can transmit from:

[non public service channels] "must not exceed an average of 12 minutes of television advertising and teleshopping spots for every hour of transmission across the broadcasting day, of which no more than 9 minutes may be television advertising"

to

"Non public service channels must show no more than an average of 9 minutes of television advertising for every hour of transmission across the broadcasting day".

Stakeholder response

4.62 BT believed the proposed amendment to this rule was less clear than the existing COSTA rule and recommended leaving the current wording intact to avoid any ambiguity or confusion.

4.63 We received no objection to the other proposed changes.

Decision

4.64 We recognise that the absence of any reference to teleshopping spots in the proposed rule designed to limit the average amount of advertising a non-PSB channel can transmit could create ambiguity as to the permitted level of such advertising when averaged across the broadcasting day. We have therefore amended the proposed wording to clarify this point. The revised wording is:

"Non public service channels must show no more than an average of 12 minutes of television advertising and teleshopping spots for every hour of transmission across the broadcasting day, of which no more than 9 minutes may be television advertising."

4.65 Noting that respondents raised no objection to the other amendments proposed, we have revised the layout of the Code and incorporated the minor revisions proposed in the July 2014 consultation (with the exception of the point on advertising averages for non-PSB channels noted above). The revised Code can be found at Annex 2.

Annex 1

Revenue assessment

Background

A1.1 For the purposes of the July 2014 consultation we undertook an assessment of the effect on the revenues of certain broadcasters of children's programming[1] of continuing to enforce the COSTA rules using the EPG approach to determining the 'scheduled duration' of a programme. The results of our assessment were presented in Annex 5 of the July 2014 consultation.

A1.2 Under our assessment we estimated the difference in revenues between enforcement using the TX approach (measuring slot duration) and, separately, two scenarios based on enforcement under the EPG approach (which assumed children's programmes would only be allowed to contain an internal break ("IB") if they sat within an EPG slot at least 31 or 35 minutes long, respectively). The results of our analysis were expressed in terms of loss of revenue under the EPG approach (separately under each of the EPG at 31 and the EPG at 35 scenarios) relative to the TX approach.

A1.3 We consulted on our findings in relation to the potential loss of advertising revenues for the children's broadcasters that would arise from enforcing an EPG approach, assuming that these broadcasters undertook no mitigation strategies. However, we considered that there were a range of mitigation strategies that could be employed by the broadcasters to minimise the financial impact. Accounting for each of these mitigations, and looking more broadly at all channel revenues rather than just advertising revenues, we found that the financial impact of enforcing an EPG approach would be unlikely significantly to affect the scope for investment in children's programming by the commercial children's broadcasters. We asked the stakeholders to comment on the four mitigation strategies we presented in the July 2014 Consultation.

A1.4 In this Annex we:

1.4.1 provide some background information on data and our approach and analysis;

1.4.2 discuss each of the mitigation strategies, including:

a) the conclusions of the July 2014 consultation,

b) the stakeholders' responses to our revenue impact analysis; and

c) our explanation of how we have taken into account the stakeholders' responses.

1.4.3 Lastly, we present our final estimates of the revenue impact of the EPG approach (including the EPG at 31 and at EPG 35 scenario) on the children's broadcasters relative to the TX approach. Although we have

[1] The analysis considers the following children's broadcasters: Turner, Disney, CSC Media and Nickelodeon.

undertaken the assessment for each of the children's broadcasters, for confidentiality reasons we report only industry average results.[2]

Background and introduction

A1.5 For the purpose of the analysis in this Annex, as in the July 2014 consultation, we have taken as our starting point that a programme's scheduled duration is defined by reference to the start time of the programme until the start time of the next programme (i.e. the programme slot).

A1.6 We have estimated the duration of programme slots to the nearest second using transmission logs from BARB data (as amended by TRP Research Ltd, see Annex 6 of the July 2014 Consultation for further details) for two sample periods. The periods chosen for the analysis were May 2012 and May 2013. Use of BARB data has allowed us to measure the ratecard-weighted impacts within each programme slot, which is central to our analysis.

A1.7 Since some children's broadcasters have claimed (at the pre July 2014 Consultation stage) to be adopting the TX approach to scheduling IBs within programmes, we have taken the current situation as the starting point for our analysis. We have assumed that under the TX approach, a children's programme that occupied a programme slot lasting exactly 30 minutes could not include an IB. However, the data for the relevant period examined appeared to show IBs in a substantial proportion of children's programme in slots of 30 minutes or less. We therefore considered it appropriate to assume that our starting point should be that of an enforced TX approach. We have, therefore, suitably modified and qualified the current situation for the relevant period to account for this (as explained in paragraph A1.37).

A1.8 We have estimated the revenue impact of applying the EPG approach to the starting point described in the above paragraph. Under an enforced EPG approach, the children's broadcasters may react in different ways. We have, therefore, compared two possible scenarios under the EPG approach:

1.8.1 one in which an IB is included in a children's programme scheduled in a 31 minute EPG slot (we refer to this as 'EPG at 31'); and

1.8.2 another where an IB is included in a programme scheduled in a 35 minute slot (we refer to this as 'EPG at 35').

A1.9 For practical purposes in this Annex we have taken the TX approach as the base case against which we compared the EPG approach (under both scenarios).

A1.10 We have focused on the impact on revenues rather than profitability. This is purely for practical reasons as some of the children's broadcasters for which we estimated the revenue impact have international operations and, therefore, assessing the impact on their profitability in the UK would have been difficult. This is discussed later in this annex in paragraphs A1.131 and A1.132. As a result, this Annex focuses on the revenue impacts of adopting the alternative options and scenarios.

[2] Confidential information relating to individual broadcasters has been redacted from this Annex but is available to the relevant broadcaster on request.

Options assessed

A1.11 The options we have assessed are:

1.11.1 **TX approach** – as discussed above, this approach uses broadcasters' transmission data to measure programme slot. Some children's broadcasters have argued that a programme with a scheduled duration (under the TX approach) of at least 30 minutes and one second long should be allowed to have an IB. We have used this interpretation for this option;

1.11.2 **EPG approach –** under this option we assessed two possible scenarios:

- **EPG at 31** – a children's programme would need to be scheduled in an EPG slot that is at least 31 minutes in duration in order to be allowed an IB; and

- **EPG at 35** – as above but only children's programmes that are scheduled in EPG slots of 35 minutes (or more) contain an IB.

A1.12 The analysis in this annex estimates the difference in revenues between the enforced TX approach and, separately, the two scenarios assessed under the (equally enforced) EPG approach. The results of our analysis are expressed in terms of loss of revenue under the EPG approach (separately under each of the EPG at 31 and the EPG at 35 scenarios) relative to the TX approach.

Revenue impact

The children's broadcasters' initial views

A1.13 In advance of the July 2014 Consultation, some of the children's broadcasters argued that there would be a substantial revenue impact should they not be allowed IBs in children's programmes which sit in 30 minute EPG slots but which have a slot duration of 30 minutes and one second according to their transmission logs.

A1.14 ✂ argued that the removal of IBs in such programmes would lead to a ✂ loss in the share of commercial impacts and revenues.[3] ✂. ✂ argued that based on 2012 figures ✂ this could lead to a ✂ decline in advertising revenues. ✂ argued that this would be equivalent to a ✂ reduction ✂ later clarified that its estimate assumed all IBs in ✂were eliminated and that they did not mitigate the loss of IB advertising revenues.[4] ✂ also provided the 2012 revenue figures for each of its ✂.[5] This indicated that the loss of all existing IB revenues would be ✂ of all advertising revenues of ✂; ✂.[6]

A1.15 ✂ argued in October 2011 that for the period January - August 2011 the loss of IB advertising could "reduce [its] advertising impacts by ✂, equating to about ✂ in revenues".[7] This estimate excluded any mitigation strategies. ✂ also argued that the removal of IBs only from programmes affected (i.e. those scheduled in 30

[3] ✂
[4] ✂
[5] ✂
[6] ✂
[7] ✂

minute EPG slots) by the change in measurement would lead to a loss of ✂ of commercial impacts (about ✂ of advertising revenues) over the period April 2012 to March 2013. This latter estimate included mitigation by breaking up episodes of one particular programme into two separate programmes (hence replacing an IB with an end break ("EB")).

A1.16 ✂ estimated that for 2012, ✂ of its advertising revenues came from IBs. As a result of ✂, ✂ forecast IBs to represent about ✂ of all advertising revenues.[8] This estimate was based on all IBs being eliminated and no mitigation strategies. ✂ subsequently provided new analysis based on 2013 forecasted revenues.[9] It argued that its total advertising revenues for 2013 were expected to be ✂. It argued that it would recommend extending the duration of EBs to partially compensate the loss of IBs.[10] It estimated that taking this action would lead to a loss of £✂ advertising revenues. It also argued that because EBs will become longer this would lead to a loss of ✂ of commercial impacts overall in the EB total impacts.[11] As a result the revenue loss would stand at ✂.

Ofcom's views on the children's broadcaster's initial submissions

A1.17 In the July 2014 consultation we considered that the analysis put forward by ✂ did not capture well the financial impact of adopting the EPG approach. We considered that to different degrees the analysis and approaches suggested by these children's broadcasters tended to overestimate this impact on revenues. We recognised that at the time some of the children's broadcasters provided their views, we had not fully developed alternative options and consequently they would not have been able to make a detailed assessment of the alternatives considered in the consultation. Nonetheless, it may be useful to highlight what we considered to be the more important limitations of the analysis put forward by some of the children's broadcasters before discussing our own approach to this estimation.

A1.18 ✂ approach led to an overestimation of the revenue impact (even assuming that ✂ does not adopt any mitigation strategies in response). This is because ✂ assumed that all IBs would be eliminated. In reality only a proportion (although large) of IBs would be affected as programmes of longer scheduled durations have IBs, but they would be unaffected by alternative enforcement approaches. ✂

A1.19 Unlike ✂ estimate did take into account that only a proportion of IBs would no longer be allowed under the EPG approach and included some limited mitigation by splitting one specific programme into two shorter ones.

A1.20 Like ✂, ✂ approach was based on the assumption that all IBs would be eliminated (and, hence, it overestimated the maximum impact on revenues), but like ✂ it also considered mitigating the effect by increasing the duration of its EBs to compensate, if only very partially, the loss of IBs.

A1.21 As we discuss further below, we believe that the children's broadcasters:

1.21.1 could adopt a number of additional mitigation strategies if we adopted the EPG approach under either the EPG at 31 or EPG at 35 scenario; and

[8] ✂
[9] ✂
[10] ✂
[11] ✂

1.21.2 would be likely to apply a mix of mitigation strategies on each channel (i.e. on a programme by programme basis) depending on considerations related to the specific features of each programme.

Data

A1.22 For our analysis we used a sample of UK BARB data, obtained via BARB registered bureaux, and UK revenue information provided by the children's broadcasters.

A1.23 We examined the BARB data for the children's broadcasters' channels for the months of May 2013 and May 2012.[12] For each channel the BARB data set contained programme, EB and IB durations, content information and commercial impacts (both unweighted and ratecard weighted[13]). As we aimed to estimate the revenue impact, we relied on ratecard weighted impacts as these closely reflect the revenues associated with impacts. As explained in Annex 6 of the July 2014 consultation, these data had to be corrected and rectified in order for us to be able to carry out our assessment. In particular, for practical purposes we had to estimate the programme slot duration as the time between the end of an EB to the end of the next EB and not as the period of time between the beginning of a programme and the beginning of the next programme. Our analysis relied on this amended data set.

A1.24 The children's broadcasters also provided us with their total broadcasting revenues split by type (e.g. subscriptions, advertising and promotions) for each of their channels over the same periods. We have assumed that all advertising revenues within the period are generated by the ratecard-weighted impacts within the same period. Thus, we have derived revenue-per-impact data by dividing all revenues across all commercial impacts on a channel-by-channel basis. Effectively, this assumption is that for a specific reduction in ratecard-weighted impacts we would expect a proportionate reduction in advertising revenues. We believe this to be the most conservative assumption, as this is the maximum theoretical loss of revenues from a given loss of commercial impacts. We consider it more likely that there would be an increase in the price of advertising on a channel in response to a loss of commercial impacts, but due to the uncertainty around the scale of this effect we have not attempted to quantify it in our analysis.[14]

[12] We had to limit the analysis to relatively short time periods because the data had to be amended to rectify inconsistencies and incorrect entries and this was time consuming process (See Annex 6 of the July 2014 Consultation).

[13] Ratecard weighted impacts is the metric used by broadcasters to sell advertising spots. They apply different weights to the unweighted impacts to account for differences in cost by spot length contained within that minute. Ordinarily, 1 impact refers to 1 viewer watching one 30-second advertising spot, but as a pair of 15-second spots may be of higher value to an advertiser than a single 30-second spot, unweighted impacts would be insufficient to accurately account for the value of an advertising break. Ratecard weighted impacts account for these differences and allow comparisons to be made in terms of advertising revenue – e.g. one spot generating 50 ratecard weighted impacts can be said to generate half as much revenue as another spot generating 100 ratecard weighted impacts.

[14] We would expect a decline in advertising impacts to lead to an increase in the price of advertising on that channel because in the short term advertisers' budgets for TV advertising are typically relatively inflexible. As the number of commercial impacts delivered falls, the price of TV advertising measured in terms of the 'cost per thousand impacts' (a standard industry metric) increases. The scale of this effect is likely to be lower in the longer term, and will also be affected by the scale of the impact on all children's broadcasters' commercial impacts and the availability of substitute advertising markets, among other factors.

A1.25 Although we have undertaken the analysis for both May 2012 and May 2013, in this annex we have reported only the May 2013 data as they are the most recent data and results using May 2012 are similar. Analysis for both month periods is included in the revenue impact model.

Our approach to the revenue assessment

A1.26 The purpose of this assessment is to estimate the revenue impact of the EPG approach (on the basis of either the EPG at 31 or EPG at 35 scenario), relative to the TX approach.

A1.27 For the period examined we undertook the analysis on a channel-by-channel basis and then aggregated results for each children's broadcaster group. We consider the revenue impact at the group level to be the most relevant initial indicator of whether the EPG approach could reduce the children's broadcaster's incentives to invest in programme content. If this led to a reduction in the quality of the children's broadcasters' programmes, viewers may be worse off.

A1.28 However, to the extent that some channels in the current portfolio held by some of the children's broadcasters are particularly impacted, we also considered whether some approaches may render some channels no longer viable, even if the overall revenue impact on a children's broadcaster group was limited. If those unviable channels were then withdrawn, the concern would not be a risk of reduced incentives to invest in programmes, but, instead one of reduced supply of children's programme services.

A1.29 The assessment involved a number of methodological steps:

1.29.1 we first estimated the distribution of programmes according to their scheduled duration. This allowed us to build a picture of the situation in May 2013 (and 2012);

1.29.2 we assessed the maximum proportion of revenues at risk. This was estimated by assuming that all programmes that would no longer be allowed to have an IB under each option (and scenario) would lose all the associated advertising revenues. In other words, we assumed that the children's broadcasters would not adopt any of the mitigation strategies discussed below at paragraphs A1.45 to A1.110. The EPG approach (under both scenarios) is then compared to the TX approach in order to assess the difference in maximum revenue impact between the options and scenarios. We believe this to be a significant overestimation of the revenue impact of the options, as we expect the children's broadcasters to attempt to mitigate the revenue impact; and

1.29.3 the children's broadcasters could react in a number of ways to avoid the full revenue impact (described in the above paragraph) under the EPG approach (and under both scenarios). We have assumed that they would not invest in new, longer or shorter, programmes, but, taking the existing schedule as given[15], we have assumed they would adopt a number of mitigation strategies that would minimise the impact on existing revenues.

[15] The only changes in schedule may come about if the children's broadcasters adopted mitigation strategies that involved aggregating or splitting existing programmes.

We have assessed a number of mitigation strategies and estimated their efficacy.

A1.30 Our results (see paragraphs A1.111 to A1.136) show the revenue impact under the EPG approach, under either the EPG at 31 or EPG at 35 scenario, relative to the TX approach as a proportion of: i) all advertising revenues; and ii) all broadcasting revenues (i.e. including all other broadcasting revenue sources such as subscription revenues).

A1.31 In the July 2014 consultation, although we discussed the results of some sensitivity assessment, we simply presented our central estimates for each scenario. In this Annex we have also included a range of plausible estimates wherever relevant. However, we believe that the central estimate to be based on the most reasonable set of assumptions and hence the most likely scenario.

Mapping the current situation

A1.32 BARB data’ amended and prepared on our behalf by TRP Research Ltd (see paragraphs A1.22 to A1.25) was used to estimate programme slots for each programme.

A1.33 Programmes were classified as falling into the following programme slots:

- Up to 29 minutes (1-29 minutes);
- 29 minutes and 1 second to 30 minutes (29-30 minutes);
- 30 minutes and 1 second to 31 minutes (30-31 minutes);
- 31 minutes and 1 second to 32 minutes (31-32 minutes);
- 32 minutes and 1 second to 33 minutes (32-33 minutes);
- 33 minutes and 1 second to 34 minutes (33-34 minutes);
- 34 minutes and 1 second to 35 minutes (34-35 minutes); and
- 35 minutes and 1 second and more (35+ minutes).

A1.34 Table A1.1 shows the distribution of the children’s broadcasters’ programmes (expressed in terms of ratecard weighted impacts separately for EBs and IBs) according to their programme slot length. It shows that many (over 41%) of the IBs’ ratecard weighted impacts are in programmes that fall into the 30-31 minute range which would be the one most at risk if the EPG approach was chosen.

A1.35 Table A1.1 also shows that according to the May 2013 data and the way we measure the programme slot length (see Annex 6 of the July Consultation), a very sizeable amount of IBs (almost 43%) for the children’s broadcasters appeared to be shown in programme slots whose duration was 30 minutes or less (almost entirely in the 29-30 minutes range). This would suggest that while we have been reviewing our approach, broadcasters may have interpreted the rules in a way that would not be permissible under any of the options assessed in this document.[16] This also applies in particular to the TX approach.

Table A1.1: Ratecard weighted impacts in EB and IB across the children's broadcasters by programme slot (May 2013)

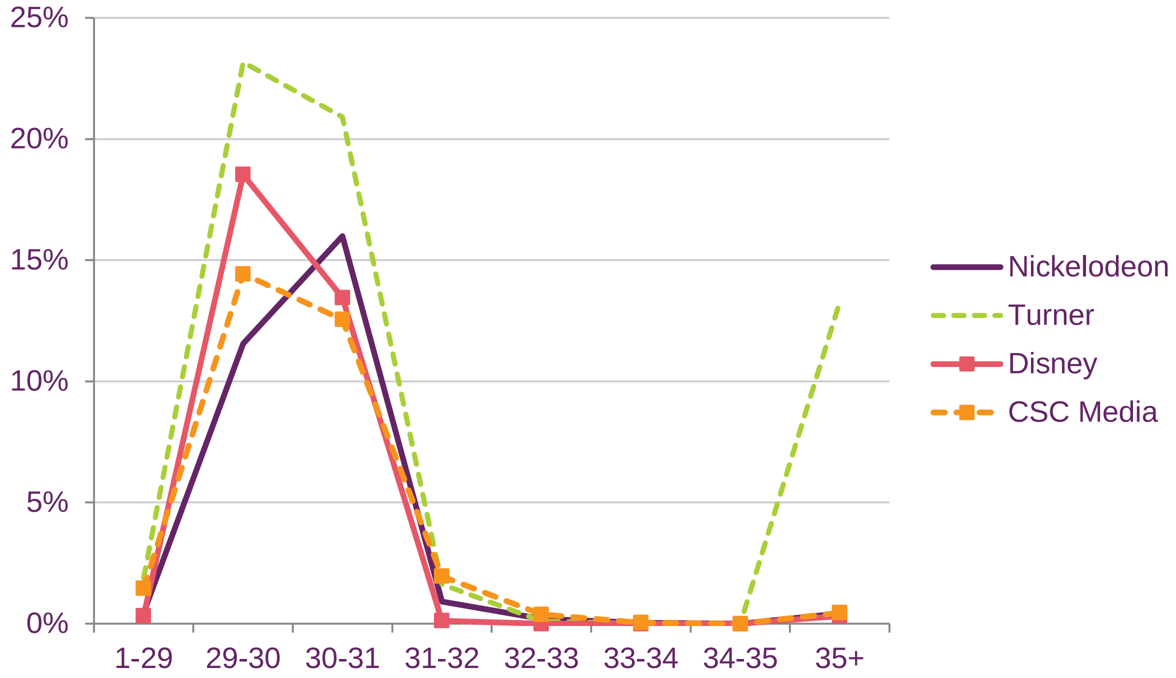
SLOT LENGTH	EB	IB
1-29	1,601,314	38,488
29-30	408,243	578,977
30-31	397,108	597,061
31-32	42,437	44,257
32-33	8,048	6,279
33-34	1,402	765
34-35	1,287	0
35+	57,383	182,009
TOTAL	**2,517,223**	**1,447,835**

Source: BARB data as amended by TRP, Individuals 4+, May 2013. Ratecard weighted impacts in 000s

A1.36 Figure A1.1 shows the same distribution but broken down by each of the children's broadcasters. It shows a similar picture across them. Table A1.2 shows that overall IBs are a substantial proportion of advertising revenues for all children's broadcasters but a much smaller proportion of all broadcasting revenues (with the exception of ✂).

[16] It is possible that some or most of these commercial impacts fall in programme slots that would be greater than 30 minutes following different methods of measuring slot duration. As explained in detail in Annex 6 of the July 2014 Consultation, due to errors in the data we found it impossible to be confident in measuring slot duration from the start of one programme to the start of the next, and so we have instead measured slot duration from the end of one programme to the end of the next. In any case, these commercial impacts are assumed to be able to be mitigated in the 'properly enforced TX approach option' (see paragraphs A1.116 to A1.118).

Figure A1.1: Proportion of all ratecard-weighted impacts in IB by the children's broadcaster and programme slot (May 2013)



Source: BARB data as amended by TRP, individuals 4+, May 2013.

Table A1.2: IB revenues as a proportion of advertising and total broadcasting revenues, by children's broadcaster (May 2013)

	% of advertising revenue	% of all revenue
✂	✂	✂
✂	✂	✂
✂	✂	✂
✂	✂	✂

Source: BARB data as amended by TRP, revenue data from children's broadcasters.

A1.37 Tables A1.1 and A1.2 and Figure A1.1 depict the situation as of May 2013. When comparing the revenue impact of adopting any of the enforcement approaches set out in paragraph A1.11 it may be helpful to consider that:

1.37.1 the children's broadcasters would no longer be able to schedule IBs in programmes of 30 minutes or less. It is likely that they would attempt to mitigate these in a number of ways - e.g. by aggregating or splitting existing programmes, making programme slots longer or shifting advertising time from IBs to EBs; and

1.37.2 under either the EPG at 31 or EPG at 35 scenario, the children's broadcasters would also no longer be able to have IBs in programme slots whose duration is 30-31 minutes or 30-34 minutes, respectively. They would be likely to attempt to mitigate this effect in similar ways.

A1.38 In our assessment, we have estimated the impact on the children's broadcasters' revenue, assuming that the starting point was that of the enforced TX approach. Therefore, any effect derived from potential infringements during the period of assessment would not be relevant. In other words, the relevant comparison would be between the enforced TX approach (where only those programmes with a slot duration of 30 minutes and one second or longer could include an IB) and the enforced EPG approach (where only those programmes with a slot duration of 31+ or 35+ minutes could include an IB). We consider that any revenue loss due to non-compliance under either option should not be accounted for in assessing the impact on revenues of any change in the way scheduled duration is measured.

A1.39 It is, however, possible that the children's broadcasters may mitigate the revenue impact of whichever option is selected in ways that modify the situation shown in Table A1.1 and Figure A1.1 and that this also affects the subsequent revenue assessment. This would be the case, for example, if the children's broadcasters could not fully mitigate the impact of enforcement on the revenues from the 29-30 minutes range. This would mean that in assessing, for example, the EPG at 31 scenario relative to the TX approach, the advertising revenues base under the TX approach would be lower than under the situation described in Table A1.1. The revenue impact of not adopting the TX approach could, therefore, be more marked.[17] We discuss how we have dealt with this issue and its potential impact on results at paragraphs A1.112 to A1.114.

Maximum revenue impact of broadcasters moving away from the TX approach without mitigation

A1.40 We have estimated the maximum possible revenue impact on the children's broadcasters if, instead of enforcement under the TX approach, either the EPG at 31 or EPG at 35 scenarios under the EPG approach are used. We have assumed for this element of our assessment that the children's broadcasters would not seek to mitigate the revenue impact of the enforcement methodology. They would react to the change by simply not including IBs in any programme that fell short of the minimum duration requirement. In the July 2014 consultation we estimated that the maximum revenue impact for the children's broadcasters would be -15% under the EPG at 31 scenario and -16% under the EPG at 35 scenario.

A1.41 In particular:

1.41.1 under the EPG at 31 scenario, we assumed that all current advertising revenues derived from IBs from programme slots with a duration of 30-31 minutes would be potentially lost[18] without the adoption of mitigation strategies. In other words, a children's broadcaster would only be able to insert an IB into a children's programme if it would sit in a 31 minute EPG slot, which we defined using the BARB data as those programmes for which the transmission log was at least 31 minutes and 1 second; and

[17] This is the case if not all the additional commercial impacts caused by enforcement could not be fully mitigated.

[18] Commercial impacts in the 30-31 minutes range would be lost under the EPG approach option but would be eligible for an IB under the TX option, as the minimum slot duration required under the TX approach option could be 30 minutes and 1 second.

1.41.2 under the EPG at 35 scenario, we similarly assumed that all current revenues derived from IBs from programme with a scheduled duration of 30-35 minutes would be lost.

A1.42 We consider that this approach significantly overestimates the impact on the children's broadcasters of the revenue difference between the TX and EPG approaches, as it explicitly assumes they cannot mitigate any loss of IBs. As such we consider this to be a highly unrealistic scenario.

Revenue impact of the EPG approach (relative to the TX approach) when applying mitigation strategies

A1.43 As the revenue impact of each approach would be overestimated under the analysis in paragraphs A1.40 to A1.42, we have assessed a number of mitigation strategies, such as:

1.43.1 **Strategy 1 – Adding self-promotions in IBs and/or EBs**: children's broadcasters could increase the amount of self-promotional content broadcast to ensure that an EPG slot duration is long enough to carry an IB;

1.43.2 **Strategy 2 – Splitting programmes into two**: for some programmes only, children's broadcasters could split a programme, which does not meet the requirement to have an IB, into two. Hence, rather than having a programme with an IB, it will have two programmes with an EB between them;

1.43.3 **Strategy 3 – Bundling two programmes into a longer one**: by bundling up two programmes, that otherwise may not be allowed to have a IB, into a longer programme children's broadcasters may lose one EB but be able to retain two IBs as long as the programme's scheduled duration becomes at least 60 minutes long (given the rules allow children's programmes to be interrupted once for each scheduled period of at least 30 minutes); and

1.43.4 **Strategy 4 - Removing IBs but making EBs longer**: children's broadcasters could mitigate the impact on revenues by accepting the loss of IB advertising but increase the duration of existing EBs. Unlike under mitigation strategies 1-3, this would not require increasing the scheduled duration of the programme.[19]

A1.44 In pre-consultation responses, some of the children's broadcasters agreed that they could mitigate some of the revenue impact by adopting mitigation strategies 2 and 4.[20]

[19] There are also two other possible strategies we considered but did not investigate further. First that the children's broadcasters could increase the programme slot duration by scheduling additional advertising to make IBs and/or EBs longer. If some channels did not make full use of their 12 minutes of advertising in an hour allowance, they could do so and increase the scheduled programme duration. However, we consider this to be unlikely. Second, they could increase their reliance on other revenue sources. However, if this was a profitable strategy we would expect the children's broadcasters to have adopted it already.

[20] ✂

Mitigation Strategies

A1.45 In this Section we separately assess each of the mitigation strategies 1-4 with regard to stakeholders' comments.

A1.46 We note that some of these mitigation strategies may carry some costs – e.g. cost in re-editing programmes to split them into two or to bundle two programmes into one. Although, for practical reasons we focused on the revenue impact (see paragraph A1.10), the decision of these broadcasters would be based on the impact that the available mitigation strategies have on profits. Therefore, we have also considered instances where the impact on cost would also be relevant. Failing to include these costs may lead to an under-estimation of the overall impact on profitability. Overall, in the light of the responses to the July 2014 Consultation we conclude that:

1.46.1 we do not have sufficient information as to whether these costs are likely to be substantial; and

1.46.2 for most children's broadcasters a UK profitability impact would impractical (see paragraph A1.10). This is why we have focused on the revenue impact.

A1.47 We also note that we have adopted a conservative approach in estimating the revenue loss under each mitigation strategy in our central scenario, which is likely to lead to an overestimation of the revenue impact.

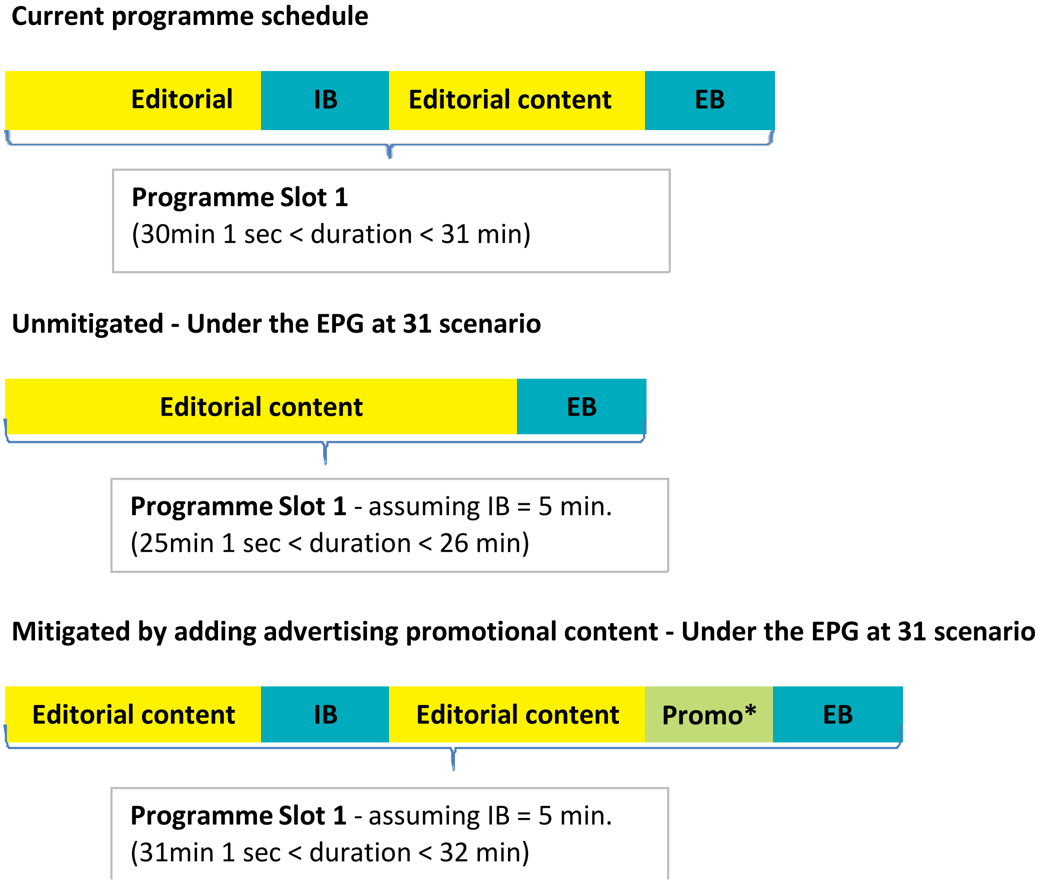
Mitigation Strategy 1: Increasing slot duration by extending IB and/or EB by including promotional content

Summary of July 2014 Consultation

A1.48 We explained that one means of mitigating the financial impact for the children's broadcasters would be to increase the amount of self-promotional content broadcast to ensure that an EPG slot duration is long enough to carry an IB. We assumed that children's broadcasters could add up to one minute of self-promotional content to their programmes under the EPG at 31 scenario, and up to two minutes under the EPG at 35 scenario.

A1.49 Our modelling suggested that this mitigation strategy would reduce the impact as a proportion of all revenues across all children's broadcasters from -15% (without mitigation) to -7% (using this mitigation only) under the EPG at 31 scenario. Our modelling suggested that this strategy would be largely ineffective under the EPG at 35 scenario.

Figure A1.2: Mitigation Strategy 1



*Note: Promotional material could be added before or after either or both of the IB and EB. It has been placed before the EB in this example for ease of presentation.

Stakeholder responses

A1.50 COBA argued that:

1.50.1 channels already include promotional material in their schedules and the addition of further promotion material would "inevitably increase the risk of a loss of impacts". It argued that, due to this loss, it did not believe that there is likely to be any significant level of mitigation from this approach; and

1.50.2 this mitigation strategy could be impractical, as promotional material may be included later in the process, after a channel's internal schedule has been provided to the platforms for the creation of an EPG schedule, but before eventual transmission.

A1.51 ✂ believed that this strategy had only very limited application to its children's channels and in no event could it constitute a meaningful mitigation strategy. It stated that it could only use promotional air time to extend a programme slot to make up a 31 minute slot (and in rare occasions 35 minutes) in a minimum number of occasions "subject to suitable editorial programme duration and availability of suitable promotional or filler content".

A1.52 ✂ argued that including additional promotional content to extend EPG slots to 31 or 35 minutes would make programmes more difficult to find in the schedule and act as a potential disincentive for its audience to remain with its channels until the next programmes begin. It also argued that promotional content may have lower efficacy, if repeated more frequently, and could reduce the perception of its channels as a ready-to-watch provider of high quality children's programmes.

Our response and possible limitations

A1.53 This strategy seems a simple way for the children's broadcasters to mitigate the revenue impact of adopting either the EPG at 31 or EPG at 35 scenario. However, there some possible limitations, which we noted in our July 2014 Consultation.

A1.54 As argued by COBA in its response, there may be a cost in making an EB longer by adding self-promotional content in that it may cause a loss of commercial impacts for the channel. As we discuss in paragraphs A1.105 to A1.108, from the data we have examined we have not found that extending EBs leads to a further drop-off in viewing. It is also worth observing that this promotional content is aimed at promoting subsequent programmes and, hence, may increase audiences (and advertising revenues) in subsequent programmes and compensate for that loss. Furthermore, the effect on each individual channel will be moderated as this effect will apply to all children's broadcasters' channels – i.e. one channel's loss is another channel's gain. We have included as a sensitivity a case in which only 90% (rather than all) commercial impacts of eligible programmes are mitigated under this approach, to account for the fact that there may be some drop-off beyond these countervailing effects.

A1.55 Clearly, this mitigation strategy may only be possible for a proportion of, but not all, programmes. It is possible that adding programme promotions could lead to a "shunting effect" leading to programmes starting at times when fewer viewers tune in to watch programmes. We have estimated that under the EPG approach this mitigation strategy would account for an addition of around ten minutes of promotional material per channel per day on average under the EPG at 31 scenario, or just ten seconds per channel per day under the EPG at 35 scenario.[21] We consider it unlikely that the magnitude of the added promotional content minutes is such to lead to a "shunting effect" affecting advertising impacts.

A1.56 In the July 2014 consultation we assumed that this mitigation strategy would only apply to programmes in the 30-31 minutes range and under those in the 33-35 range under the EPG at 31 and 35, respectively. Therefore, our results are presented on the basis that only those programmes could be mitigated. To the extent that ✂ is less able than other children's broadcasters to mitigate in this manner we consider that this could already be consistent with our analysis. For example, we have identified that roughly ✂ of all programmes broadcast on

[21] This calculation is based on the total number of programmes of 30-31 minutes (for EPG at 31 scenario) or 33-35 minutes (for EPG at 35 minutes scenario) in the data, averaged over number of channels and days, assuming that each such programme includes the full potential necessary minute(s) of promotional material. Under the EPG at 35 minutes scenario we assumed that only programmes whose duration is 33-35 minutes are mitigatable under this strategy therefore there are considerably fewer programmes for which this is an option compared to the EPG at 31 scenario (fewer programmes in 33-35 minutes slot versus 30-31 minutes slot). This is why there will be less total additional promotional material per channel per day under the EPG at 35 minutes scenario compared to the EPG at 31 minutes scenario, despite each eligible programme being entitled to twice as many additional minutes of promotions.

✄ children's channels in May 2013 would be able to be mitigated in this way under our central assumptions.[22]

A1.57 As argued by ✄ in its response, the EPG approach may lead to programmes no longer starting at familiar times (e.g. on the hour/half hour), this is likely to be a particular issue if the EPG at 31 scenario is chosen.[23] As discussed in paragraph A1.56, we think that only a limited amount of additional promotional material will be necessary. While this mitigation strategy may, on its own, cause some unfamiliar programme start times, given that this strategy would be limited to some programme slots only and that the children's broadcasters could use another mitigation strategy, this is unlikely to be a material concern (as we discuss later in paragraph A1.117). Furthermore at paragraph A1.134, where we discuss which strategies the children's broadcasters would apply first, we assumed that this strategy would only be the chosen if strategy 2 could not be adopted. Therefore, we do not believe that this concern is likely to be common.

A1.58 There may be some financial costs involved in creating or editing programme promotions. However, we expect the children's broadcasters to use at least a proportion of their existing promotional material – i.e. repeat promotions more often (rather than create new ones) under the EPG approach, than under the TX approach. ✄ has argued that increasing the frequency with which promotional material is shown is likely to reduce the marginal efficacy of that promotional material. While in theory we would agree with this argument, due to the limited estimated quantity of additional promotional material (as explained in paragraph A1.56), in practice we do not think that this mitigation strategy will materially affect the marginal efficacy of the promotional material.

A1.59 As argued by COBA in its response, this strategy could be impractical, as promotional material may be included later in the process, after a channel's internal schedule has been provided to the platforms for the creation of an EPG schedule but before eventual transmission. We do not consider that this is a material concern as under an EPG rule broadcasters will have an incentive to include promotional material in the EPG at an earlier stage.

A1.60 ✄ argued that if too much promotional material is added then audiences may switch to non-linear viewing. While we agree that over the last few years opportunities have increased for children as an alternative to linear viewing and that children's viewing has been declining,[24] we note that only a limited quantity of additional material will be required. We believe this would be sufficiently small not to change materially the existing viewing trends of the audiences of these channels which are likely to be driven by factors other than the amount of advertising.

A1.61 We do not consider that the effect of these factors is likely to significantly reduce the ability of this strategy to mitigate the impact on revenues, as viewers may react to promotional content in a different way (i.e. leading to a less accentuated decline in commercial impacts) than to advertising.

[22] Only counting programmes that have a slot duration of between 30 and 31 minutes.
[23] The effect would be more rapid under a EPG at 35 minutes scenario but with programmes starting at more familiar times (i.e. 9.35 or 9.40 under the 35 minutes interpretation rather than 9.01 or 9.06 under the EPG at 31 minutes scenario).
[24] Viewing data from BARB shows that children's viewing has fallen from a peak of around 150.6 minutes per day in 2010 to around 117.6 minutes per day in 2014, a decrease of about 6% per year.

Our conclusions

A1.62 We continue to consider that this mitigation strategy remains a viable approach. For the purposes of our assessment, therefore, in our base scenario estimation, we assumed that under the:

1.62.1 EPG at 31 scenario, any programme with a scheduled duration currently in the 30-31 minutes range could be mitigated by adding promotional content of one minute or less; and

1.62.2 EPG at 35 scenario, any programme with a scheduled duration currently in the 33-35 minutes range could be mitigated by adding promotional content of up to two minutes in duration.

A1.63 An important factor to consider is that there are many programmes with a scheduled duration currently in the 30-31 minutes range, but far fewer in the 33-35 minutes range (see Table A1.1 and Figure A1.1). Hence, despite the difference in the assumption, the overall increase in promotional content minutes would be more substantial under the EPG at 31 scenario than under the EPG at 35 scenario.

A1.64 We have also performed some sensitivity analysis on this strategy, around how many minutes of promotional content could be added to a programme slot to allow a children's programme to contain an IB and the effectiveness of mitigation.[25] For example, we also:

1.64.1 restricted the EPG at 35 scenario to having only up to 1 minute of promotions - that is, assuming only scheduled durations in the 34-35 minutes range could be mitigated;

1.64.2 allowed the EPG at 31 scenario to have up to 2 minutes of promotional content. There are some programmes which fall in the 29-30 minutes range, which could not ordinarily be mitigated when under the EPG at 31 scenario, but which are mitigated under the TX approach (see paragraphs A1.112 to A1.114). Under this sensitivity assessment, these programmes will also be able to be mitigated under the EPG at 31 scenario (for further detail, see paragraph A1.113); and

1.64.3 assumed that 10% of commercial impacts from IBs of eligible programmes under our base scenario estimation would not be able to be mitigated, due to the inclusion of additional promotional material putting viewers off watching the channel.

A1.65 Under our base scenario, we would expect this strategy alone to reduce the impact on all broadcasters' revenues from -15% to -8% (our sensitivity estimates range from - 8% to 0%) under the EPG at 31 scenario. We believe this strategy would be largely ineffective under the EPG at 35 scenario.

[25] The first two sensitivities presented here were also presented in the July 2014 Consultation. We have added to these the third sensitivity, regarding an overall loss of commercial impacts from eligible programmes.

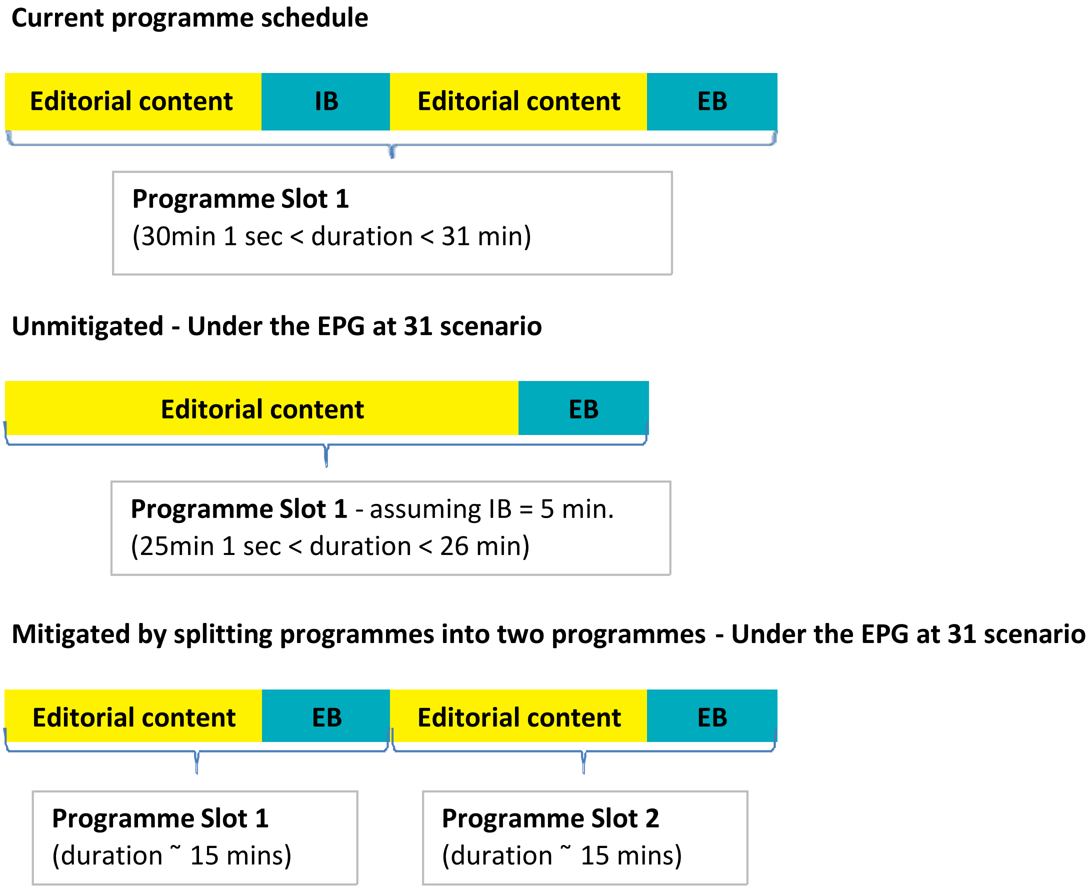
Mitigation Strategy 2: Splitting programmes into two separate programmes

Summary of July 2014 Consultation

A1.66 We proposed that children's broadcasters could, for some programmes only, split a programme which does not meet the requirement to have an IB, into two separate programmes. Hence, rather than having a programme with an IB, it will have two programmes with an EB (of the same duration as the former IB) between them. We assumed this would only be possible for programmes with two or more separate narrative storylines, which were combined together to be a single episode.

A1.67 Our modelling suggested that this would reduce the impact as a proportion of all revenues across all children's broadcasters from -15% (without mitigation) to -11% (using this mitigation only) under the EPG at 31 scenario and from -16% (without mitigation) to -11% (using this mitigation only) under the EPG at 35 scenario. In the July 2014 Consultation we also reported the results of some sensitivity analysis.

Figure A1.3: Mitigation Strategy 2



Stakeholder responses

A1.68 COBA stated that broadcasters might not have the right to break programmes into parts and reiterated that the narrative of the programming might make this approach impossible. This point was also made by Viacom in its response.

A1.69 Disney argued that, as the majority of the programmes produced for its channels have an editorial length of 22-23 minutes with a resolution in the final few minutes, the editing of one programme into two is not considered practical from an editorial perspective. In addition, it claimed that opening and end credits would also need to be “re-versioned”, at significant aggregate cost, and that this would also impact on the total running time of the new programmes. Finally, it explained that there might also be editing restrictions on content as the result of talent guild agreements, particularly in respect of programmes which were produced in the United States.

A1.70 Turner stated it has already been splitting eligible programmes in this way, ✂.

Our response and possible limitations

A1.71 As discussed at paragraph A1.66, the number of programmes suited to this strategy may be limited. ✂; our analysis is based on data for May 2013 and, therefore, may not capture relatively recent changes in Turner’s scheduling approach. However, we identified programmes accounting for roughly ✂ of its commercial impacts in May 2013 which would otherwise be at risk and that could be split. If Turner has begun splitting these programmes already then these commercial impacts would not be at risk from moving to an EPG approach, so the post-mitigation revenue impact would remain the same. Indeed, this scheduling behaviour would be evidence that this mitigation strategy could be feasible and worthwhile.

A1.72 As argued by Disney, we note that in some instances, there may be some disadvantages for viewers in having two sets of titles at the start and end of the two split programmes, as this would add to the length of the programme. There may also be some editorial costs in editing archive material in order to adapt a programme into two. While we understand that this may potentially make splitting programmes difficult in some cases and more costly, we believe we have made conservative assumptions in modelling the mitigating impact of this strategy (see below). Furthermore, these difficulties may only be important in the short run, but may be resolved in the medium to longer run as broadcasters and content right holders adjust to the EPG option.

A1.73 There may be some potential presentational implications for the EPG if programmes are fragmented in this way, but we would not expect these to have a material impact on advertising revenues. We consider that it would be in the interests of both the broadcasters and the rights holders to renegotiate any prohibition to show separate and contiguous episodes of the same programmes. This is therefore likely to be a one-off short-term as opposed to long-term problem and/or cost.

A1.74 Disney and COBA argued that this mitigation would only apply to a limited number of programmes. In the July 2014 Consultation we stated that mitigation strategy 2 may not be viable for all programmes. This is why we restricted it to the programmes that we classified as "able to be split". We, therefore, only assess the mitigation potential from the subset of programmes which do not have a narrative constraint to being split into two episodes. We have also excluded those programmes for which we were not able to decide whether children’s broadcasters would be able split or not. This means that we have used conservative assumptions to our approach to this mitigation strategy. In our analysis we did not find any Disney programmes which would be able to be split, so Disney has not been modelled to gain any benefit from this mitigation strategy.

Our conclusions

A1.75 We have reviewed all programmes in our data set to estimate which ones could be split. Where we considered programmes could be split we assumed that this is what the children's broadcasters would do and that by doing so they would not lose any revenues – i.e. the EB that replaces the IB is assumed to generate the same amount of revenues.[26]

A1.76 We reviewed each programme by title and identified the format which it takes, classifying each as:

- Able to be split;
- Film/long form;
- Not able to be split;
- Short;[27] and
- Unknown.[28]

A1.77 We assumed that all the commercial impacts in the IB of programmes that were classified as 'Able to be split' would be mitigated, if the programme slot was between 30 and 31 minutes or between 30 and 35 minutes depending on the EPG approach scenario considered. We have also performed some sensitivity analysis on this strategy, allowing programmes of 'Unknown' format also to be split. However, these programmes only accounted for around 2% of the commercial impacts accounted for by 'Able to be split' programmes, so this sensitivity does not materially affect our results.

A1.78 Under our base scenario, we would expect this strategy alone to reduce the impact on all broadcasters' revenues from -15% to around -10% under the EPG at 31 scenario and from -16% to around -11% under the EPG at 35 scenario.

Mitigation Strategy 3: Bundling two programmes into one longer programme

Summary of July 2014 Consultation

A1.79 We proposed that children's broadcasters could, for a limited number of programmes only, bundle up two programmes, that otherwise may not be allowed

[26] Essentially the position and amount of advertising does not change but the IB is now labelled as an EB.

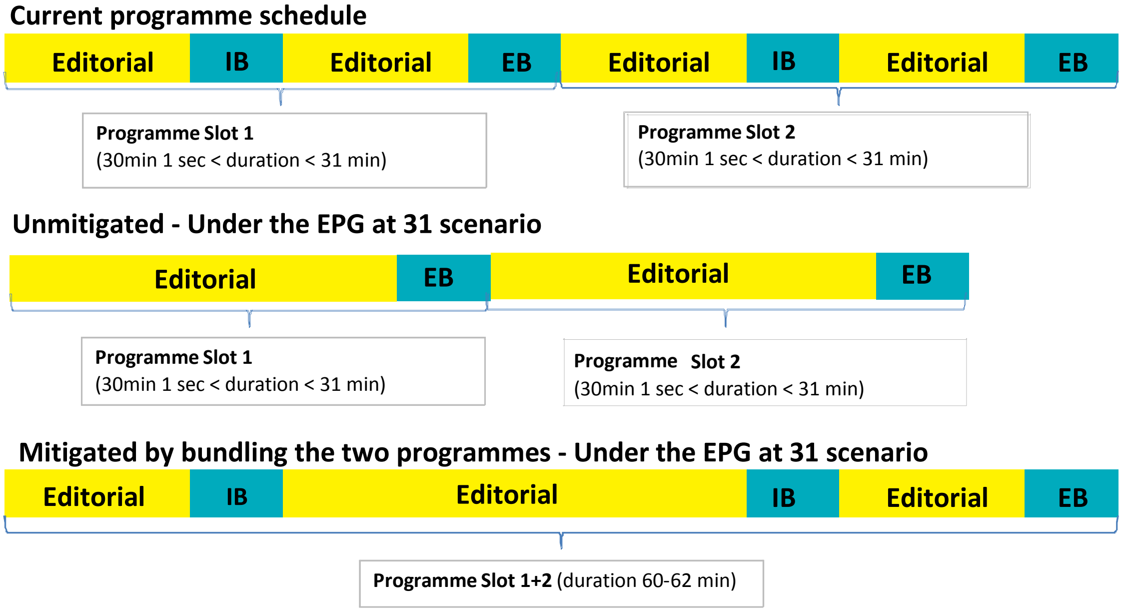
[27] Programmes have been assessed based on their ordinary running time – that is, the expected scheduled duration based on the programme title. Due to the lack of alternative sources of data, this has been determined manually. There was an issue with the data in that some programmes identified as 'Short' (that is, having an ordinary running time of <15 minutes) were found in slots of 25 minutes or more. Similarly, some instances of programmes identified as 'Able to be split' were found in slots of less than 25 minutes. In these cases we have reclassified the categorisation of that instance of that programme, in the former case from 'Short' to 'Able to be split', and in the latter case vice versa. This is due to the fact that, though ordinarily 'Short' programmes are scheduled individually, they may on occasion be bundled into a longer slot – or vice versa in the former case.

[28] These are programmes for which it was not possible to assess their regular format from the information we had.

to have an IB, into a single longer programme. Under this mitigation strategy, children's broadcasters may lose one EB but be able to retain two IBs as long as the programme's scheduled duration becomes at least 60 minutes long (given the rules allow children's programmes to be interrupted once for each scheduled period of at least 30 minutes). We assumed this would only be possible for multiple episodes of the same programme which already sit adjacent to one another in the schedule.

A1.80 Our modelling suggested that this would reduce the impact as a proportion of all revenues across all children's broadcasters from -15% (without mitigation) to -9% (using this mitigation only) under the EPG at 31 scenario and from -16% (without mitigation) to -10% (using this mitigation only) under the EPG at 35 scenario. In the July 2014 Consultation we also reported the results of some sensitivity analysis.

Figure A1.4: Mitigation Strategy 3



Stakeholder responses

A1.81 COBA argued that, similarly to mitigation strategy 2, this strategy would raise concerns about editorial integrity and whether broadcasters have the right to tamper with a programme in such a way.

A1.82 Disney reiterated its arguments for mitigation strategy 2, citing editorial continuity, talent guild restrictions and re-mastering costs as examples. It argued that combining programmes from different distribution windows would also remove the flexibility of being able to schedule episodes from different seasons of the same series in adjacent timeslots.

A1.83 Turner argued that the proposed scheduling structure would be complicated to implement, would not allow a recovery of the full advertising minutage under the current approach and would still require extra promotional or filler content. It also claimed that a longer break would have a serious effect on advertising impacts.

Our response and possible limitations

A1.84 The children's broadcasters have argued that programme integrity constrains the number of programmes that could be bundled together. As with mitigation strategy 2, we have accounted for this in how we have approached our analysis, making conservative assumptions about which programmes could be bundled together.

A1.85 Disney argued specifically that this mitigation strategy would remove flexibility from which seasons it could schedule together two or more episodes. After the consultation period following the July 2014 consultation, it provided further information on the proportion of multiple episodes of a single programme being scheduled in adjacent slots that were from the same season. In May 2013, this proportion was ~80%. In May 2012, this proportion was ~69%.[29] It seems, therefore, that there is only a minority of cases where episodes of different seasons of the same programme are scheduled in adjacent slots. We believe that in a number of cases there will be no theoretical reason why two episodes of different seasons could not be combined together, as this would only be the case for programmes with an ongoing narrative plot that continues from episode to episode (which is not the case for all children's programmes). However, even if we assume that the suggested constraint is binding, the evidence from Disney suggests that this is not currently a particularly common practice.

A1.86 Disney has argued that there may also be some editorial costs in bundling programmes. As with mitigation strategy 2, we believe we have made conservative assumptions and note that these difficulties and costs may only be one-off and important in the short run, but may be resolved in the medium to longer run as broadcasters and content right holders adjust to the EPG option.

A1.87 Turner argued that this strategy would require additional promotional content and would not allow full recovery of its advertising minutage. However, this is not necessarily true as the three resulting breaks could be extended to account for the lost EB, as explained in the July 2014 Consultation.

A1.88 Turner also argued that extending break lengths would reduce viewing of those breaks. As shown in paragraphs A1.103 to A1.106, the evidence we have been able to gather from BARB data suggests that longer EBs do not lose commercial impacts over their duration, so it is not clear that lengthening breaks would lead to a loss of commercial impacts. Turner has not provided any further evidence for its claim that longer breaks would lead to a reduction in commercial impacts.

Our conclusions

A1.89 The first step in modelling this strategy is to estimate how many programmes could be bundled together. We adopted the following approach in our base scenario:

1.89.1 we identified all the instances when two episodes of the same programmes – e.g. two Scooby-Doo episodes - are scheduled next to each other; and

1.89.2 we assumed that these could be bundled into a single programme and when that is the case, that the children's broadcasters would experience no revenue loss. This is our base scenario.

[29] ✂.

A1.90 However, we note that programmes could be bundled even if they are not contiguous in the schedule – e.g. one episode of a programme in the morning and one in the afternoon (or the next day) could be bundled and re-scheduled either in the morning or in the afternoon. Hence, we performed some sensitivity analysis also assuming that episodes of the same programme could be bundled even if they are not contiguous in the schedule, but were broadcast in the same day. The key concern by doing so is that there is a risk that the two episodes scheduled at different times within the same day may consist of the same material - i.e. one is a repeat of the other. If this was the case[30] bundling would not be possible. Therefore, in some cases this would overestimate the ability of a children's broadcaster to mitigate the revenue impact. This means that this sensitivity assessment may overestimate the scope for mitigation under this strategy.

A1.91 Under our base scenario, we would expect this strategy alone to reduce the impact on all broadcasters' revenues from -15% to -9% (our sensitivity estimates range from -9% to -1%) under the EPG at 31 scenario and from -16% to -10% (our sensitivity estimates range from -10% to -1%) under the EPG at 35 scenario.

Mitigation Strategy 4: Removing IBs but making EBs longer

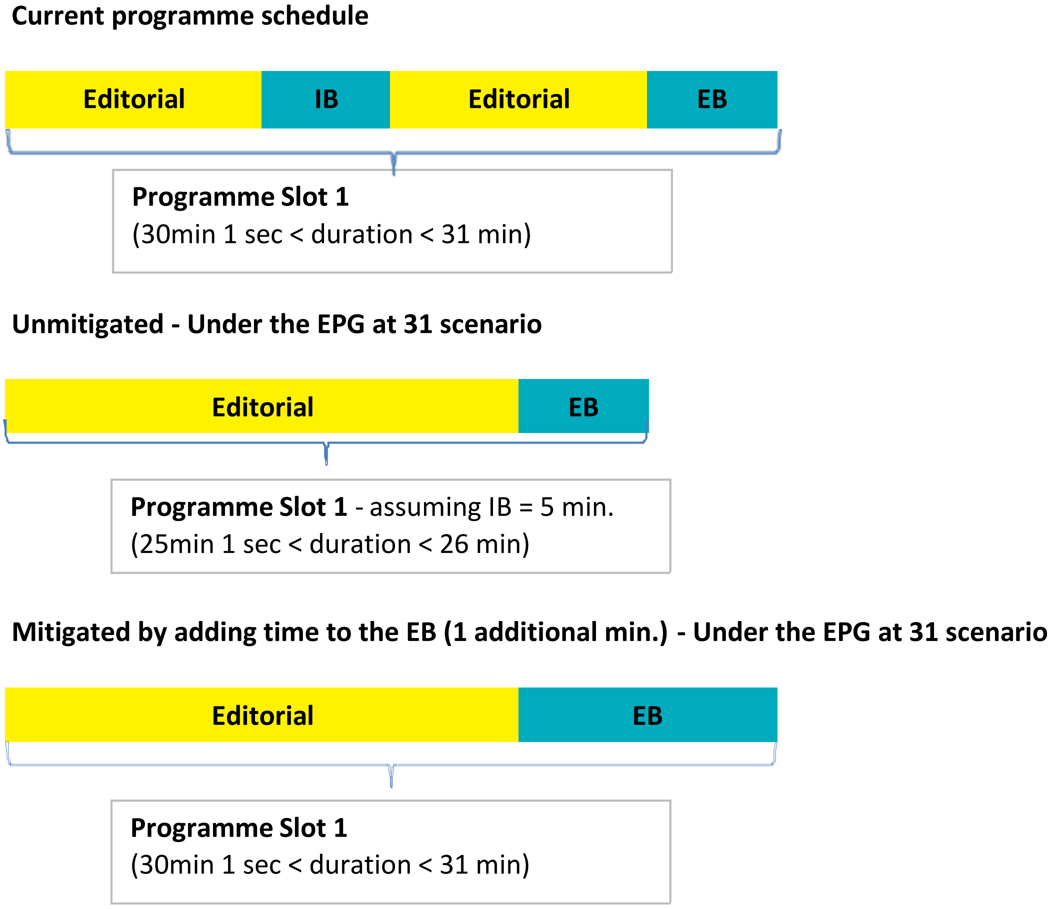
Summary of July 2014 consultation

A1.92 Lastly, we proposed that children's broadcasters could mitigate the revenue impact by accepting the loss of IB advertising but increase the duration of existing EBs. Unlike under mitigation strategies 1-3, this would not require increasing the scheduled duration of the programme. The children's broadcasters would be expected to transfer at best the entire minutage in an IB into a much longer EB. We analysed BARB data to estimate the general trend of viewing across a break and found evidence suggesting that, excepting an initial drop-off of around 15%, extending an EB led to no fall in viewing and extending an IB only led to a minor fall in viewing.

A1.93 Our modelling suggested that this would reduce the impact as a proportion of all revenues across all children's broadcasters from -15% (without mitigation) to -7% (using this mitigation only) under the EPG at 31 scenario and from -16% (without mitigation) to -7% (using this mitigation only) under the EPG at 35 scenario. In the July 2014 consultation we also reported the results of some sensitivity analysis.

[30] The data available indicates the programme name but not the episode's title or number. It has therefore not been possible to identify whether an episode is a repeat of an earlier one.

Figure A1.5: Mitigation Strategy 4



Stakeholder responses

A1.94 COBA disagreed that lost commercial impacts from extending an end break would be mitigated by viewers who start watching during an end break in order to watch the following programme. It stated that broadcasters would still face an increased risk of losing audiences who were watching the first programme if the EB is extended, reducing overall commercial impacts, and as a result revenues, for that spot.

A1.95 COBA also argued that the length to which EBs can be reasonably extended is likely to limited, citing research by one of its members that breaks of longer than five minutes lead to up to a 50% loss of audience, compared to an average audience loss of 29% across all commercial breaks (defined as % of those viewers who were watching the channel in the 5 minutes before break who were still watching in the 5 minutes after the break).

A1.96 Turner argued that, similarly to its response to mitigation 3, this option still requires extra promotional or filler content. It also argued that longer EBs would translate into a worse experience for the viewer, and would have a serious effect on advertising impacts.

A1.97 ✂ said that increasing the length of EBs would act as a disincentive for the audience to remain with the channels whilst waiting for the next programme to begin. It argued that the creation of longer EBs might also be perceived as reducing the amount of new programme content on the channels in favour of more promotional activity.

Our response and possible limitations

A1.98 This mitigation strategy is potentially applicable to all programmes which would otherwise lose their IBs under the EPG approach. However, this option carries a potential cost in terms of lost commercial impacts and revenues even if the overall (i.e. inclusive of the IBs and EBs in the programme slot) minutes of advertising remain unaffected by mitigation. Hence, this may be a second best choice that could be deployed only if other mitigation strategies are unavailable.

A1.99 We have identified no obvious editorial costs in this mitigation strategy. As discussed at paragraph A1.55 for mitigation strategy 1, a “shunting effect” could in theory also apply to this mitigation strategy (although this would occur because this strategy may reduce rather than increase the programme slot duration – see paragraph A1.108). We believe that this effect is likely to be immaterial, especially given the fact that mitigation strategy 4 offers only a partial mitigation and, hence, it is likely to be applied only in a few cases.

A1.100 The children’s broadcasters did not agree with our view of the trend of viewing across EBs, though only COBA and Viacom supplied additional data to support their claims. The BARB data for our sample show trends in overall commercial impacts for all children’s channels (inclusive of those who watched the previous programme and those who join to watch the next programme). We understand that the research to which COBA refers only examined the trends in the audience of the previous programme (i.e. how many of the previous programme viewers were retained in the next programme). We consider it more precise to examine all commercial impacts including those who joined to watch the next programme, as described in paragraphs A1.103 to A1.106. The BARB data we used show that the overall commercial impacts decline as the break's duration increases but by not as much as assumed by ✂. We agree that there may be an upper limit to the length of EBs which would be considered acceptable by audiences, which is why we have assumed that there is a maximum EB length of 4.5 minutes in our analysis.

A1.101 We do not understand ✂ concern that shifting some minutes in IBs to EBs could be perceived as reducing content in favour of more promotional material. We termed this a partial mitigation strategy in the July 2014 Consultation because it would lead to a partial loss of minutes (and commercial impacts). Therefore, this strategy, when adopted, would reduce the amount of advertising.

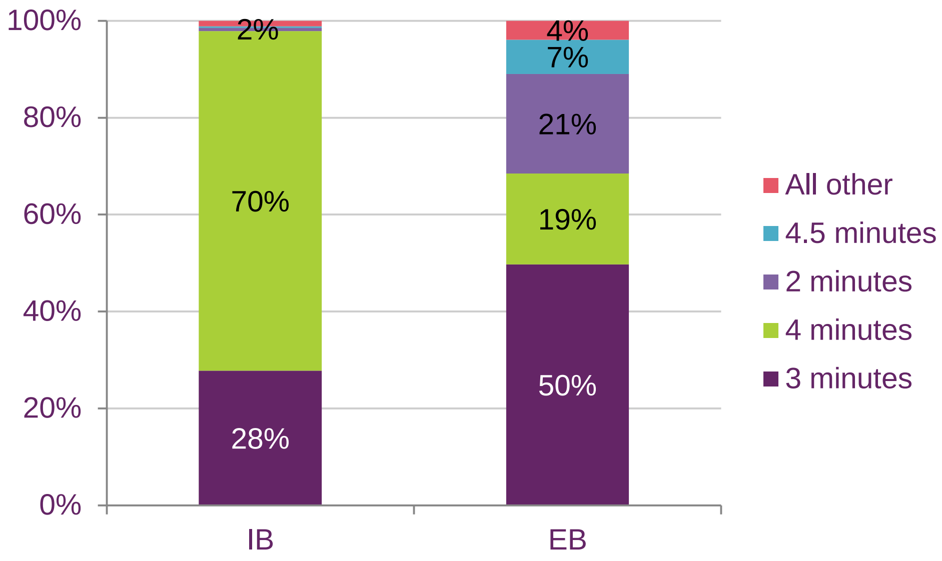
A1.102 As we assume there is a maximum acceptable EB length, this mitigation strategy involves losing some advertising minutes overall. This time may be made up by promotional material, but it does not need to be, especially if this mitigation is combined with other mitigation strategies. For example, Viacom has suggested a strategy in which it uses mitigation strategy 1 on the first of two programmes, increasing its length to include an IB, and using mitigation strategy 4 on the second programme. Therefore, the minutes gained from this strategy are used to implement a different strategy. This is described in further detail in paragraphs A1.117 to A1.119, below.

Our conclusions

A1.103 To correctly account for differences in revenues generated by EBs and IBs we first estimated the average trend in ratecard weighted impacts within EBs and IBs using our data sample.

A1.104 Our analysis shows that most EBs and IBs have a standard duration of either 3 or 4 minutes, with some end breaks having durations of 2 or 4.5 minutes. Breaks of other durations do exist but were used very infrequently (Figure A1.6). We also note that currently EBs have already a higher proportion of longer breaks.

Figure A1.6: Proportion of all ratecard weighted impacts in IBs and EBs by break duration (May 2013)

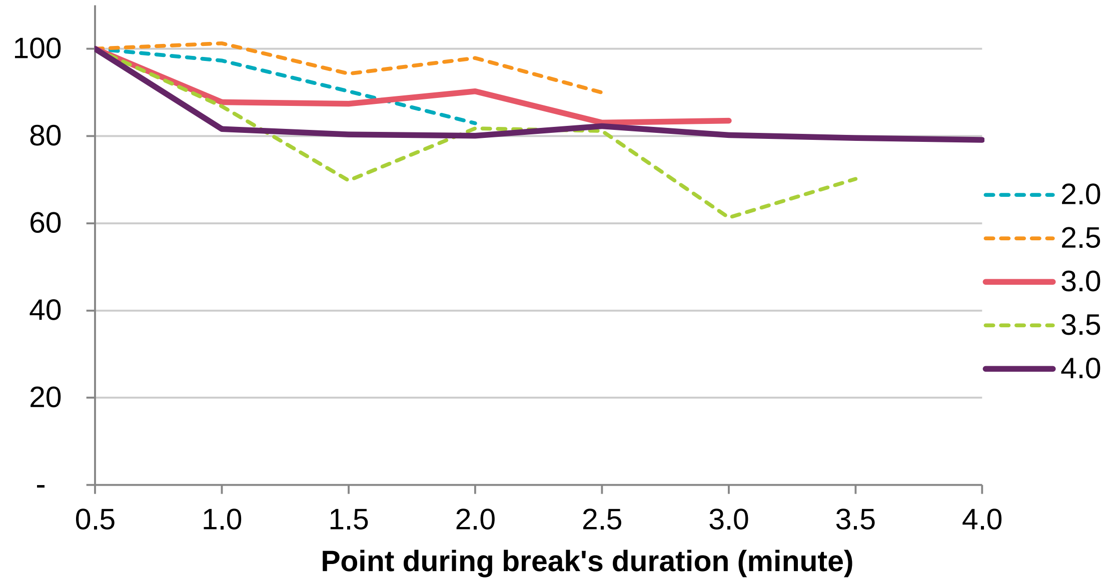


Source: Ofcom's analysis on BARB data as amended by TRP. Individuals 4+ May 2013.

A1.105 For EBs and IBs of equal duration (and hence directly comparable) we estimated the trends in ratecard weighted impacts over 30 second intervals, separately for IBs and EBs. We have used data on the children's broadcasters for May 2013. Figure A1.7 shows that over time ratecard weighted impacts in the IBs with the most common length (3 and 4 minutes) fall off quickly and stabilise between 80% and 90% of initial commercial impacts, with a slight downward trend over the entire duration.[31] The EBs with the most common length (Figure A1.8) have a similar initial reaction to IBs but do not follow the same slight downward trend over time.[32] This may be due to new viewers switching on to the channel to watch a programme about to start and, as a result, also watching adverts in the latter part of an EB following the previous programmes.

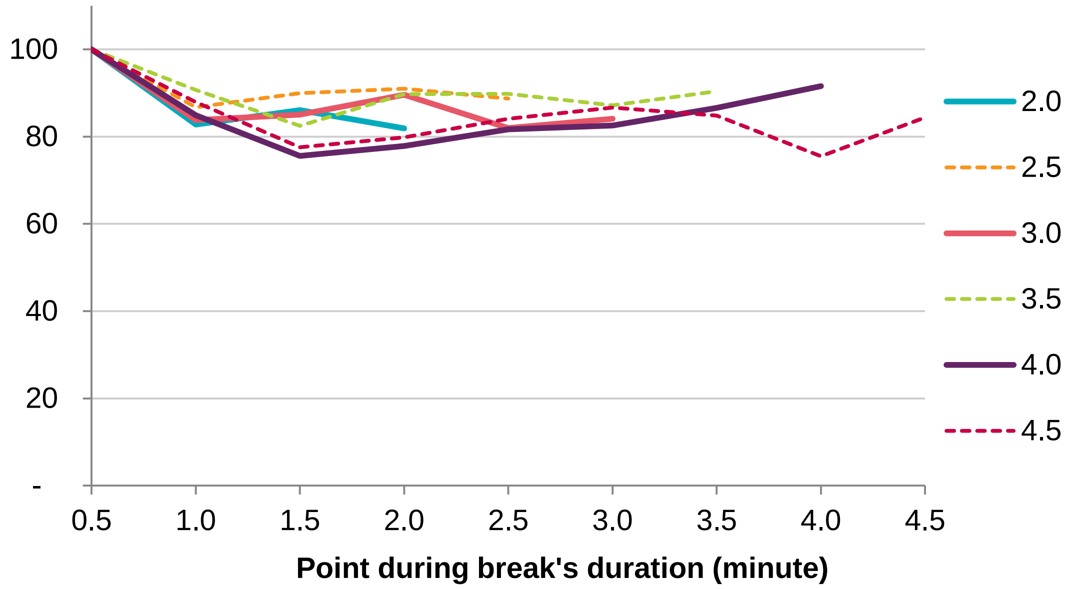
[31] The only exception is for breaks of 3.5 minutes which, however, are very infrequent (see Figure A1.7).
[32] We took total commercial impacts in the first 30 seconds of a given break duration and indexed it at 100, with all subsequent periods being rebased accordingly.

Figure A1.7: Index of ratecard weighted impacts over IB duration by break duration (May 2013)



Source: Ofcom's analysis of BARB data as amended by TRP. Individuals 4+, May 2013.
Note: break durations with the most impacts (3 minutes, 4 minutes) are shown with filled lines. Dotted lines denote series with fewer impacts and therefore are considered less reliable.

Figure A1.8: Index of ratecard weighted impacts over EB duration by break duration (May 2013)

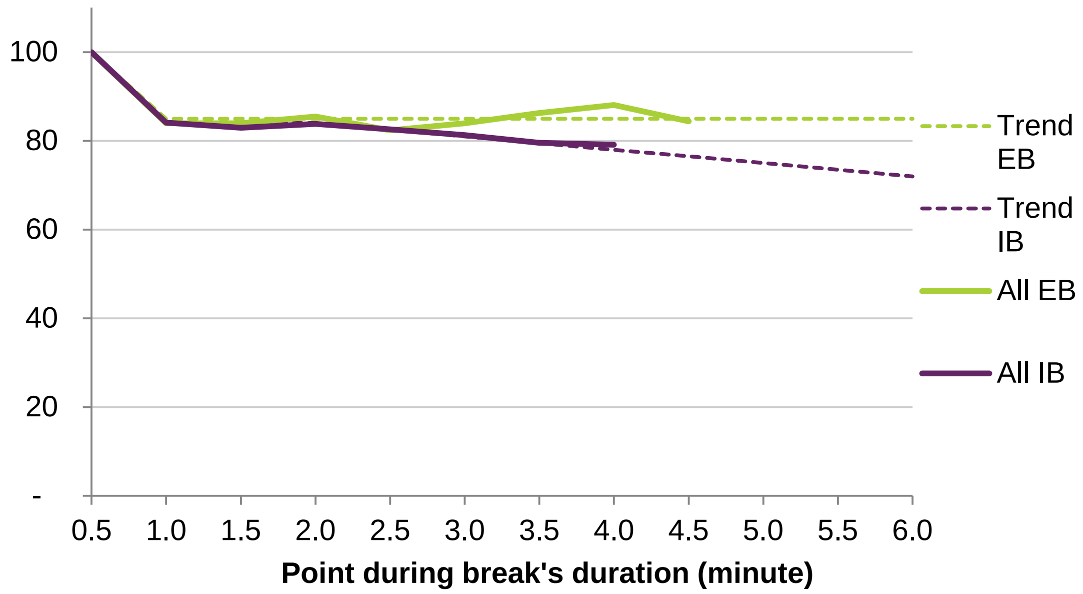


Source: Ofcom's analysis of BARB data as amended by TRP. Individuals 4+, May 2013.
Note: break durations with the most impacts (2 minutes, 3 minutes, and 4 minutes) are shown with filled lines. Dotted lines denote series with fewer impacts and therefore are considered less reliable.

A1.106 On the basis of this evidence we have assumed that for EBs commercial impacts will fall from 100% to 85% after the first 30 seconds, and remain constant thereafter. For IBs, they will fall to 84% after the first 30 seconds, and after 2 minutes from the start of the break, commercial impacts are assumed to fall with the trend shown in

Figure A1.9. This shows the weighted average of all commercial impact profiles in IBs and EBs, along with the trend we have used for further analysis.

Figure A1.9: Profile of ratecard weighted impacts over duration of breaks used in further analysis (May 2013)



Source: Ofcom's analysis of BARB data as amended by TRP. Individuals 4+, May 2013.

A1.107 Second, we considered whether the children's broadcasters would react to the loss of an IB by increasing the duration of the EB by the same amount or by less. One reason why they could decide not to recover all the lost IB minutes is that the duration of some EBs could become much longer than any of the existing EBs. In this case, reliance on the relationship we identified in Figure A1.9 could underestimate the revenue loss.

A1.108 In our base scenario we estimated the revenue impact of this mitigation strategy assuming that a children's broadcaster would increase the duration of an EB up to a maximum of 4.5 minutes, this being the longest EB among the most commonly used breaks (see Figure A1.6). We assumed that this strategy provides only a partial mitigation because:

1.108.1 not all lost IB minutes are recovered by "extending" the EB; and

1.108.2 the revenues from one incremental minute of EB are assumed to be less than the revenue from an average minute of an IB it replaces.

A1.109 We have also performed the following sensitivity analysis on this strategy around our chosen maximum length of EB by analysing the effect on this strategy:

1.109.1 if we follow ✂ claim that 3 minutes is the longest viable end break length;[33] and

1.109.2 if we do not artificially limit the length of EBs and allow EBs to extend up to six minutes, following the trend shown in Figure A1.9.

[33] ✂

A1.110 Under our base scenario, we would expect this strategy to reduce the impact on all broadcasters' revenues from -15% to -7% (our sensitivity estimates range from -13% to -1%) under the EPG at 31 scenario and from -16% to -10% (our sensitivity estimates range from - 15% to -5%) under the EPG at 35 scenario.

Results

A1.111 In this section we:

1.111.1 assess the effect on our analysis of accounting for programmes in the data that are in slots of less than 30 minutes but which include IBs (see paragraph A1.38).; and

1.111.2 report results of our revenue impact estimation on three bases:

1. assuming that the children's broadcasters do not engage in mitigation (maximum revenues impact);

2. assuming they do by applying a single mitigation strategy across all of their channels (see paragraphs A1.122 to A1.124); and

3. assuming they do by applying the best mitigation strategy for each of their channels separately (see paragraphs A1.125 to A1.127).

The effect of compliance with existing rules

A1.112 In paragraph A1.38 we discussed the possible implications for our revenue impact analysis of the presence in the data we have analysed of a substantial number of IBs' commercial impacts in programmes in slots of 30 minutes or less when measured using transmission data (i.e. the least restrictive approach for broadcasters). In our view, in assessing the revenue impact under either the EPG at 31 or EPG at 35 scenario, we should exclude any revenue impact that would occur in bringing those programmes into compliance (see discussion at paragraph A1.7). In order to do so it is necessary to consider whether compliance would lead the revenue base under the TX approach to be different – e.g. because the children's broadcasters may lose commercial impacts in programme slots the duration of which is shorter than 30 minutes leading to the revenue base being less than what shown in Table A1.1 (see paragraph A1.38). We have therefore examined the extent to which the children's broadcasters could mitigate the loss of IBs in programmes in the 29-30 minutes range by applying the same mitigation strategies assessed above. We have used the results of this assessment to estimate the children's broadcasters' revenues assuming compliance with the rules (unlike the picture that emerges from Table A1.1). With this revised starting point, we have then undertaken a revenue impact assessment separately under both the EPG at 31 and EPG at 35 scenarios relative to the TX approach.

A1.113 If the rules were to be enforced using the TX approach[34], this might lead the children's broadcasters to apply any of the mitigation strategies discussed above for any programme slots of less than 30 minutes. In particular, we assume that any programme slots of 29-30 minutes could be fully mitigated using strategy 1. While programmes of less than 29 minutes may also be able to be mitigated using

[34] i.e. accepting that a children's programme that occupies a slot of at least 30 minutes and 1 second is entitled to an IB.

strategies 2-4, we have assumed that they would not as they constitute such a small proportion of commercial impacts that doing so would not materially affect our analysis.

A1.114 Having applied mitigation strategy 1 to programmes that in May 2013 had a slot duration of 29-30 minutes and assumed that those of less than 29 minutes could not mitigated at all, we have estimated the advertising revenues under the TX approach to be 98% of that implied under Table A1.1. This is the revenue base against which we have conducted the rest of our analysis.

Maximum revenue impact

A1.115 Table A1.3 shows the maximum impact as a proportion of advertising revenues and total broadcasting revenues for each children's broadcaster group. This shows that ✂would be the most affected in terms of impact as a percentage of total broadcasting revenues ✂. As a percentage of all advertising revenues, ✂ would be the most affected children's broadcaster, ✂.

A1.116 The differences between the EPG at 31 and EPG at 35 scenarios are minimal. This is because the majority of programmes fall in the 30-31 minute slots (Table A1.1), and so are affected regardless of interpretation used.

Table A1.3: Maximum impact (no mitigation deployed) by children's broadcaster (May 2013)

EPG at 31 scenario

	Maximum impact (£000s)	as % of advertising revenue	as % of all revenues
✂	✂	✂	✂
✂	✂	✂	✂
✂	✂	✂	✂
✂	✂	✂	✂
Children's broadcasters total	✂	-38%	-15%

Source: Ofcom's analysis of BARB data as amended by TRP. Individuals 4+, May 2013, revenue data from children's broadcasters.

EPG at 35	Maximum impact (£000s)	as % of advertising revenue	as % of all revenues
✂	✂	✂	✂
✂	✂	✂	✂
✂	✂	✂	✂
✂	✂	✂	✂
Children's broadcasters total	✂	-40%	-16%

Source: Ofcom's analysis of BARB data as amended by TRP. Individuals 4+, May 2013, revenue data from children's broadcasters

Stakeholder comments

A1.117 Viacom provided analysis based on a combined approach assuming the EPG at 31 scenario. It assumed the full broadcast of a 31 minute show with an IB in the first part of the hour, followed by a 29 minute programme with no IB, or potentially two short programmes if possible in the second part of the hour. Its analysis results in only partial mitigation of losses of revenue due to an assumed lower audience of EBs than of IBs. Using this analysis it estimated that it would lose ✂ per annum in revenues if we were to adopt the EPG approach.

A1.118 The main difference between Viacom's and our analysis is its assumption that EBs generate fewer commercial impacts than IBs, and that longer breaks increase the drop-off in viewing. To support this assumption, Viacom provided us with a forecast of average audiences gained by breaks of different types and lengths, which it explained has been derived by extrapolating the differences between its most common break schedules (i.e. it compared the average audience gained from a 3 minute EB to the average audience gained by a 4 minute EB). We believe, however, that this approach may introduce a bias, as different break patterns may be used at different times or for programmes which achieve different audiences.

A1.119 We believe that our approach, which analyses the change in commercial impacts over the duration of breaks of different lengths, better captures the effect of extending a break as it accounts for changes in audiences over the duration of a break. This allows us to identify trends within the level of commercial impacts within breaks. Our conclusion is that any loss of commercial impacts over the break from viewers who were watching the previous programme (other than an immediate reduction of around 15%) is roughly offset by new commercial impacts when viewers join the channel in anticipation of the following programme.

Revenue impact with mitigation

A1.120 We expect the children's broadcasters to react to the adoption of the EPG approach and that the mitigation strategies discussed at paragraphs A1.48 to A1.110 have the potential to reduce the financial impact of adopting the EPG approach whether on the basis of the EPG at 31 or EPG at 35 scenario. However, as discussed there will also be some costs involved (e.g. re-editing of existing material, the efficacy of additional promotions etc.) which will affect profitability and that we have not been able to estimate. If these were significant our revenue impact estimate could overestimate the impact on profitability (see discussion at paragraph A1.46). However, we believe that we have adopted conservative assumptions elsewhere in estimating the revenue impact of each option under our base scenario.

A1.121 We consider that each children's broadcaster is likely to adopt a number of mitigation strategies depending on the programme and channel concerned. In order to make the analysis tractable the analysis we have undertaken is as follows:

1.121.1 We first analysed each mitigation strategy in isolation and assessed the revenue impact of the EPG approach (relative to the TX approach) under either the EPG at 31 or EPG at 35 scenario – e.g. we applied mitigation strategy 1 to all channels. This is likely to underestimate the ability to mitigate the loss of IBs' revenues (and overestimate the overall revenue loss).

1.121.2 Therefore, we refined the analysis at paragraph 1.121.1 by assuming that each children's broadcaster would choose the strategy that it believed best mitigated the revenue impact at the channel level – e.g. a children's broadcaster could choose strategy 1 for channel A because that is the best of the 4 strategies available, but could instead adopt strategy 4 for channel B if this was better at mitigating the revenue impact. This is still likely to under-estimate the children's broadcasters' ability to mitigate the adoption of either of the options (and overestimate the overall revenue loss) as it is likely to be optimal to adopt more than one strategy for each channel.

1.121.3 If the result of the above analysis for a particular children's broadcaster was judged to be sufficiently clear – i.e. it suggested that the revenue impact seemed not to be substantial, we relied on this estimate to draw our conclusions. However, if this was not the case – i.e. this estimation indicated that the revenue impact was not insignificant – we also undertook a more detailed estimate of how the children's broadcasters could apply more than one mitigating strategy to each channel.[35]

Each mitigation strategy applied to all channels

A1.122 We first applied each mitigation strategy separately to all channels – e.g. all channels are assumed to only adopt Strategy 1 and we estimated the revenue impact, and then separately only applied Strategy 2 to all channels etc. Results are shown in Tables A1.4 and A1.5 for each children's broadcasting group. These show the loss in all channel revenues post-mitigation as a percentage of all advertising revenues and all broadcasting revenues. We reported the results for our base scenario and also (in brackets the estimate range based on our sensitivity assessment). As discussed at paragraph A1.31, we believe that the most likely scenario is our base scenario.

Table A1.4: Revenue effect after mitigation strategies by children's broadcaster under the EPG at 31 scenario – each strategy applied to all channels (% of revenues, May 2013)

	Impact on advertising revenues			
	Mitigation 1	Mitigation 2	Mitigation 3	Mitigation 4
✂	✂	✂	✂	✂
✂	✂	✂	✂	✂
✂	✂	✂	✂	✂
✂	✂	✂	✂	✂
Children's broadcasters total	-19% (-21% to 0%)	-26% *	-24% (-24% to -2%)	-24% (33% to -2%)

Source: Ofcom's analysis of BARB data as amended by TRP. Individuals 4+, May 2013, revenue data from children's broadcasters

**Note: For some channels, the sensitivity range under certain mitigation strategies is smaller than 1%. In these cases, no range has been presented as it provides no further detail than the point estimate.*

[35] We confined this more detailed approach only to these cases because of the additional complexity in undertaking such assessment.

	Impact on all channel revenues			
	Mitigation 1	Mitigation 2	Mitigation 3	Mitigation 4
✂	✂	✂	✂	✂
✂	✂	✂	✂	✂
✂	✂	✂	✂	✂
✂	✂	✂	✂	✂
Children's broadcasters total	-7% (-8% to 0%)	-10% *	-9% (-9% to -1%)	-7% (-13% to -1%)

Source: Ofcom's analysis of BARB data as amended by TRP. Individuals 4+, May 2013, revenue data from children's broadcasters.

**Note: For some channels, the sensitivity range under certain mitigation strategies is smaller than 1%. In these cases, no range has been presented as it provides no further detail than the point estimate.*

Table A1.5: Revenue effect after mitigation strategies by children's broadcaster under the EPG at 35 scenario – each strategy applied to all channels (% of revenues, May 2013)

	Impact on advertising revenues			
	Mitigation 1	Mitigation 2	Mitigation 3	Mitigation 4
✂	✂	✂	✂	✂
✂	✂	✂	✂	✂
✂	✂	✂	✂	✂
✂	✂	✂	✂	✂
Children's broadcasters total	-40% *	-27% *	-25% (-25% to -2%)	-25% (-37% to -13%)

	Impact on all channel revenues			
	Mitigation1	Mitigation 2	Mitigation 3	Mitigation 4
✂	✂	✂	✂	✂
✂	✂	✂	✂	✂
✂	✂	✂	✂	✂
✂	✂	✂	✂	✂
Children's broadcasters total	-16% *	-11% *	-10% (-10% to -1%)	-10% (-15% to -5%)

Source: Ofcom's analysis of BARB data as amended by TRP. Individuals 4+, May 2013, revenue data from children's broadcasters.

**Note: For some channels, the sensitivity range under certain mitigation strategies is smaller than 1%. In these cases, no range has been presented as it provides no further detail than the point estimate.*

A1.123 Based on the impact expressed as percentage of channel revenues, using our base assumptions we believe that, if theoretically a children's broadcaster was constrained to use a single mitigation strategy, at an aggregated level the most effective strategy would be 4 followed by 1, 3 and 2 in the case of the EPG at 31 scenario. Under the EPG at 35 scenario, the order remains the same except that mitigation 1 has almost no effect and is thus the least effective strategy.

A1.124 However, although this is the easiest way to undertake this assessment, we consider that results in Tables A1.4 and A1.5 are likely to substantially overestimate the revenue impact of the EPG approach relative to the TX approach as we can expect the children's broadcasters to adopt a mix of strategies (and not only one strategy) to mitigate the revenue impact.

Best mitigation strategy applied to each channel

A1.125 We also assumed that the children's broadcasters can adopt the most successful mitigation strategy for each of their channels.[36] In reality each children's broadcaster can react to an enforcement based on the EPG approach by adopting a mix of strategies. In particular, we consider that a more realistic approach would be to assume that each children's broadcaster would adopt the strategy that best mitigates the revenue impact of enforcing the EPG approach on a programme by programme basis.

A1.126 Nonetheless, for our modelling purposes we adopted a conservative approach by assuming that each children's broadcaster would still be constrained to one strategy per channel (rather than per programme). Results are shown in Tables A1.6 and A1.7.

Table A1.6: Total mitigation by children's broadcaster under the EPG at 31 scenario – best strategy applied to each channel (% of advertising and all channel revenues, May 2013)

	Impact on advertising revenues	Impact on all revenues	Notes
✂	✂	✂	Uses strategies 2 & 4
✂	✂	✂	Uses strategy 4
✂	✂	✂	Uses strategies 1 & 2
✂	✂	✂	Uses strategies 1, 3 & 4
Children's broadcasters total	-13% (-13% to 0%)	-5% (-5% to 0%)	

Source: Ofcom's analysis based on BARB data as amended by TRP. Individuals 4+, May 2013, revenue data from children's broadcasters.

[36] In the July 2014 Consultation, we presented the impact on all children's broadcasters' revenues from adopting the EPG at 35 scenario as -6%. Due to a rounding error this was incorrect, the correct figure should have been -7% (which is the same as is presented in Table A1.7 below).

Table A1.7: Total mitigation by children's broadcaster under the EPG at 35 scenario – best strategy applied to each channel (% of advertising and all channel revenues, May 2013)

	Impact on advertising revenues	Impact on all revenues	Notes
✂	✂	✂	Uses strategies 2 & 4
✂	✂	✂	Uses strategy 4
✂	✂	✂	Uses strategies 2 & 4
✂	✂	✂	Uses strategies 2, 3 & 4
Children's broadcasters total	-16% (-18% to -2%)	-7% (-7% to -1%)	

Source: Ofcom's analysis based on BARB data as amended by TRP. Individuals 4+, May 2013, revenue data from children's broadcasters.

A1.127 Table A1.6 suggests that if the children's broadcasters selected the most effective strategy at the channel level, this could further mitigate the overall impact on industry revenues. It shows that under the EPG at 31 scenario the latter would decline from 19% of all advertising revenues,[37] or 7% of all broadcasting revenues, to 13% and 5%, respectively (or less, under certain assumptions regarding sensitivities). The revenue impact under the EPG at 35 scenario is very similar. For the children's broadcasters, this suggests that, in terms of loss of revenues as a proportion of advertising revenues, the least affected children's broadcasters would be ✂ and the most affected, ✂. As a proportion of all broadcasting revenues, the least affected would be ✂ and the most affected would be ✂.

A1.128 There are reasons to be cautious in interpreting results in Tables A1.6 and A1.7. We consider that these results may still overestimate the revenue impact as the children's broadcasters are likely to apply a mix of mitigation strategies within each channel. This would allow them to substantially reduce the revenue impact under either of the options. We discuss how we could refine our approach in the next section.

Results interpretation

A1.129 In the tables above we have reported the results of our assessment by children's broadcaster group. We noted, however, that some channels within each children's broadcaster group may be affected more significantly than others. This raises the possibility that a children's broadcaster may decide to withdraw those channels that are heavily affected, even if the overall revenue impact at a group level is modest. Tables A1.8 and A1.9 show the average revenue impact by children's broadcaster alongside listing the most impacted channels for each children's broadcaster (alongside the revenue impact on the channel).

A1.130 In the July 2014 consultation we noted the potential for the EPG approach to have detrimental effects for citizens and consumers:

1.130.1 if the revenue impact at the group level is large enough to affect the overall incentives to invest in high quality programmes (either commissioned or

[37] As shown in Table A1.4

acquired) across all the broadcaster's channels, citizens and consumers may be negatively affected via lower programme quality; and/or

1.130.2 if the revenue impact at the channel level is such to be likely to lead to a withdrawal of the channel, citizens and consumers may be negatively affected via a more limited supply of children's programmes and/or channels.

A1.131 On the basis of the results shown in Tables A1.8 and A1.9, we consider that overall ✂appear unlikely to be affected under either the EPG at 31 or EPG at 35 scenario to a sufficiently material extent to reduce the scope of their ability to invest in children's programmes across their channels. A key factor we have taken into account is that ✂. In particular, we consider this to be the case for programmes that are produced by the respective broadcaster whose costs are common across many jurisdictions. Therefore, the estimated industry revenue impact in A1.8 and A1.9 ranging from 5% to 7% of total UK-based broadcasting revenues under our central scenario seems very unlikely to ✂ incentives to continue to invest in children's programmes ✂. However, this may not apply to ✂, which would appear to be affected much more significantly ✂. We have therefore examined further whether the revenue impact on ✂ may be sufficient to potentially raise a concern about a reduction in the quality of their programmes.

A1.132 Tables A1.8 and A1.9 also show that some of the channels of ✂ may suffer a substantial reduction in revenues under the EPG approach ✂. There is therefore some risk of withdrawal for some of these channels.[38]

Table A1.8: Average impact and most affected channel of each children's broadcaster under the EPG at 31 scenario – best strategy applied to each channel (May 2013)

	Impact on advertising revenues	Impact on all broadcasting revenues	Most affected channel	Impact on channel's broadcasting revenues
✂	✂	✂	✂	✂
✂	✂	✂	✂	✂
✂	✂	✂	✂	✂
✂	✂	✂	✂	✂
Children's broadcasters total	-13% (-13% to 0%)	-5% (-5% to 0%)		

Source: Ofcom's analysis based on BARB data as amended by TRP. Individuals 4+, May 2013, revenue data from children's broadcasters.

[38] It is possible that even if a channel's revenues were substantially reduced, the children's broadcasters may still have an incentive not to withdraw the channel. This is most evident for the +1 channels as there are very limited costs to broadcast a +1 version in addition to those incurred for the base version. However, the same may apply to channels that share a substantial amount of programme content with other channels which are not affected by moving away from the TX approach option.

Table A1.9: Average impact and most affected channel of each children's broadcaster under the EPG at 35 scenario – best strategy applied to each channel (May 2013)

	Impact on advertising revenues	Impact on all revenues	Most affected channel in base case	Impact on channel revenues in base case
✂	✂	✂	✂	✂
✂	✂	✂	✂	✂
✂	✂	✂	✂	✂
✂	✂	✂	✂	✂
Children's broadcasters total	-16% (-18% to -2%)	-7% (-7% to -1%)		

Source: Ofcom's analysis based on BARB data as amended by TRP. Individuals 4+, May 2013, revenue data from children's broadcasters.

A1.133 We believe that the figures in Tables A1.8 and A1.9 may still overestimate the impact on revenues under either the EPG at 31 or EPG at 35 scenario. This is because in practice children's broadcasters would adopt a mix of mitigation strategies across each programme even in the same channel. In the light of the results shown in Tables A1.8 and A1.9 , ✂ we believe that further consideration of the position of ✂ is unnecessary. However, given the revenue impact estimated for ✂ we have analysed in greater detail the optimal adoption of a mix of strategies ✂ on a programme by programme basis.

<u>Mitigation strategies on a programme-by-programme basis for ✂</u>

A1.134 For our modelling we made the additional assumption that ✂ would employ mitigation strategies on a programme by programme basis in the following order of preference:

1.134.1 first apply mitigation strategy 2, splitting any programmes that are eligible;

1.134.2 if strategy 2 was not available, adopt mitigation strategy 1, bulking up with promotions any remaining programmes that fell just short of the minimum allowable time;

1.134.3 if either strategy 1 and 2 were not available, adopt mitigation strategy 3 with any programmes that remained that were eligible, bulking them up into hour-long blocks; and

1.134.4 last, if no other mitigation was available, apply mitigation strategy 4 to every remaining programme, accepting the loss of IBs and extending their EBs in these programmes partially.

A1.135 The reason for this order is that strategies 1 and 2 successfully mitigate the loss of almost all commercial impacts for those programme slots for which they are eligible strategies. Mitigation strategy 3 is less effective but still more effective than 4 on a per-programme basis. Mitigation strategy 4 is the least effective overall, but can be applied to all programmes – as such, it is applied to any programme that could not be mitigated via any other strategies.

A1.136 Results, shown in Table A1.10[39], show that the revenue impact on ✂ of adopting the EPG approach on the basis of either the EPG at 31 or EPG at 35 scenario is estimated to be substantially less under this more granular approach. In particular, under the EPG at 31 scenario, the revenue impact is estimated to be ✂ (as both a proportion of advertising and all broadcasting revenues) instead of ✂ while under the EPG at 35 scenario the estimated revenue impact is ✂ instead of ✂. ✂.

Table A1.10: Impact on ✂ channels assuming a sequential adoption of mitigation strategies on a programme by programme basis (May 2013)

	31 minutes EPG interpretation		
	Total impact (£)	Impact on advertising revenues	Impact on all revenues
✂	✂	✂	✂
✂	✂	✂	✂
✂	✂	✂	✂
✂	✂	✂	✂
✂	✂	✂	✂
✂	✂	✂	✂
✂	✂	✂	✂

	35 minutes EPG interpretation		
	Total impact (£)	Impact on advertising revenues	Impact on all revenues
✂	✂	✂	✂
✂	✂	✂	✂
✂	✂	✂	✂
✂	✂	✂	✂
✂	✂	✂	✂
✂	✂	✂	✂
✂	✂	✂	✂

[39] No sensitivities have been run for this more in-depth analysis, so ranges are not presented.

Annex 2

Code on the Scheduling of Television Advertising – November 2015

This Code sets out the rules with which television broadcasters licensed by Ofcom[40] ("broadcasters") must comply when carrying advertising. These rules give effect to relevant provisions of the Communications Act, the Audiovisual Media Services (AVMS) Directive and those policies determined by Ofcom following consultation.

Broadcasters must also comply with the UK Code of Broadcast Advertising (the BCAP Code) issued by the Broadcast Committee of Advertising Practice.

Definitions

In this Code:

'**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.

'**broadcasting day**' is deemed to start at 06:00 and run for the following 24 hours.

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

'**public service channels**' are Channel 3 services, Channel 4, Channel 5 and S4C.

'**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.

'**films**' means films made for television (including single dramas but excluding series, serials and documentaries) and cinematographic works.

'**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.

'**teleshopping windows**' are extended teleshopping features with a minimum uninterrupted duration of 15 minutes.

40 For the purpose of this Code, this includes S4C, which is authorised by the Broadcasting Act 1990.

Rules

Identification of advertising

1. Broadcasters must ensure that television advertising and teleshopping is readily recognisable and distinguishable from editorial content and kept distinct from other parts of the programme service. This shall be done by optical (including spatial) means; acoustic signals may also be used.

Time devoted to advertising

Rules 2 to 5 do not apply to:

- advertising by the broadcaster in connection with its own programmes and ancillary products directly derived from those programmes;
- local digital television programme services ("L-DTPS") not receivable outside the UK (e.g. a DTT service not receivable outside the UK, or an encrypted satellite service); and
- teleshopping windows (see Rules 6 and 7).

2. Time devoted to television advertising and teleshopping spots on any channel in any clock hour must not exceed 12 minutes.

Further to Rule 2:

3. Non public service channels must show no more than an average of 12 minutes of television advertising and teleshopping spots for every hour of transmission across the broadcasting day, of which no more than 9 minutes may be television advertising.

Teleshopping and self-promotional services are exempt from Rule 3 (for an explanation of these types of services see http://licensing.ofcom.org.uk/binaries/tv/tlcs_guidance.pdf).

4. On public service channels, time devoted to television advertising and teleshopping spots must not exceed:

   i. an average of 7 minutes per hour for every hour of transmission time across the broadcasting day; and

   ii. an average of 8 minutes per hour between 18:00 and 23:00.

During programmes broadcast by the national Channel 3 breakfast licensee, the amount of time permitted for television advertising and teleshopping spots between 06:00 to 09:25 may be averaged across the week.

There may be occasions when a broadcaster transmits less advertising than it scheduled. If this happens for reasons of good programme presentation, or because of unforeseen technical or human errors, Ofcom may grant the broadcaster a limited exemption from Rule 3 or 4 to enable it to transfer unused minutage to other parts of its schedule. In such circumstances, the broadcaster must contact Ofcom, in writing, to seek permission to transfer unused minutage. The request must set out:

i. the reason for the proposed transfer; and

ii. the date(s) and time(s) of the proposed recoupment, which must be within 7 days of the lost minutage.

In no circumstances can the transfer result in any clock hour containing more than 12 minutes of advertising.

5. Advertising breaks during programmes on public service channels may not exceed 3 minutes 50 seconds, of which advertising and teleshopping spots may not exceed 3 minutes and 30 seconds.

Advertising breaks in films are not subject to Rule 5.

Teleshopping windows

6. Teleshopping windows must be at least 15 minutes long.

7. On public service channels, teleshopping windows may be scheduled only between 00:00 and 06:00.

Placement of advertising

8. Where television advertising or teleshopping is inserted during programmes, television broadcasters must 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.

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

10. The transmission of films and news programmes may be interrupted by advertising or teleshopping only once for each scheduled period of at least 30 minutes.

11. Breaks are not permitted within schools programmes.

12. Children's programmes with a scheduled duration of 30 minutes or less may not be interrupted by advertising. The transmission of children's programmes with a scheduled duration of longer than 30 minutes may be interrupted by advertising or teleshopping once for each scheduled period of at least 30 minutes.

13. Programmes including a religious service may not include advertising or teleshopping breaks during the service.

14. Broadcasts of a formal Royal ceremony may not include advertising or teleshopping breaks during the ceremony.

15. Broadcasts of live Parliamentary proceedings:

    i. may not include advertising and teleshopping breaks in programmes of a scheduled duration of 30 minutes or less;

ii. in programmes that have a scheduled duration that is greater than 30 minutes, the 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.

16. For programmes other than those set out in Rules 10 to 15 above, the number of internal breaks permitted is set out in the tables that follow. For every additional 20-minute period beyond that set out in the tables, a further break is permitted.

Table 1: Number of internal breaks permitted in programmes on public service channels

Scheduled duration of programme	Number of breaks
21 – 44 minutes	One
45 – 54 minutes	Two
55 – 65 minutes	Three
66 – 85 minutes	Four
86 – 105 minutes	Five
106 – 125 minutes	Six

Table 2: Number of internal breaks permitted in programmes on other channels

Scheduled duration of programme	Number of breaks
< 26 minutes	One
26 – 45 minutes	Two
46 – 65 minutes	Three
66 – 85 minutes	Four
86 – 105 minutes	Five
106 – 125 minutes	Six

The following programmes are exempt from Rule 16:

Live events – these may take more breaks than are indicated in Tables 1 and 2, provided that:

i. the timing of the event and its constituent parts are outside the control of the programme provider; and

ii. there would not be sufficient time within the number of permitted breaks which are also natural breaks to schedule the permitted amount of advertising.

Live programme feeds from an overseas broadcaster – these may take the break pattern of the originating broadcaster. The broadcaster retransmitting the feed from the UK remains responsible for ensuring compliance with other relevant parts of this Code and the UK Code of Broadcast Advertising.

Annex 3

European case law

A3.1 Relevant case law includes the following cases. (Although all these cases considered provisions in the TVWF Directive – the predecessor of the AVMS Directive - the wording is similar to AVMS):

The ProSieben case (CJEU judgment of 28 October 1999 C-6/98)

A3.2 This case considered the number of advertising breaks permitted in feature films by reference to Article 11(3) of the TVWF Directive (substantially the same wording as in Article 20(2) of AVMS) in light of the purpose of the minimum standards set under Article 26 of TVWF 'to ensure that the interests of consumers as television viewers are fully and properly protected'.

A3.3 Under Article 11(3) of TVWF, the frequency of internal advertising breaks was calculated by reference to each period of 45 minutes in a film with a scheduled duration of more than 45 minutes.

A3.4 A question that arose was whether the duration of advertisements should be included in the period of time in relation to which the possible number of interruptions was calculated ('the gross principle') or whether only the duration of the films themselves should be included ('the net principle').

A3.5 It was held that the wording of Article 11(3) of the TVWF as amended, did not provide any clear indication as to whether that provision prescribed the gross or the net principle so no conclusive arguments could be drawn in answer to the question whether Article 11(3) of TVWF as amended prescribed the gross principle or the net principle.

A3.6 Moreover, the different language versions of the text, the history of the provision and the preparatory documents contained too many contradictory and ambiguous elements to provide a clear answer to that question. The wording of Article 11(3) of TVWF (as amended) was therefore ambiguous. In order to interpret the provision, it was necessary to consider its context and the objective of the rules in question (Case 11/76 Netherlands v Commission 1979 ECR 245 paragraph 6**).**

A3.7 The Court noted that the main purpose of the Directive was to ensure freedom to provide television broadcasting services.

A3.8 It held that a provision which imposed a restriction, in the matter of the provision of services on an activity involving the exercise of a fundamental freedom, such as the freedom to provide television broadcasting services, must express that restriction in clear terms. It therefore followed that where a provision of TVWF imposed a restriction on broadcasting and on the distribution of television broadcasting services and the community legislature had not drafted that provision in clear and unequivocal terms, it must be given a restrictive interpretation.

A3.9 Since Article 11(3) of TVWF as amended imposed a restriction as regards the possibility of interrupting the transmission of audiovisual works by advertising, that restriction must be interpreted in the strictest possible sense.

A3.10 Accordingly, the gross principle was prescribed, so that in order to calculate the 45 minute period for the purpose of determining the number of advertising interruptions allowed in the broadcasting of audiovisual works such as feature films and films made for television, the duration of the advertisements must be included in the period.

A3.11 In addition, the Court held that if, as permitted under Article 3(1) of TVWF, Member States considered it appropriate to impose stricter or more detailed advertising rules, they could do so, provided those rules were proportionate and otherwise compatible with Community law.

The RTL Case (CJEU judgment of 23 October 2003 C-245/01)

A3.12 This case concerned the frequency of advertising breaks permitted under Article 11(3) TVWF, in relation to films made for television and whether RTL had infringed the relevant national rules by including more frequent advertising breaks than was permitted.

A3.13 The case largely focused on the meaning of the terms: 'films made for television' and 'series' under TVWF, but the following aspects of the Court's decision may be noted:

3.13.1 Article 11(3) provided for a scheme of increased protection for feature films and films made for television by permitting only one advertising break per each 45 minute period with an additional break if the programme's duration is at least 20 minutes longer than 2 or more complete periods of 45 minutes.

3.13.2 Such a restriction may amount to a restriction on the freedom of expression as enshrined in Article 10(1) of ECHR but such a restriction was justified under Article 10(2) of ECHR in that it pursued a legitimate aim involving the protection of the rights of others - namely, the protection of consumers as television viewers as well as their interest in having access to quality programmes.

3.13.3 Those objectives may justify measures against excessive advertising. The protection of consumers against abuses of advertising or, as an aim of cultural policy, the maintenance of a certain level of programme quality are objectives which may justify restrictions by Member States on freedom to provide services in relation to television advertising (see Case 288/89 Collectieve Antennevoorziening Gouda 1991 ECR 1-4007, paragraph 27 and Case C-6/98 ARD 1999 ECR 1-7599, paragraph 50).

3.13.4 The restriction was not disproportionate as it did not relate to the content of the advertising and was not a prohibition but only a limit on frequency applying to every operator and in principle, left broadcasters free to decide the timing and, subject to Article 18 of TVWF, the length of the advertising breaks.

3.13.5 National authorities have a discretion, in accordance with ECHR case law, in deciding whether there is a pressing social need capable of justifying a restriction on freedom of expression. Such a discretion is particularly essential in commercial matters and especially in a field as complex and fluctuating as advertising (see VGT Verein gegen Tierfabriken v Switzerland, judgment of the ECHR of 28 June 2001).

3.13.6 The purpose of Article 11 of TVWF was to establish a balanced protection of the interests of television broadcasters and advertisers on the one hand and those of the rights holders and consumers as television viewers on the other.

3.13.7 In considering the proper meaning of 'series', it should not be based essentially on criteria of form, since that would undermine the purpose of Article 11 (above) and make it possible for the increased protection to be circumvented and therefore risk rendering it illusory.

The Spanish Case (Case C-281/09 Commission v Spain judgment of 24 November 2011)

A3.14 This case considered the rules on the daily and hourly limits on advertising spots under Article 18 of TVWF (the 20% rule), rather than the advertising break rules.

A3.15 However, it considered the concepts of "advertising spots" and of "other forms of advertising" which were not defined in the TVWF directive and in doing so, the Court had regard to the context and purpose of the Directive in resolving the issue.

A3.16 The following aspects of the Court's judgment may be noted in particular:

3.16.1 where a provision makes no express reference to the law of the Member States for the purpose of determining its meaning and scope, then its meaning and scope must normally be given an autonomous and uniform interpretation throughout the EU having regard to the context of the provision and the objective pursued by the legislation in question.

3.16.2 Article 18 was intended to establish a balanced protection of the financial interests of television broadcasters and advertisers, on the one hand, and the interests of rights holders, namely writers and producers, and of consumers as television viewers, on the other.

A3.17 The Court emphasised that the protection of consumers, as television viewers, from excessive advertising is an essential aspect of the objective of that directive.