



# Code on scheduling of TV advertising

Rules on advertising minutage, breaks and  
teleshopping

Statement

Publication date:

26 May 2009



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## Section 1

# Summary

### Introduction

- 1.1 This document reports on the outcome of the second stage of Ofcom's review of advertising regulation<sup>1</sup>, which dealt with rules on:
- a) the overall amount of advertising permitted on public service broadcasting (PSB<sup>2</sup>) channels and non-PSB channels;
  - b) peak-time advertising on PSB channels;
  - c) the number of advertising breaks permitted on PSB and non-PSB channels;
  - d) the length of breaks within programmes on PSB channels; and
  - e) the amount of teleshopping<sup>3</sup> permitted on PSB and non-PSB channels,

### Background

- 1.2 Section 2 summarises the background to the review. In brief, Ofcom has carried out a comprehensive review of the advertising rules, partly in order to give effect to the Audiovisual Media Services (AVMS) Directive and partly to update rules that had not been substantively revised for many years. The outcome of Stage One of the review was a new Code on the Scheduling of Television Advertising (COSTA), which can be found in Annex 1. This replaced the former Rules on the Amount and Distribution of Advertising (RADA) with effect from 1 September 2008<sup>4</sup>.

### Consultation

- 1.3 In October 2008, Ofcom published a consultation paper on Stage Two of the review. This set out a range of options relating to the issues set out in paragraph 1.1, including an initial impact assessment. Section 3 of this statement sets out consultees' responses in relation to advertising breaks, teleshopping and related issues, as well as Ofcom's decisions on these issues. Section 4 summarises responses in relation to the overall and peak-time amounts of advertising on television, and Ofcom's decisions, and explains why Ofcom considers that a further review of the rules on advertising minutage will be needed next year.
- 1.4 Comments on Ofcom's initial impact assessment are addressed in the revised impact assessment in Annex 3. All non-confidential submissions have been posted on our website.

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<sup>1</sup> *Review of television advertising and teleshopping regulation – Stage 2*, Ofcom, October 2008 (<http://www.ofcom.org.uk/consult/condocs/rada08/rada08.pdf>) ("October 2008 document").

<sup>2</sup> The term 'PSB channels' refers to ITV1, Channel 4, Five and S4C1, each of which has public service obligations. The term PSBs (public service broadcasters) includes the Channel 3 licensees (those controlled by ITV plc, as well as GMTV, STV, UTV, and Channel Television), the Channel Four Corporation, Five, and S4C.

<sup>3</sup> 'Teleshopping' means television advertising which includes direct offers to the public with a view to the supply of goods and services in return for payment.

<sup>4</sup> Parts of COSTA do not come into effect until December 2009. Details are given in Annex 1.

- 1.5 In formulating our conclusions, we have had regard to a variety of factors, including:
- a) the regulatory objectives published in the October 2008 consultation document, and reproduced in section 2 for ease of reference;
  - b) the evidence available to us that was summarised or referred to in the consultation document, as well as the outcome of deliberative research published in October 2008;
  - c) consultation submissions, including those that were confidential, and points made to us in meetings with stakeholders;
  - d) the outcome of Ofcom’s PSB review, published in January 2009; and
  - e) the repercussions of the recent drop in television advertising revenues, and the longer-term structural changes to the television market.

## **Ofcom’s decisions**

### **Advertising breaks, teleshopping and other issues**

- 1.6 Ofcom has decided:
- a) to maintain the number of advertising breaks permitted on PSB channels at the current levels for programmes with a scheduled duration of 60 minutes or less, but to increase the number of permitted breaks in longer programmes to the same level as permitted on non-PSB channels. This change does not affect the particular rules applying to specific types of programme, such as films, news and children’s programmes;
  - b) to allow PSB channels to schedule up to 6 hours of teleshopping between midnight and 6am;
  - c) to remove the restrictions on the amount of teleshopping that non-PSB channels may schedule; and
  - d) to remove the ‘peak-time’ designation for the period from 7am to 9am on PSB channels and to regulate this period in accordance with the rules applying to non-peak periods.

### **Advertising minutage**

- 1.7 Pending the outcome of a further review, we do not propose to make any changes to rules on the overall amount of advertising permitted on PSB and non-PSB channels, or to the limits on how much may be scheduled during the evening peak (6pm to 11pm) on PSB channels.
- 1.8 At present, the rules applying to the amount and usage of advertising minutage are significantly more restrictive for PSBs than they are for non-PSBs. For the reasons set out more fully in section 4, Ofcom considers that there is a strong case for harmonising the regulation of advertising minutage (including both overall amounts and peak-time limits) on PSB and non-PSB channels within the next few years.
- 1.9 We intend to examine the case for harmonisation and how this might be achieved in a further review to be published in Spring 2010. The options discussed in section 4

could contribute to a process of harmonisation, but there may be other options that would also do so. An example is the suggestion made by one respondent that both PSBs and non-PSBs be permitted an average of 8 minutes of advertising an hour. The review will examine this and any other relevant options that come to light, and we shall invite comments on these when we publish the review in Spring 2010.

- 1.10 In the meantime, the impact assessment at Annex 3 makes clear that harmonising the regulation of PSB and non-PSB channels by removing some or all of the additional restrictions imposed on PSBs would be likely to have a detrimental effect on non-PSB revenues. Thus, even if we were to conclude that harmonisation of advertising regulation was appropriate, we do not consider that it would be sensible to start that process of harmonisation now, as all broadcasters are suffering from the effects of the recession, which has resulted in a sharp decline in television advertising revenues. Moreover, we consider that there may be advantages to phasing any changes over a period of time, in order to allow more time for broadcasters and advertisers to adjust, although the implications of this require further study.
- 1.11 Accordingly, as part of the review, we shall be considering the economic modelling for options to phase in such an approach. We shall also consider whether or not the Airtime Sales Rules<sup>5</sup> (which require the PSB channels to sell all their advertising minutage) should be modified, retained or scrapped.

## Clarifications

- 1.12 Ofcom has also made some changes to COSTA to clarify that:
- a) in accordance with Article 18(2) of the AVMS Directive, the definition of advertising does not include announcements made by a broadcaster in connection with its own programmes and ancillary products directly derived from those programmes, sponsorship announcements and product placements;
  - b) all local television channels, however distributed, may show local advertising features in teleshopping windows, provided that they are not receivable outside the UK. The previous version of COSTA referred to local television channels distributed by satellite or cable only. Following an announcement made by Ofcom in December last year, it may now be possible for local television channels to be broadcast on digital terrestrial multiplexes with coverage, where suitable spectrum is available<sup>6</sup>;
  - c) consistent with Article 11(1) of the AVMS Directive, the term ‘films’ includes both films with cinematographic releases, and those made for television;
  - d) as explained in paragraph 3.46 of the October 2008 consultation, the national Channel 3 licensee (currently GMTV) is permitted to average its advertising allowance across the week, as its small daily broadcasting window limits its scope to optimise the scheduling of advertising breaks; and

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<sup>5</sup> The background to the Airtime Sales Rules is explained at [http://www.ofcom.org.uk/tv/ifi/guidance/ITV\\_airtime\\_sales/](http://www.ofcom.org.uk/tv/ifi/guidance/ITV_airtime_sales/).

<sup>6</sup> *Statement on making of regulations in connection with the award of licences in the frequency bands 542 to 550 MHz and 758 to 766 MHz covering Cardiff and Manchester*, Ofcom, December 2008 ([http://www.ofcom.org.uk/radiocomms/spectrumawards/completedawards/542550\\_cardiff/Keydocuments/statementcm/](http://www.ofcom.org.uk/radiocomms/spectrumawards/completedawards/542550_cardiff/Keydocuments/statementcm/))

e) for every additional 20-minute period beyond that in Tables 1 and 2 of COSTA, a further break is permitted.

1.13 The changes to advertising regulation that stem from the decisions outlined above are shown in the revised version of COSTA at Annex 2. For the reasons explained in section 3, Ofcom does not consider that the changes to regulation set out there will have a significant effect on the advertising airtime market. Accordingly, we have decided to bring them into effect from 1 June 2009.

### Other matters

1.14 Ofcom has today published a statement on the status of transactional gambling services<sup>7</sup>. From 1 June 2009, such content, which has previously been regulated as editorial content, will be treated as teleshopping. One effect of the decisions made in this statement will be to enable those channels (including PSB channels) that have previously scheduled transactional gambling content as editorial programming to do so in the future in teleshopping slots.

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<sup>7</sup> *The regulation of transactional TV gambling channels: Ofcom regulatory statement on the position of TV channels and programmes that offer gambling services to viewers*, Ofcom, May 2009 (<http://www.ofcom.org.uk/tv/ifi/guidance/gambling>) ('TV and gambling services statement, May 2009')

## Section 2

# Background

## Context for the review

### Changes to the European regulatory framework

- 2.1 Since the 1989 Television without Frontiers (TWF) Directive came into force, UK regulation of TV advertising in the UK has been set within a European framework. In 2007, the TWF Directive was amended to become the AVMS Directive. Amongst other things this allows the UK and other EU member states to change a number of advertising-related rules, including increasing the amount of advertising that may be shown on television. While EU Member States must meet the minimum requirements of the TWF Directive, they can impose stricter rules. We have taken the opportunity of amendments to the European framework to carry out a comprehensive review of the rules on scheduling television advertising.

### Market context

- 2.2 From the 1950s to the 1980s, the television market evolved relatively slowly. Following the post-war resumption of the BBC Television Service in 1946, it was nearly ten years before the Independent Television service (later ITV) was launched in 1955. It did not reach all parts of the UK and Channel Islands until 1963. BBC2 began service the following year, but it was almost two decades before the second commercial public service channel – Channel 4 – began operation in 1982. The final commercial public service channel – Five – was launched in 1997.
- 2.3 From the mid-1980s, new means of distributing channels emerged, initially by cable and later by satellite. This extra capacity provided scope for many more channels, none of which carried public service obligations. By the end of the 1990s, hundreds of new channels were available. While the then regulator (the Independent Television Commission) considered that it had a remit to influence programme quality on public service channels, it did not believe that this remit extended to the newer channels. Accordingly, it saw no case for imposing substantially greater restrictions on the non-PSB channels than those required by the TWF Directive.
- 2.4 Many television channels are funded in whole or part by advertising revenue. So far as viewers are concerned, it makes a major contribution both to the choice and quality of the programmes available to them. Television advertising is also an important means for advertisers to target consumers.

## Stage One of the review

### Consultation

- 2.5 We published Stage One of the review in the March 2008 document<sup>8</sup>, and invited comments on proposals for simplified and liberalised rules on the placing (or 'distribution') of television advertisements. We published conclusions in relation to

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<sup>8</sup> *Review of advertising and teleshopping regulation*, Ofcom, March 2008 (<http://www.ofcom.org.uk/consult/condocs/rada/rada.pdf>). ("March 2008 document").

Stage One of the review in the July 2008 statement<sup>9</sup>. In brief, this explained that we had decided that the then rules should be replaced by a shorter and simpler Code. This came into force on 1 September 2008.

- 2.6 To the extent permitted by the AVMS Directive, the changes:
- a) removed outdated or unnecessary rules that had little or no beneficial impact, either on viewers or broadcasters, and that were, in some cases, unhelpful to both. These included rules that forced broadcasters to adopt a pattern of advertising breaks that was unpopular with viewers; and
  - b) removed or liberalised rules that prevented broadcasters from taking as many breaks in documentaries, religious programmes or films as in other kinds of programmes.
- 2.7 Alongside the consultation on Stage One of the review, we set out for discussion a range of possible scenarios for Stage Two, relating to the rules on advertising minutage, on teleshopping and on advertising breaks<sup>10</sup>. The purpose of this was to ask interested parties if we had identified the appropriate range of options to include within the Stage Two consultation, and whether the suggested approach to assessing the impact of these options was reasonable. The views expressed by respondents helped Ofcom in framing the Stage Two consultation, and in refining our assessment of the impact of different options.

## Regulatory objectives

- 2.8 Section 3 of the March 2008 document explained how Ofcom proposed to balance its statutory duties and other relevant considerations in regulatory objectives for the overall review of advertising regulation. We asked whether the objectives struck an appropriate balance between these duties and other considerations that Ofcom should take into account in reviewing advertising regulation. In the July 2008 statement, we said that we had considered comments from consultees, and decided that the proposed regulatory objectives were appropriate.
- 2.9 The first regulatory objective is that we should seek to further the interests of citizens and consumers, in particular, in relation to:
- a) the range, quality and appeal of television services available throughout the UK and in different parts of the UK and, in particular, public service channels;
  - b) the importance of securing a sufficient degree of plurality of providers of television services; and
  - c) such other matters as appear, having regard to the opinions expressed by consumers, important to them.
- 2.10 Further to this, Ofcom considers that any changes to current regulation should, in furthering the interests of citizens and consumers, so far as possible:
- a) be evidence-based, transparent, proportionate, consistent and limited to the measures needed to achieve the first objective;

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<sup>9</sup> *Code on the Scheduling of Television Advertising – Revised rules on the scheduling of advertisements*, Ofcom, July 2008 ('July 2008 statement')

(<http://www.ofcom.org.uk/consult/condocs/rada/statement/statementcode.pdf>).

<sup>10</sup> Section 7 of March 2008 document.

- b) avoid the imposition or maintenance of regulation that is unnecessary; and
- c) take account of the desirability of promoting competition, and the nature and interests of different consumers, in relevant markets.

## Stage Two of the review

### Consultation

- 2.11 Responses to the March 2008 document indicated a broad coalition of stakeholders opposed to any increase in permitted advertising on either public service or other channels:
- a) PSBs argued that demand for television advertising is inelastic, so that an increase in minutage would simply reduce the price of advertising and cut industry revenue;
  - b) virtually all multi-channel broadcasters believed that any increase in advertising minutage would not increase net advertising revenue significantly, but would redistribute revenues from multi-channels to PSBs. The analysis we carried out and included in the initial impact assessment in our October 2008 document supported this view;
  - c) both research and feedback to Ofcom suggested that viewers would prefer not to see more advertising on television; and
  - d) advertising interests indicated that, on balance, they would prefer the status quo. An advertising trade association said that there was ‘no doubt that any increase in the supply of airtime would lead to a decrease in its aggregate price’.
- 2.12 Ofcom took these views into account when it published a consultation document in October 2008. Although we consulted on a wide range of options, we indicated an initial preference for no change to the amount of advertising on television.

### Market Developments

- 2.13 Since the second half of 2008, the deteriorating economic situation has intensified the concerns of broadcasters. While year-on-year advertising and sponsorship revenue for non-PSB channels grew by around 4.5% during 2008, corresponding revenues for PSB channels fell by about 7.2%<sup>11</sup>. A number of non-PSB channels have told us that their advertising revenue in the first quarter of 2009 fell by between 10% to 20%; both ITV and Channel 4 have reported that their net advertising revenue (NAR) in the first quarter fell by 17%, while RTL said that Five’s NAR had fallen by more than 17% in the same period. Modelling undertaken on behalf of Ofcom published last year suggested that, in a prolonged economic downturn, advertising revenue for commercial broadcasters could fall by between 10% to 20% in real terms<sup>12</sup>. Several broadcasters have already cut programme budgets and staff, and expect to make further cuts in due course. There remains considerable uncertainty about how prolonged and serious the recession will be.
- 2.14 The effects of the recession on television advertising revenues throw into sharp relief the longer-term structural changes in the television market. In a statement on the

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<sup>11</sup> Source: broadcasters’ annual returns to Ofcom.

second review of public service broadcasting published in January 2009<sup>13</sup>, Ofcom noted that the transition to the digital era was undermining the current model for delivering public service content outside the BBC. We warned that “commercial public service broadcasters face greater competition than ever before and growth in television advertising has stalled as investment moves to the internet. These trends represented irreversible structural changes to the broadcasting market and are significantly exacerbated by current economic conditions”.

- 2.15 In order to help redress the balance between the value of licence benefits and the cost of public service broadcasting obligations, Ofcom decided to reduce some of these obligations<sup>14</sup>. In doing so, Ofcom made the point that these changes did not represent a permanent solution to the mounting pressures on commercial public service broadcasters’ ability to contribute to the overall public service broadcasting system.
- 2.16 In reaching the decisions set out in this statement, Ofcom has had regard to both the drop in advertising revenues, and the longer-term structural changes to the television market.

### Responses to the consultation

- 2.17 Several members of the public responded to the consultation, as did a wide range of broadcasters. These included seven public service licensees (PSBs), five multi-channel broadcasters (Sky and four others), and two UK-based operators of overseas channels (SBS and Viasat), as well as the Satellite and Cable Broadcasters’ Group (SCBG).
- 2.18 A number of respondents focussed wholly or mainly on teleshopping issues, including the Electronic Retailing Association (ERA), whose members include a number of teleshopping providers, the Premium Rate Association (PRA), the Institute for Local Television (ILTV), a provider of quiz television, a provider of teleshopping services and one other.
- 2.19 There were also responses from the Campaign for Press and Broadcasting Freedom (CPBF), and the Incorporated Society of British Advertisers (ISBA).
- 2.20 Where relevant, we have also referred to the outcomes of the deliberative research we commissioned last year, and published on our website<sup>15</sup>. Conventional opinion research is useful for gaining a snap-shot of ‘top of mind’ public views, but does not provide scope to introduce to participants relevant factors that they may not be aware of that might shape their informed opinions. Deliberative research provides this opportunity, although it is important to note that it is qualitative in nature. We accept that it is not a definitive guide to how viewers in general think, and have balanced the outcome of the deliberative research with responses to the consultation, and with an

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<sup>13</sup> See Executive Summary, *Ofcom’s Second Public Service Broadcasting Review: Putting Viewers First*, Ofcom, January 2009

([http://www.ofcom.org.uk/consult/condocs/psb2\\_phase2/statement/psb2statement.pdf](http://www.ofcom.org.uk/consult/condocs/psb2_phase2/statement/psb2statement.pdf))

<sup>14</sup> *Statement on short term regulatory obligations – Ofcom’s Second Public Service Broadcasting Review*, Ofcom, January 2009

([http://www.ofcom.org.uk/consult/condocs/psb2\\_phase2/shortterm/shortterm.pdf](http://www.ofcom.org.uk/consult/condocs/psb2_phase2/shortterm/shortterm.pdf))

<sup>15</sup> *UK viewers’ attitudes towards potential changes to television advertising regulation*, Ofcom, October 2008 (<http://www.ofcom.org.uk/consult/condocs/rada08/research.pdf>). (‘Deliberative research’)

assessment of factors we believe are likely to bear upon viewers' attitudes to potential changes to the regulations.

- 2.21 All non-confidential submissions have been posted on our website. We have taken account of both confidential and non-confidential submissions in formulating our conclusions. With the exception of comments on the initial impact assessment (which are addressed in the revised version of the impact assessment at Annex 3), key points from all submissions are summarised in sections 3 and 4.

## **Definitions**

- 2.22 The term 'PSB channels' refers to ITV1, Channel 4, Five and S4C1, each of which has public service obligations. The term PSBs (public service broadcasters) includes all the Channel 3 licensees (those controlled by ITV plc, as well as GMTV, STV, UTV, and Channel Television), the Channel Four Corporation, Five, and S4C. Most of these licensees also operate non-PSB channels (e.g. ITV2, GMTV2, E4 and Fiver).
- 2.23 The term 'multi-channel broadcaster' refers to those groups, such as Discovery, Sky, UKTV, Viacom, and Virgin Media that provide multiple channels in the UK. The term 'UK-based provider of overseas channels' includes groups such as SBS and Viasat that provide multiple channels to places outside the UK.

## Section 3

# Advertising breaks, teleshopping and other issues

## Introduction

3.1 In this section, we set out the responses of consultees to questions on the regulation of advertising breaks, teleshopping and two miscellaneous issues – the length of breaks on PSB channels, and the designation of the period from 7am to 9am on PSB channels as ‘peak’ for the purposes of advertising regulation. Following a summary of consultation responses on each issue, we set out Ofcom’s decision.

## Frequency of advertising breaks

3.2 We asked whether, in terms of the number of advertising breaks in general programming, consultees favoured the status quo (Option 1), or slightly more breaks in programmes longer than 30 minutes (Option 2). We also asked whether, in respect of programmes with autonomous parts (such as magazine programmes), broadcasters should be allowed to decide for themselves how many breaks to take (Option 3).

## Consultee comments

### Break frequencies in general programming

- 3.3 Most individual respondents supported the status quo, as did the CPBF; only a small minority indicated willingness to accept more frequent breaks. One said that it was not unreasonable to expect to see at least 15 continuous minutes of programme content before a break. Another was concerned about the increasing time that would be devoted to sponsorship references if there were more breaks. Participants in the deliberative research indicated a preference for fewer, longer breaks rather than shorter more frequent breaks<sup>16</sup>. When exposed to four breaks in an hour long programme, many participants found this acceptable. However, they did not favour an hour long programme featuring five breaks.
- 3.4 Two PSBs and one UK-based provider of overseas channels (Viasat) supported the status quo. One PSB argued that increasing the frequency of breaks would have a detrimental impact on viewers, risk a reduction in advertising revenues stemming from the consequential increase in commercial impacts, and favour those broadcasters with the highest rating shows. The other said that, in the medium term, it would lead to all channels moving to four breaks in hour long programmes.
- 3.5 Notwithstanding Ofcom’s decision in its July 2008 statement to continue to regulate the number of advertising breaks within television programmes, most multi-channel broadcasters (Sky and two others), as well as SCBG and Viasat felt that regulation was unwarranted. Sky said that the deliberative research conducted by Ofcom was flawed, and provided little evidence of consumer preferences as to the frequency of breaks. While it accepted that there were some limits to viewers’ acceptance of the number of breaks, it argued that if they were alienated by break patterns on some

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<sup>16</sup> Section 3, Deliberative research.

channels, they would switch to other channels. Viasat said that, given competition between broadcasters, they were unlikely to abuse the freedom to schedule breaks as they saw fit. It said that it analyses in great detail how audience share changes during a break, and seeks to optimise break patterns to minimise the audience's propensity to switch channels.

- 3.6 In default of complete freedom to decide on the frequency of advertising breaks, some multi-channel broadcasters (Sky and one other), as well as SCBG and SBS, favoured Option 2. One suggested that this would provide extra flexibility without triggering a major increase in the supply of commercial impacts. Three PSB licensees also favoured liberalisation of the rules, but saw no reason to maintain different rules for PSB and non-PSB channels. Those who favoured liberalisation wanted it to be introduced as soon as possible.

### Break frequencies in programmes of autonomous parts

- 3.7 The CPBF opposed allowing any more breaks in programmes of autonomous parts. The views of individual respondents were mixed; some believed that it would be acceptable for certain genres, such as music video programmes; others were generally unenthusiastic. One said that, while it sounded sensible, the frequent breaks in GMTV's morning magazine programme, padded out by bumpers and programme trailers, illustrated what might happen if they were allowed without a more structured and defined version of this option. Another said that, while more breaks in magazine-style shows would be acceptable, his experience of watching television in the US showed that they would ruin dramas.
- 3.8 Several respondents, including three PSB licensees, SCBG, SBS, an advertising trade association, and three multi-channel broadcasters (Sky and two others) supported the idea of allowing more breaks in programming comprised of autonomous parts (Option 3), and said that this change should be implemented as soon as possible. However, none suggested that this would have a significant impact on broadcasting revenues.
- 3.9 A multi-channel broadcaster said that, for this to work in practice, it would be important to establish a clear definition of 'autonomous parts', which is not open to interpretation, and which does not provide an unduly strong incentive on broadcasters to move towards a greater level of 'autonomous part' programming. It suggested that an additional criterion might be to require that relevant content was not produced specifically for the programme in question, but was produced independently and at different times for a variety of different purposes. If a robust definition proved impracticable, it would still advocate the flexibility to schedule as many breaks as possible in programmes comprising content such as music videos. It did not believe that this would alienate viewers or affect the integrity of the viewing experience.
- 3.10 However, one PSB opposed the idea, saying that it would introduce unwelcome complexity into the system, and incentivise the production of more magazine formats, which might reduce the choice available to viewers. It also risked the development of a US-style television environment, which would be unattractive to viewers. A UK-based provider of overseas channels (Viasat) was sceptical about the need for change, arguing that more frequent breaks were not well received by viewers, and that the current rules were adequate for all types of programmes.
- 3.11 GMTV argued strongly that it should be allowed to keep the concession that allows it to schedule more breaks in its magazine programming than are normally permitted

on PSB channels. It pointed out that its limited transmission period constrained its ability to optimise the use of its advertising allowance. Given that in response to audience research it had adopted seamless programming between 6am and 9.25am 'so far as possible', application of the general PSB break pattern would penalise it. It would also remove much of the benefit of the weekly averaging concession that allowed it to schedule more advertising during weekdays, and less at weekends.

## **Ofcom's decision**

### Break frequencies in general programming

- 3.12 As regards those broadcasters who continue to argue for complete deregulation of the number of advertising breaks, Ofcom notes that it invited views on the principle of whether the number of breaks should be regulated in its March 2008 consultation, and took account of the views expressed before deciding that regulation is required (see paragraphs 3.27 to 3.30 of the July 2008 statement). Ofcom also pointed out that if a channel was able to grow its share of commercial impacts by adding extra breaks incrementally, competing channels would be likely to follow suit (paragraph 4.28 of the October 2008 consultation).
- 3.13 As regards the option of allowing more frequent breaks in programmes longer than 30 minutes, we note that opinion was divided: most broadcasters favoured this option, but most individual respondents and two PSBs wanted the status quo retained. Broadcasters downplayed the likelihood that relaxing the rules would generate much revenue<sup>17</sup>, and did not respond to the invitation to explain how more frequent breaks would benefit viewers.
- 3.14 On balance, we consider that viewers are likely to regard an increase in the number of breaks in programmes of 60 minutes or less as detrimental to their viewing experience, for three reasons: first, in an hour-long programme with four breaks, it would shorten the average length of programme segments between breaks from around 12 minutes at present to around 9 minutes<sup>18</sup>; second, it would be likely to lead to more advertising being placed within programmes rather than between them<sup>19</sup>; third, it would be likely to lead to an increase in the number of sponsorship bumpers within a programme, with which participants in the deliberative research expressed irritation.
- 3.15 However, we do see merit in allowing PSBs the same number of breaks as allowed to non-PSB channels for programmes of more than 60 minutes. This change will mean, for example, that viewers of a two-hour programme on a PSB channel would see 6, rather than 5, internal breaks. The reasons why we consider the change justified are as follows:
- a) it would reduce the inconsistencies in the way PSB and non-PSB channels are regulated at a time when the justification for differences in regulation are being eroded, as explained in section 4 in more detail;

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<sup>17</sup> The impact assessment published with our consultation also suggested that the revenue benefits would be marginal.

<sup>18</sup> See Figures 5 and 6 in the October 2008 consultation. The approximations of 12 minute programme segments under current rules, and 9-10 minute segments if there were four breaks an hour assumes that channels do not allow programme trailers or sponsorship bumpers during internal breaks. In fact, both are common.

<sup>19</sup> See reasoning in paragraphs 4.18 to 4.19 of the October 2008 consultation.

- b) it would remove a disincentive on PSB channels to schedule longer programmes such as dramas and magazine programmes, and could help to foster a greater variety of programming formats. At present, PSB channels showing, say, one 60-minute programme and two 30-minute programmes over a two hour period could schedule 8 ad breaks (disregarding the opening ad break, these would comprise 5 internal breaks and 3 end breaks). By contrast, a PSB channel may only schedule 7 such breaks in a two-hour programme; and
  - c) the actual impact of this change on viewers would be relatively limited, both because it would apply to relatively few programmes, and because it would only result in a small incremental increase in break frequencies – 6 internal breaks in a two-hour programme, instead of 5 at present. PSB programmes of 60 minutes or less, which account for the large majority of their programming, would be unaffected. Many longer programmes are films, and break numbers in these would not be affected<sup>20</sup>.
- 3.16 We do not expect this change to make a big difference to the economics of programming, though it may make longer programmes marginally more attractive to broadcasters. The analysis we have carried out suggests that the extra flexibility to schedule more breaks might increase advertising revenues for PSB channels by less than 1%.
- 3.17 We have also decided that more frequent breaks should be allowed in live events (e.g. sports fixtures), whether on PSB or non-PSB channels, where the timing of these events is outside the control of the programme provider, and it would not otherwise be possible to schedule the same amount of advertising as would be permitted in other programmes.
- 3.18 This additional flexibility will benefit viewers by making it easier for broadcasters:
- a) to schedule the same amount of advertising during live events as in pre-recorded programming, thereby removing or reducing a disincentive to cover live events; and
  - b) to insert breaks at times during live events that do not interfere with coverage of the action.
- 3.19 The reason why this flexibility is limited to coverage of live events (i.e. not pre-recorded) where the timing of these events is outside the control of the programme provider is to prevent the format of live events being devised with the specific intention of scheduling more frequent ad breaks than would normally be permitted.

### Break frequencies in programmes of autonomous parts

- 3.20 As explained in paragraph 3.9 above, one broadcaster suggested an approach to limit any tendency to schedule more programmes of autonomous parts. Having considered the idea of allowing externally-commissioned content to be interrupted more frequently than content commissioned by the broadcaster, we do not believe that it would provide a reasonable basis for distinguishing between content in which more breaks were permitted and content where break patterns would have to comply with COSTA. Nor has it proved possible to devise an alternative approach that would avoid creating perverse incentives to schedule more and more programming comprising short segments.

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<sup>20</sup> The AVMS Directive limits breaks in films to one break for every 30 minutes.

- 3.21 We have concluded that it would not further the interests of citizens and consumers to allow broadcasters to schedule more breaks in programmes of autonomous parts, for the following reasons:
- a) we invited views on how allowing more breaks in programmes of autonomous parts would benefit viewers, but none was forthcoming. Indeed, individual respondents and some broadcasters argued that more breaks would be irritating. By contrast, Ofcom has not received complaints from viewers that existing break patterns in, for example, music programming are inappropriate;
  - b) we are not aware of any evidence that would suggest that the current rules have limited the choice of content to viewers which could be configured in autonomous parts (e.g. music channels). It is difficult to see how amending the rules would further the interests of citizens and consumers in relation to the range, quality and appeal of television services;
  - c) we do not consider that allowing more frequent breaks would significantly improve the economics of programming which could be configured in autonomous parts. Broadcasters in general did not argue that more breaks would generate significantly more revenue; and
  - d) we note that some broadcasters agree that allowing more breaks in programmes of autonomous parts would incentivise broadcasters to produce more such programmes. Ofcom is not persuaded by the arguments of broadcasters who favour relaxation – most of them argued that viewers would switch away from channels that they did not want to watch, curbing broadcasters' ability to schedule ever more breaks. However, they did not explain convincingly how they would resist the pressure to defend their share of commercial impacts by matching any increase in break frequency by a competitor.
- 3.22 In the light of our regulatory objectives, and given that there is no obvious benefit to viewers in allowing more breaks in programmes of autonomous parts, we have concluded that there should be no change to the current rules. Accordingly, broadcasters are required not to take more advertising breaks in programmes of autonomous parts than are permitted for other programmes.

### **Length of breaks on public service channels**

- 3.23 We asked consultees whether the existing limit on the length of internal advertising breaks on PSB channels should be kept or scrapped, and if any changes were made, whether they should come into effect shortly after Ofcom published its conclusions.

### **Consultee comments**

- 3.24 Most individual respondents wanted the current limit kept, as did the CPBF, though a few said that longer breaks would be a better alternative to more breaks, and a few said the reverse. The deliberative research suggested that, on the basis of 'top of mind' responses, viewers would not notice 'the odd extra 30 seconds of advertising'<sup>21</sup>.
- 3.25 Two PSB channels and ISBA said that the existing rules should be retained, as an increase in the length of breaks would have an adverse impact on viewers, increase the supply of commercial impacts (thereby risking a reduction in advertising revenues), and favour broadcasters with larger audiences over others.

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<sup>21</sup> Section 3, Deliberative research.

- 3.26 SCBG and some multi-channel broadcasters (Sky and one other) favoured the retention of a cap on the length of PSB advertising breaks, on the grounds that relaxing the rules would result in more advertising within programmes, thus increasing the supply of commercial impacts. One (Sky ) said that, given the collective impact of this and other possible changes on the TV airtime market, it would clearly be inappropriate to implement any changes until 2010.
- 3.27 One PSB expressed surprise that, since mooted the possibility of scrapping the current rule in its March 2008 consultation, Ofcom was now suggesting that any change would need to be justified in terms of benefits to consumers that outweighed the perceived disbenefits of longer ad breaks and a shift of advertising from end breaks to internal breaks. It argued that the financial impact would be neutral, but that regulation was unnecessary, given the overall limits on advertising minutage, and the incentive on broadcasters not to alienate viewers. Its views were supported by two other PSB licensees; they said that the rule should be scrapped as soon as possible.

### **Ofcom's decision**

- 3.28 Ofcom notes that most individual respondents were opposed to the possibility of longer breaks, and that most broadcasters favoured the retention of the cap, for a mixture of commercial reasons and concern for the impact on viewers of longer breaks. One of the broadcasters who favoured removal of the cap said that the financial impact would be neutral, which suggests that the rule is not particularly burdensome. None of the respondents were able to suggest how removing the rule would further the interests of consumers.
- 3.29 Having regard to the regulatory objectives, Ofcom has concluded that, in current circumstances, the interests of consumers would be safeguarded by retaining the current rule by limiting the scope to place advertising in internal rather than end breaks. Notwithstanding the arguments of one broadcaster, we are not satisfied that the overall limit of 12 minutes in any clock hour, coupled with the limit on the number of breaks, would achieve the same objective, as broadcasters may be incentivised by the prospect of securing more commercial impacts from advertising scheduled within programmes, rather than between them. In this connection, we note that internal breaks on non-PSB channels, which are not regulated as to length, are often longer than on PSB channels.
- 3.30 If, for the reasons set out in section 4, we conclude that it is necessary to reduce the differences between the way PSB and non-PSB channels are regulated, it may also be necessary to review this rule.

### **'Morning peak' on public service channels**

- 3.31 We invited views on our proposal to regulate advertising between 7am and 9am in the same way as non-peak times.

### **Consultee comments**

- 3.32 The views of individual respondents were divided between those who thought that removing the rules was acceptable, and those who preferred limits on the amount of advertising between 7am and 9am to be subject to peak time restrictions.
- 3.33 Many others who commented were content with the proposal, including five PSBs and ISBA. One PSB argued that it was reasonable for GMTV to be allowed to optimise the use of advertising minutage within the slots most popular with audience.

However, two of the PSB licensees said that their support was contingent on there being no change to the amount of advertising allowed in the evening peak. All the PSB respondents agreed that the change should be brought in as soon as possible.

- 3.34 A multi-channel broadcaster said that it was unclear about the justification of the change, and estimated that it could boost GMTV's impacts by around 7%. It suggested that this change would relieve GMTV of certain aspects of its PSB responsibilities without any clear benefits to consumers or advertisers. SCBG opposed the proposal on the ground that it was likely to result in a shift of advertising spend away from non-PSB channels. Another respondent (CPBF) said that in principle it was opposed to an increase in advertising time on PSB channels, but that there might be grounds for a change if there was clear evidence of viewer tolerance, and if the concession was linked to maintaining public service commitments.

### **Ofcom's decision**

- 3.35 The advertising restrictions were imposed when television viewing peaked around breakfast time, as well as in the evening. As the October 2008 consultation document showed, audiences no longer peak during the morning period, so the original rationale has disappeared. As Ofcom is under a duty<sup>22</sup> to remove regulation that is no longer necessary, we believe that it is appropriate to remove the restrictions. We do not consider that this change represents a concession to public service broadcasters; in any case, there is no mechanism for requiring licensees to hypothecate advertising revenue from particular day-parts for public service purposes.
- 3.36 We remain of the view, explained in paragraphs A3.172 - A3.174 of the revised impact assessment, that given the particular constraints that GMTV faces (notably the restricted hours of its schedule, and the limit of an average of 7 minutes an hour of advertising), that the impact of this change on any stakeholders (including non-PSBs) will be very limited. The scope for GMTV to schedule slightly more advertising between 7am and 9am will have a marginally beneficial effect on its ability to invest in programming. The increase in advertising is unlikely to affect many viewers, in part because there are relatively few viewers to breakfast time television compared to viewing in the evening peak, and in part because breakfast time viewing is often for relatively short periods. We have therefore decided that the restrictions should be removed with effect from 1 June 2009.

### **Teleshopping**

- 3.37 As regards the amount of teleshopping permitted on PSB and non-PSB channels (excluding dedicated teleshopping channels), we asked consultees whether they favoured:
- a) the status quo (under which PSB channels have no teleshopping allowance, and non-PSB channels are limited to 3 hours a day) (Option 1);
  - b) complete deregulation, under which PSB and non-PSB channels would be able to schedule as much or as little teleshopping as they wished (Option 2);
  - c) deregulation or liberalisation for non-PSB channels, ranging from complete freedom to an increased allowance of, say, 6 hours a day (Option 3); and

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<sup>22</sup> See section 6 of the Communications Act 2003.

d) liberalisation for PSB channels, under which they would be allowed to air up to 6 hours a day overnight (Option 4).

3.38 We also asked whether consultees agreed that any changes should come into effect shortly after Ofcom published its conclusions.

### **Consultee comments**

3.39 Not all individual respondents commented on the issue of teleshopping; some said that they never watched it. Those who did respond were generally unenthusiastic about the prospect of more teleshopping, particularly on PSB channels. Most wanted teleshopping confined to dedicated teleshopping channels, or the status quo kept. One favoured allowing PSB channels the same 3 hour allowance given to non-PSB channels; another said that he would object to more teleshopping being shown on non-PSB channels. Only one said that, as commercial PSBs were not subsidised, they needed the freedom to decide what content to show.

3.40 Amongst broadcasters, there was little support for the status quo (Option 1), or complete deregulation for both PSB and non-PSB channels (Option 2). Most respondents advocated more limited liberalisation, and many considered it appropriate to operate different teleshopping regimes for PSB and non-PSB channels.

3.41 Several respondents were concerned about the implications of possible regulatory changes stemming from an ECJ decision<sup>23</sup>, which they considered could lead to some types of programming – such as quiz TV – being regulated as teleshopping. Some PSBs pointed that if this was so, PSB channels would be denied access to revenue from such content unless they had a teleshopping allowance. One PSB and a multichannel provider felt that this would be a good thing, arguing that such content did not contribute to the public service remit of PSB channels. A third party provider of such programming was also concerned that it would lose the opportunity to supply content to broadcasters if the current limits were retained. The ERA was worried that, if the rules were not liberalised, conventional teleshopping services might be replaced by betting and gaming programmes.

### **Teleshopping on non-PSB channels**

3.42 Many respondents favoured deregulation (ERA, QVC, SBS, SCBG, Viasat), or liberalisation (all PSB licensees who responded and the PRA) of the limits on teleshopping on non-PSB channels (Option 3). Several PSB licensees argued that there should be a level playing field for both non-PSB and PSB channels – a daily allowance of 6 hours, to be scheduled at the discretion of broadcasters. Four respondents who supported relaxation of the teleshopping rules for non-PSB channels did not indicate whether they favoured complete deregulation or partial liberalisation (ILTV, two multi-channel broadcasters and one other).

3.43 However, Sky opposed liberalisation for non-PSB channels, on the grounds that the main beneficiaries would be PSBs, which (unlike Sky) tended to use teleshopping allowances on their non-PSB channels such as ITV2, Fiver and Five US.

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<sup>23</sup> ECJ judgement in case C-195/06, relating to the definition of teleshopping (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62006J0195:EN:HTML>).

- 3.44 One respondent suggested that self promotional channels be allowed to offer teleshopping windows to third party broadcasters, thereby increasing the range of content available and expanding opportunities for broadcasters.

### Teleshopping on PSB channels

- 3.45 Several PSB licensees and two other respondents (ERA and one other) supported the liberalisation of teleshopping rules for PSB channels (Option 4), as this would lift the de facto ban on PSB channels benefiting from revenue from teleshopping content. The ERA, PRA and Viasat suggested that the PSB allowance should be limited to 6 hours. The ERA said that this should be limited to the midnight to 6am slot, and a PSB said that it should be late at night.
- 3.46 Like SCBG and some multi-channel broadcasters, Sky also opposed the liberalisation of teleshopping rules for PSB channels, as did QVC and one PSB channel. Some respondents (Sky, a PSB and a multi-channel broadcaster) argued that teleshopping on PSB channels made little contribution to their public service remits. QVC said that if PSBs were offer retail teleshopping services, this would result in unfair competition in the television retail market, and reduce the choice of viewers for public service content in the late evening / early morning.
- 3.47 As regards the timing of any changes:
- a) a number (ERA, a PSB channel, a quiz TV provider and a multichannel broadcaster) said and that the rules should be liberalised as soon as Ofcom published its conclusions; and
  - b) one said that no decision should be taken on liberalising the rules for PSB channels until the PSB and CRR reviews had been completed, and the outcome of Ofcom's consultations on participation TV and gambling and teleshopping were known.

### **Ofcom's decision**

- 3.48 It is clear from the consultation responses that some viewers would prefer not to watch teleshopping. Given that spot advertising generally delivers better financial returns than teleshopping when large numbers of people are watching, most viewers are unlikely to be inconvenienced, as teleshopping is unlikely to be shown during peak viewing hours. Moreover, as at present, not all channels permitted to carry teleshopping may choose to do so. As a result, we consider that viewers will retain a choice of non-teleshopping viewing at other times of the day.
- 3.49 As regards the concerns expressed by one teleshopping operator that allowing PSB channels to provide retail teleshopping would lead to unfair competition, we do not in principle see why such competition should be unfair. Moreover, on the basis of indications from PSBs, it seems possible that, to the extent that they make use of the opportunity for teleshopping, they will choose to offer transactional services (such as gambling) rather than retail teleshopping.
- 3.50 Against this background, Ofcom considers that the regulatory objective of furthering the interests of citizens and consumers in relation to the range, quality and appeal of television services is best achieved by allowing broadcasters more flexibility over the scheduling of teleshopping. The reason for this is that it will help broadcasters to generate more revenue at times of the day when audiences are small, and when spot advertising therefore yields few saleable commercial impacts. Given declining

advertising revenues, additional teleshopping revenue may help broadcasters to maintain programming budgets, or sustain channels serving niche interests that might otherwise become unviable.

- 3.51 As regards the arguments mounted by Sky (see paragraph 3.43 above) we do not believe that it is reasonable for the regime applying to non-PSB channels to be determined by the fact that some such channels are owned by PSBs.
- 3.52 We have therefore concluded that non-PSB channels should be allowed to choose how much teleshopping content to schedule and when to do so.
- 3.53 Ofcom believes that different considerations apply to PSB channels. While we recognise that teleshopping can make a useful contribution to the funding of PSB channels, we consider that the content that is permissible within teleshopping (including the type of content referred to in paragraph 1.14 of section 1) does not of itself contribute significantly to the public service remit as set out in section 264 of the Communications Act 2003. Accordingly, we consider that the amount of teleshopping that may be shown on public service channels should be limited to six hours a day, to be scheduled between midnight and 6am, when audiences are comparatively small.
- 3.54 As regards the suggestion that self-promotion channels be allowed to carry teleshopping, Ofcom considers that the effect of Article 19 of the AVMS Directive is to make channels that are not exclusively devoted to teleshopping subject to the limits on advertising set out in Article 18. In this case, self-promotional content would then be subject to those advertising limits, which apply to self-promotion. We have amended COSTA to clarify this point.
- 3.55 We remain of the view, set out in paragraph 1.16 of the October 2008 consultation document, that there is no reason to delay the implementation of the changes to teleshopping rules set out above, as they do not oblige broadcasters to change their existing arrangements, nor do they result in a change in the overall amount of advertising minutage permitted on television channels. Ofcom has today published a statement confirming that gambling transactional channels should be regulated as teleshopping channels<sup>24</sup>, and we believe that the decisions above will make it easier for affected broadcasters to make the transition, and should be brought into force at an early date. Accordingly, the rules set out in paragraph 5 of COSTA (see Annex 2) will come into force with effect from 1 June 2009.

### Other comments

- 3.56 Amongst other comments made by respondents:
- a) in relation to the regulatory objectives on which Ofcom consulted in its March 2008 consultation document, Sky said that it was unsure why Ofcom had formulated its duties in this way. It was concerned that Ofcom was predisposed towards PSB channels, and that it saw little justification for this, given that there was no guarantee how any benefit realised from regulatory change would be committed. It also said that some non-PSB channels made an important contribution to the 'range, quality and appeal of TV services available in the UK'. Sky suggested that Ofcom represented to it at a meeting on 9 May 2008 that its duty to public service broadcasting was greater than its duty to the market as a whole;

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<sup>24</sup> TV and gambling services statement, May 2009

- b) Sky and a PSB urged Ofcom to consider the cumulative effect of any changes on the TV airtime market. The PSB suggested that the combined effect of an extra centre break in an hour long programme, and the removal of rules on the length of such breaks would result in a considerable increase in commercial impacts. Sky suggested that there might be a case for postponing the implementation of those changes which (when viewed in isolation) might appear to be suitable for immediate implementation until 2010; and
- c) ISBA urged Ofcom to keep under review the amount of promotional trailers included in advertising breaks by broadcasters. It recognised that broadcasters needed to promote their programming, but said that excessive clutter could disaffect viewers. Two members of the public suggested that the time used for sponsorship bumpers should be counted as advertising minutage.

3.57 As regards the comments summarised above, Ofcom:

- a) explained in some detail in section 3 of the March 2008 consultation document how it had formulated its proposed regulatory objectives, and specifically invited the views of consultees on whether the draft objectives struck an appropriate balance between its duties and other relevant considerations. We note that Sky did not take that opportunity to comment on the draft regulatory objectives. As regards Sky's suggestion that Ofcom has elevated its duty to promote public service broadcasting over its duty to the market as a whole, Ofcom does have specific duties in section 264 of the Communications Act 2003 that relate to public service broadcasting, and we referred to these in the explanation of our regulatory objectives. Ofcom is satisfied that the regulatory objectives are a reasonable construction of how we should balance our statutory duties and other relevant considerations;
- b) agrees that, in deciding what changes should be made to regulation, it is prudent to consider the combined effect of possible changes. As the changes that Ofcom has introduced are unlikely to have a significant effect on the TV airtime market, Ofcom sees no case for deferring their implementation; and
- c) considers that revenue from sponsorship is important to the funding of television programming, and that programme promotions help to inform viewers of forthcoming programmes that they may wish to watch. Nonetheless, we are aware that viewers may find the repetition of sponsorship bumpers irritating, and will keep under review the practices of broadcasters as regards the amount of promotional trailers and sponsorship bumpers. The AVMS Directive excludes programme promotions and sponsorship bumpers from the rules on advertising minutage, though it remains open to Ofcom to put in place rules applying to these should it decide that this is warranted.

## Section 4

# Rules on overall and peak-time advertising minutage

## Introduction

4.1 In this section, we set out the responses of consultees to options for regulating both overall advertising minutage on all channels, and for regulating peak-time minutage on PSB channels. The revised impact assessment summarises consultees' comments on the initial assessment of the potential impact of these options. Following a summary of consultation responses, we set out Ofcom's decision, and explain Ofcom's intention to carry out a further review in Spring 2010.

## Overall advertising minutage

- 4.2 We invited views on whether the overall amount of advertising should be:
- a) maintained at current levels (i.e. an average of 7 minutes an hour on PSB channels, and 9 minutes an hour on other channels (Option 1); or
  - b) increased on PSB channels to an average of 9 minutes an hour, the same level as on other channels, or on all channels to 12 minutes, the maximum permitted by the AVMS Directive (Option 2); or
  - c) reduced on non-PSB channels to an average of 7 minutes an hour, the same level as on other channels (Option 3);
- 4.3 We also asked whether consultees would prefer a different alternative to these options to be adopted.
- 4.4 Finally, we asked whether consultees agreed that any rule changes that might result in a significant change to the number of commercial impacts should not come into force before 1 January 2010.

## Consultee comments

### Option 1 - Status quo

- 4.5 Most respondents felt strongly that no change should be made to the overall amount of advertising on television (Option 1). Almost all individual respondents felt this way, as did the CPBF. Broadcasters supporting this position included three PSB licensees, four multi-channel broadcasters (Sky and three others), SCBG and a UK-based provider of overseas channels (Viasat). ISBA said that most of its members felt that the present position was broadly satisfactory. However, it suggested that at some point, given that digital switchover was diminishing the special status of PSB channels, there would be a case for harmonising the minutage rules applying to PSB and non-PSB channels, perhaps at an average of 8 minutes per hour.
- 4.6 The ERA said that the teleshopping industry found it helpful that, at present, non-PSB channels were allowed up to 3 minutes an hour of teleshopping spots in addition to a maximum of 9 minutes an hour of conventional spot advertising. If the overall amount of advertising was to be increased to 12 minutes an hour (including up to 3

minutes of teleshopping, at the option of the broadcaster), it was likely that teleshopping spots would be squeezed out of the market place.

- 4.7 One multi-channel broadcaster said that the disparity in regulation of PSB and non-PSB channels continued to be justified by the privileges and obligations of PSB channels. It was also concerned that decisions on advertising minutage might be made in isolation from the PSB and CRR reviews<sup>25</sup>, and said that a specific date for implementing changes should not be set until the outcome of those reviews were known. Another (Sky) said that it supported the status quo because other options would benefit those with greatest market power, namely the PSBs. It expressed concern that Ofcom was predisposed towards conferring some benefit on the PSBs.

### Option 2 - Levelling up

- 4.8 Only one individual respondent supported an increase in the amount of advertising on commercial PSB channels (Option 2), on the grounds that, unlike the BBC channels, they did not benefit from the licence fee.
- 4.9 The main argument advanced by broadcasters (including most PSB licensees, multi-channel broadcasters and SCBG) against Option 2 was that its effect would be to increase the supply of commercial impacts to the market at a time when demand was weak, creating deflationary pressures across the market as a whole and resulting in a transfer of advertising revenues from non-PSB channels to PSB channels, particularly ITV1. One PSB said that the steep growth in impacts in recent years meant that the demand for TV advertising was more than satisfied, and that there was no latent demand – in fact, smaller channels were unable to sell all their advertising airtime. Two other PSBs agreed that this option would create deflationary pressures, but believed that both PSB and non-PSB channels would lose advertising revenue. One PSB said that more advertising and related clutter within programmes would have a detrimental impact on viewers.
- 4.10 One UK-based provider of overseas channels (SBS) said that non-PSB channels should be allowed the maximum permitted under the AVMS Directive – that is, 12 minutes an hour in every hour of transmission. It argued that, given fierce competition between channels, the inability to sell as much advertising as possible could force some channels out of business, thereby restricting viewer choice.

### Option 3 - Levelling down

- 4.11 Some individual respondents liked the idea of levelling down the amount of advertising on non-PSB channels (Option 3), but only three broadcasters (all PSBs) agreed. Amongst multi-channel broadcasters opposed to the idea, one said that there was no policy reason for this; non-PSB channels had operated on the current basis for 17 years with relatively few complaints. It suggested that the adverse impact on non-PSBs from the transfer of revenues to PSB channels would be far greater than estimated by Ofcom. SCBG said that aligning non-PSB minutage with PSB minutage would not create a level playing field. PSBs and their spin-off non-PSB channels had a large share of the broadcasting market. Research they had commissioned indicated that such a change would entail a substantial collective loss for non-PSB channels that would exceed the benefit to PSB channels. A PSB channel agreed that this option could improve the financial position of PSB channels,

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<sup>25</sup> The outcome of Ofcom's PSB review can be seen at <http://www.ofcom.org.uk/media/features/janpsb1>. The OFT's *Contract Rights Renewal Review* can be found at [www.ofcom.gov.uk/news/press/2009/02-09](http://www.ofcom.gov.uk/news/press/2009/02-09).

but could potentially jeopardise the continued existence of some non-PSB channels, as well as increasing costs for advertisers.

- 4.12 Of the three PSB licensees supporting this option, one argued that reducing the supply of commercial impacts would help to put a floor under the price of airtime. While it recognised that this would be more beneficial to PSBs than to non-PSBs, the broadcaster believed that this was consistent with Ofcom’s regulatory objective to further the interests of citizens and consumers in relation to the range, quality and appeal of television services available throughout the UK, in particular public service channels. It wanted the supply to be reduced as soon as possible; given current market conditions, it saw little likelihood that non-PSB channels would already have committed all their advertising airtime half way through the year. The two other PSB licensees said that levelling down would help PSB channels to continue investing in high quality original content, to the benefit of viewers. They argued that the impact on non-PSB channels was unlikely to be significant.

### Variations of these options

- 4.13 ISBA said that, while ‘it would be unwise to advocate extensive change to ...RADA at a time of such uncertainty’, it believed that with digital TV penetration at 90% and switchover on target for 2012, ‘the legacy differential between PSBs and multichannel broadcasters is no longer defensible’. ISBA therefore suggested that Ofcom harmonise minutage allowances on all channels to a mid-point, say 8 minutes an hour, and consider phasing any such move in over time, so as to avoid any disruption to the market place.

## **Ofcom’s analysis**

### Option 2 – Levelling up

- 4.14 In the October 2008 consultation, we looked at two variants of the so-called ‘levelling up’ option – the first in which the advertising allowance for PSBs was levelled up to the non-PSB level (i.e. from an average of 7 minutes an hour to an average of 9 minutes an hour); the second in which all broadcasters – both PSB and non-PSB – were allowed to air up to 12 minutes an hour in any one hour (the maximum permitted under the AVMS Directive).
- 4.15 Our analysis for levelling up to 9 minutes<sup>26</sup> suggests that:
- a) viewers be likely to criticise the increase in advertising that would occur, particularly on the most-watched PSB channels, despite the fact that in much of peak-time viewing, advertising minutage is already close to the maximum permitted. Viewers might benefit from the ability of PSBs to maintain investment in programming, given that PSB channels attract the largest audiences, However, given that some non-PSB channels will have less funding, viewers to non-PSB channels may see a greater volume of repeats, or fewer original programmes, or lower quality programmes, or a combination of these;

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<sup>26</sup> For the reasons explained in paragraphs A5.94 to A5.95 of the October 2008 consultation, although we are able to model the impact of full liberalisation to 12 minutes on the share of commercial impacts which would be delivered by each group of broadcasters, we were not confident that the modelling approach adopted for other options would produce useful estimates of the revenue impacts of this scenario. Nonetheless, it is clear that, compared to the first variant, it would involve an even more substantial increase in the volume of commercial impacts than the first variant, and an even greater shift of revenue from non-PSBs to the PSBs.

- b) PSB groups (including their non-PSB channels) would benefit by about £44 million per year, and that non-PSB channels would lose about £46 million. The percentage increase in PSB group advertising revenues would be 1.6%, while the percentage reduction in non-PSB revenues would be 6.4%<sup>27</sup>; and
- c) advertisers might also benefit from greater opportunities to reach large audiences quickly, at a cheaper price. However, there are also concerns that more ‘clutter’ around programmes, including extra advertising, could reduce the effectiveness of television as an advertising medium.

### Option 3 - Levelling down

- 4.16 Under the levelling down option, the advertising allowance for non-PSB channels would be reduced from an average of 9 minutes an hour to 7 minutes an hour, the same level as for PSB channels. Our analysis of this suggests that:
- a) viewers might benefit in two ways: from the reduction in advertising on non-PSB channels<sup>28</sup> (though broadcasters would seek to optimise the outcome by maximising advertising around the most popular programmes), and from the increase in PSB revenues, which would allow the most popular channels to maintain their investment in programming. On the other hand, viewers might expect to see a reduction in quality and/or choice on non-PSB channels, as they cut costs by increasing repeat rates, making cheaper programmes, or (in extreme cases) closing uneconomic channels;
  - b) the share of commercial impacts delivered by PSB groups (particularly ITV plc) would increase, with corresponding reductions in the share of commercial impacts delivered by non-PSB channels. PSB groups would benefit by about £33 million (much of which would go to ITV plc), representing an increase in their net advertising revenue of about 1.2%. Non-PSBs would lose about £34 million, representing a reduction in their net advertising revenue of about 4.8%<sup>29</sup>; and
  - c) advertisers might have to pay higher prices, which might result in a reduction in the range of products and services advertised on television.

### **Ofcom’s decision**

- 4.17 The basis for Ofcom’s decision in relation to rules on the overall amount of advertising on television is the same as for its decision in relation to advertising in peak-time on PSB channels. We set out below the decisions, and the reasoning for them, following the summary of consultees’ responses to options for peak-time advertising on PSB channels.

### **Advertising in peak time on public service channels**

- 4.18 We invited views on whether public service channels should:
- a) continue to be limited to an average of 8 minutes advertising per hour between 6pm and 11pm (Option 4); or
  - b) be allowed more peak-time advertising (Option 5); or

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<sup>27</sup> See Table 4 following paragraph 4.29 of the revised impact assessment.

<sup>28</sup> See Figure 3, page 15, October 2008 consultation.

<sup>29</sup> See Table 5 following paragraph 4.39 of the revised impact assessment.

- c) be allowed to aggregate their daily peak time allowances (currently 40 minutes a day) so that they could be used flexibly across the week, subject only to the limit of 12 minutes an hour of advertising in any one hour – so-called ‘weekly averaging’ (Option 6); and
- d) whether any changes that might result in a significant change to the number of commercial impacts should come into force on 1 January 2010, in order that they could be reflected in the annual commercial negotiations with advertisers.

## Consultee comments

### Increases in peak-time allowances

- 4.19 Most individual respondents wanted the existing limits to be kept, as they did not want to see any more advertising; some favoured a reduction in the amount of peak time advertising allowed. Discussion amongst participants in the deliberative research suggested that viewers would be prepared to accept some increase in peak-time advertising<sup>30</sup>. The CPBF was strongly opposed to any increase in peak-time advertising, pointing to the risk that this would increase the opportunity costs of scheduling public service programming.
- 4.20 Most broadcasters who commented (six PSB licensees, three multi-channel broadcasters - Sky and two others - and SCBG) also favoured the status quo. Broadcasters were concerned that allowing more peak time advertising would increase the supply of commercial impacts, and increase the PSBs’ share of those impacts, to the significant detriment of non-PSB channels. However, one PSB argued that increasing the amount of peak time minutage (Option 5) would help those channels that did not broadcast overnight.

### Weekly averaging

- 4.21 There was no support for weekly averaging amongst individual respondents; one commented that it would be equivalent to removing the cap altogether.
- 4.22 With the exception of two PSBs, most broadcasters were also opposed to Option 6 because of concern that it would increase the supply of commercial impacts. One PSB said that both Option 5 and Option 6 would be perceived by viewers as detrimental to their interests – it suggested that Option 6 would enable PSB channels to schedule 50% more advertising at times on Saturday evenings, and that there would be consequential reductions in the length of programmes. Moreover, there was a risk that the resulting increase in the supply of commercial impacts might actually reduce advertising revenues.
- 4.23 However, another PSB suggested that Ofcom’s analysis overstated the financial benefits to PSBs of Option 6; it felt that the main benefits lay in removing a barrier to the commissioning (or recommissioning) of popular but unprofitable programming, by allowing more advertising around such programming. It argued that the impact on non-PSB channels would be marginal, and that this impact would not outweigh the benefits to viewers of better programming. Given its view that the increase in commercial impacts would be small, it suggested that the changes should come into effect as soon as Ofcom published its conclusions.

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<sup>30</sup> Section 3, Deliberative research

## Ofcom's analysis

### Increases in peak-time allowances

- 4.24 Our analysis suggests that, if PSBs were allowed to increase their daily peak-time allowances from an average of 8 minutes an hour to an average of 9 minutes an hour:
- a) viewers would be exposed to more advertising in peak and could be expected to criticise this, although many might notice little difference in practice, since advertising is already close to the maximum permitted in the most popular viewing hours;
  - b) so far as they could, PSB channels would schedule more advertising during programmes with the highest or most valuable audiences. As a result, they would increase their share of commercial impacts at the expense of non-PSB channels. The central estimates in our impact assessment suggest that PSB groups (including their non-PSB channels) would benefit by about £30 million, and that non-PSB channels would lose about £30 million. The percentage increase in PSB group advertising revenues would be 1.1%, while the percentage reduction in non-PSB revenues would be 4.2%<sup>31</sup>; and
  - c) advertisers would have more opportunities to reach large audiences quickly at a cheaper price.

### Weekly averaging

- 4.25 If PSBs were allowed to aggregate their daily peak-time allowances (40 minutes) into a weekly peak-time allowance (280 minutes) and allocate it as they saw fit (subject to the absolute limit of 12 minutes in any one hour), our analysis assumes that:
- a) viewers would be exposed to more advertising in peak during those days when audiences were highest, but less advertising during other days. They could be expected to criticise this, although many might notice little difference in practice, since advertising is already close to the maximum permitted in the most popular viewing hours;
  - b) PSB channels (particularly ITV1) would increase their share of commercial impacts of PSBs, and correspondingly reduce the share attributed to non-PSB channels. The central estimates suggest that PSB groups (including their non-PSB channels) would benefit by about £39 million, and that non-PSB channels would lose about £36 million. The percentage increase in PSB group advertising revenues would be 1.4%, while the percentage reduction in non-PSB revenues would be 5.1%<sup>32</sup>; and
  - c) as in the case of an overall increase in peak-time advertising on PSB channels, advertisers would have more opportunities to reach large audiences quickly.

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<sup>31</sup> See Table 11 following paragraph 4.59 of the revised impact assessment.

<sup>32</sup> See Table 12 following paragraph 4.64 of the revised impact assessment.

## Ofcom's decision

- 4.26 The current rules impose stricter limits on the amount of advertising on PSB channels than non-PSB channels. As a result, any moves to harmonise the rules will benefit PSBs relative to non-PSBs.
- 4.27 Pending a review in Spring 2010, Ofcom has decided not to change the current rules either in relation to overall advertising minutage or to the amount of advertising that may be shown in peak on PSB channels. The chief reasons for this are that:
- a) as each of the possible rule changes would result in non-PSB channels collectively losing about 3 – 5% of their advertising revenues, making these changes at a time when advertising revenues are already falling could further damage their ability to contribute to the objective of securing for viewers a wide range of high quality television programmes;
  - b) deferring change until later in the economic cycle – say, from the beginning of 2011 – may mean that any changes to the rules could be implemented at a time when advertising revenues have stabilised or have begun to rise, making it easier for non-PSB channels to adjust to the consequences; and
  - c) the impact assessment suggests that each of the options would have a similar impact on both PSBs and non-PSBs, though the outcomes for viewers would vary. The refinements we are considering to the modelling may shed further light on which of these options is most appropriate.
- 4.28 For this reason, we are not making any decisions yet on whether any of the options discussed above should be implemented. We shall look again at these options in the Spring 2010 review, and will consider the points made by consultees in relation to them.

## The implications of structural changes in the television market

- 4.29 In a statement on the second review of public service broadcasting published in January 2009, Ofcom noted that the transition to the digital era is undermining the current model for delivering public service content outside the BBC. We warned that 'commercial public service broadcasters face greater competition than ever before and growth in television advertising has stalled as investment moves to the internet. These trends represented irreversible structural changes to the broadcasting market and are significantly exacerbated by current economic conditions'<sup>33</sup>.
- 4.30 In a statement on changes to PSB regulatory obligations published alongside the review, Ofcom noted that we need to 'balance the value of licence benefits with the cost of public service broadcasting obligations. Without this balance, there is no incentive for commercial public service broadcasters to retain their public service licences'<sup>34</sup>. These changes reduced the cost of regulatory obligations to ITV1 and Five. However, the statement pointed out that the changes did not represent a permanent solution to the mounting pressures on commercial public service broadcasters' ability to contribute to the overall public service broadcasting system.

<sup>33</sup> Paragraph 1.16, Executive Summary, *Ofcom's Second Public Service Broadcasting Review: Putting Viewers First*, Ofcom, January 2009 ('Second PSB Review') ([http://www.ofcom.org.uk/consult/condocs/psb2\\_phase2/statement/psb2statement.pdf](http://www.ofcom.org.uk/consult/condocs/psb2_phase2/statement/psb2statement.pdf))

<sup>34</sup> *Statement on short term regulatory obligations – Ofcom's Second Public Service Broadcasting Review*, Ofcom, January 2009 ([http://www.ofcom.org.uk/consult/condocs/psb2\\_phase2/shortterm/shortterm.pdf](http://www.ofcom.org.uk/consult/condocs/psb2_phase2/shortterm/shortterm.pdf))

Since the publication of that statement, the advertising revenues of commercial PSBs have declined still further, making the case for further regulatory relief stronger.

- 4.31 Although Ofcom has decided not to make changes to advertising minutage arrangements for the time being, our presumption is that, in due course, we shall need to move towards a more level regulatory playing field, including in relation to advertising regulation. In this connection, we note that non-PSB channels are allowed to sell 40% more advertising minutage overall than PSBs, and a third more in peak-time. The effect of these differences is to impose opportunity costs on the retention of PSB status.
- 4.32 The alternative, of maintaining the differences in advertising regulation, risks the possibility of one or more of the commercial PSBs surrendering their licences (thus affecting delivery of the ‘modest but important public service commitments’ referred to above). This raises the prospect of unpredictable, precipitate and large-scale change in the volume and distribution of commercial impacts. This could prove destabilising to broadcasters (particularly non-PSB channels) and to advertisers, and reduce the ability of non-PSB channels to contribute to a wide variety of high quality television programming.
- 4.33 Accordingly, we plan a further review to be published in Spring 2010. As part of that review, we shall be considering:
- a) whether the circumstances do indicate the need to harmonise regulation of advertising as between PSBs and non-PSBs, and if so, over what period;
  - b) what options there are for harmonising advertising regulation, and whether there would be advantage in phasing the process over time, to allow broadcasters, viewers and advertisers time to adjust; and
  - c) whether or not the Airtime Sales Rules<sup>35</sup> (which require the PSB channels to sell all their advertising minutage) should be modified, retained or scrapped.
- 4.34 In assessing the implications of the options for harmonisation, including possible changes to the Airtime Sales Rules, we shall look at whether changes to the economic modelling would be appropriate, as discussed in the impact assessment at Annex 3.

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<sup>35</sup> The background to the Airtime Sales Rules is explained at [http://www.ofcom.org.uk/tv/ifi/guidance/ITV\\_airtime\\_sales/](http://www.ofcom.org.uk/tv/ifi/guidance/ITV_airtime_sales/). In brief, ITV1, Channel 4 and Five are required to sell all their advertising minutage, whereas other channels are not.

## Annex 1

# Revisions to the Code on the scheduling of television advertising

[deletions struck through, additions underlined]

## Introduction

1. This Code sets out the rules with which television broadcasters licensed by Ofcom<sup>36</sup> ('broadcasters') must comply when carrying advertising. These rules give effect to relevant ~~the~~ provisions of the Audio Visual Media Services (AVMS) Directive and those policies determined by Ofcom following consultation. In accordance with Article 20 of the Directive, Ofcom may disapply some or all of the relevant rules to channels that are not receivable outside the United Kingdom.
2. Broadcasters must also comply with the Television Advertising Standards Code issued by the Broadcast Committee on Advertising Practice.

## Definitions

3. In this Code:
  - a) 'television advertising' means any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes by a public or private undertaking or natural person in connection with a trade, business, craft or profession in order to promote the supply of goods and services, including immovable property, rights and obligations, in return for payment<sup>37</sup>;
  - b) the 'broadcasting day' for the purposes of this Code is deemed to start at 6am and run for the following 24 hours;
  - c) 'Parliamentary proceedings' includes proceedings on the floor of either House and Parliamentary Committees;
  - d) 'public service channels' means those television services designated in accordance with section 310 of the Communications Act 2003 other than the BBC services<sup>38</sup>;
  - e) a 'formal Royal ceremony' means a formal ceremony or occasion of which the Sovereign or members of the British Royal Family enjoying the prefix 'Royal Highness' are the centre. It applies to occasions such as the State Opening of Parliament and Trooping the Colour;

<sup>36</sup> For the purpose of this Code, this includes S4C, which is authorised by the Broadcasting Act 1990.

<sup>37</sup> This definition is derived from Article 1(i) of the AVMS Directive. In accordance with Article 18(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, sponsorship announcements and product placements.

<sup>38</sup> Designated channels currently include any Channel 3 service, Channel 4, Channel 5, and S4C.

- f) 'films' includes cinematographic works and films made for television, but excludes series, serials and documentaries<sup>39</sup>;
- g) 'self promotion' means advertising for the broadcaster's own products and services<sup>40</sup>; and
- h) 'teleshopping' means television advertising which includes direct offers to the public with a view to the supply of goods or services, including immovable property, rights and obligations, in return for payment<sup>41</sup>. ~~It includes self-promotion channels, devoted to the promotion of the broadcaster's own goods or services. Teleshopping windows are extended teleshopping features with a minimum uninterrupted duration of 15 minutes. Shorter teleshopping spots may also in appear within conventional advertising breaks.~~

## Allowances for advertising and teleshopping

4. ~~The total allowance for~~ Subject to paragraphs 5 to 8 below, time devoted to television advertising and teleshopping spots on any channel in any one hour must not exceed 12 minutes, and:

- a) on public service channels 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 an hour between ~~7am to 9am and 6pm and 11pm~~ (subject to the daily average of 7 minutes an hour);
- b) on other channels must not exceed:
  - i) an average of ~~12 minutes an hour~~ 9 minutes of television advertising for every hour of transmission across the broadcasting day ~~Within this, the maximum daily average for advertising spots is 9 minutes an hour across the broadcasting day; and~~
  - ii) an average of 3 minutes of teleshopping spots for every hour of transmission across the broadcasting day.

5. During programmes broadcast by the national Channel 3 licensee, the amount of time permitted for television advertising and teleshopping spots between 6am to 9.25am may be averaged across the week.

6. Channels exclusively comprised of teleshopping and advertising are not subject to the limits on advertising and teleshopping spots set out in paragraph 4(b) above.

7. Channels exclusively comprised of self-promotional content are not subject to the limits on advertising set out in paragraph 4(b), notwithstanding that self-promotional content is defined as television advertising in paragraph 3(a) above. On those channels comprising both self-promotional and other content, the self-promotional content will be treated as advertising, and will be subject to the limits on advertising set out in paragraph 4(b)(i).

<sup>39</sup> This definition is derived from Article 11(2) of the AVMS Directive.

<sup>40</sup> This definition is derived from Article 1(i) of the AVMS Directive.

<sup>41</sup> This definition is derived from Article 1(l) of the AVMS Directive.

8. Teleshopping windows are extended teleshopping features and must be of at least 15 minutes long uninterrupted duration:

a) on public service channels, teleshopping windows may be scheduled only between midnight and 6am; and

~~\_\_\_\_\_ b) \_\_\_\_\_ dedicated teleshopping and self-promotional channels, there are no restrictions on the amount of teleshopping, and;~~

b) on other channels, there are no limits on the number or scheduling of more than 3 hours of teleshopping windows is permitted.

9. ~~Channels licensed by Ofcom which are available only in an area served by a Restricted Service Licence or distributed under a Television Licensable Content Service licence within contiguous areas served by a single cable headend; and a locality within the United Kingdom~~ and which are not receivable outside the United Kingdom may use all or part of their teleshopping windows for local advertising features that do not include direct offers for sale, provided that a significant proportion of each feature refers specifically to the locality in which it appears.

### Transfer of minutage

10. If broadcasters have been unable to use their full allowance for television advertising and teleshopping spots for reasons of good programme presentation, or because of unforeseen technical or human errors, they may transfer the unused minutage to other parts of the schedule on the same or any other day within 7 days, provided that they comply with the rules in paragraph 4. If a proposed transfer would result in a breach of the rules in paragraph 4 ~~(b)~~ (a) or paragraph 4 ~~(e)(b)~~, the broadcaster should seek Ofcom's prior permission<sup>42</sup>. However, transfers that would result in a breach of paragraphs 4(a) more than 12 minutes of advertising and teleshopping spots in any one hour are not, in any event, permissible.

### Identification of advertising and teleshopping breaks

11. 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 as well.

### Advertising and teleshopping breaks during programmes

12. 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.

13. To avoid excessive abruptness, transition between live coverage of Parliamentary proceedings and advertising should take place where natural breaks occur via a programme presenter in sound or vision. Programme directors / editors must have the discretion to

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<sup>42</sup> Until 31 December 2009, Channel 4 will be allowed to continue with the present arrangements for substituting advertising minutage which would otherwise be used between schools programmes with an amount equivalent to 60% elsewhere in the schedule, subject to complying with the ~~rules in paragraph 4(a) and the peak-time restrictions in paragraph 4(ba)(ii) and the overall limit of 12 minutes of advertising and teleshopping spots in any one hour.~~

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.

14. Breaks ~~within~~ during programmes on public service channels may not exceed 3 minutes 50 seconds, of which advertisements may not exceed 3 minutes 30 seconds.

### Scheduling restrictions

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

16. Restrictions apply when inserting advertising breaks ~~within~~ during the following programmes<sup>43</sup>:

- a) films and news programmes may only include one advertising or teleshopping break for each scheduled period of at least 30 minutes;
- b) children's programmes (other than schools programmes) with a scheduled duration of 30 minutes or less may not include an advertising or teleshopping break. Such programmes with a scheduled duration of longer than 30 minutes may have one break for each scheduled period of at least 30 minutes. Breaks are not permitted within schools programmes, but may be scheduled between programmes;
- c) programmes including a religious service may not include advertising or teleshopping breaks during the service;
- d) broadcasts of a formal Royal ceremony may not include advertising or teleshopping breaks during the ceremony;
- e) broadcasts of live Parliamentary proceedings may not include advertising and teleshopping breaks in programmes of a scheduled duration of 30 minutes or less;
- f) in programmes of live events, more breaks may be taken than are indicated in Tables 1 and 2 below, provided that:
  - i) the timing of the event and its constituent parts are outside the control of the programme provider;
  - 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.
- g) live programme feeds from an overseas broadcaster 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 Television Advertising Standards Code.

17. With the exceptions described in paragraph 16 above, the number of internal breaks permitted in programmes on public service channels is set out Table 1; the number

<sup>43</sup> In the case of news programmes, and programmes for children (excluding schools programmes), this restriction will come into force on 1 December 2009. Until then, sections 3.2(i) and 3.2(iii) of RADA will apply. RADA can be found at <http://www.ofcom.org.uk/tv/ifi/codes/advertising/rules/>.

permitted in programmes on other channels is set out in Table 2. 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 – <del>59</del> <u>54</u> minutes	Two
<del>60 – 89</del> <u>55 – 65</u> minutes	Three
<del>90 – 119 minutes</del> <u>66 – 85</u> minutes	Four
<del>120 – 149 minutes</del> <u>86 – 105</u> minutes	Five
<u>106 – 125</u> minutes	<u>Six</u>

**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

## Annex 2

# Code on the scheduling of television advertising

[This version of the Code includes the revisions shown in Annex 1, and will come into effect from 1 June 2009]

## Introduction

1. This Code sets out the rules with which television broadcasters licensed by Ofcom<sup>44</sup> ('broadcasters') must comply when carrying advertising. These rules give effect to relevant provisions of the Audio Visual Media Services (AVMS) Directive and those policies determined by Ofcom following consultation. In accordance with Article 20 of the Directive, Ofcom may disapply some or all of the relevant rules to channels that are not receivable outside the United Kingdom.
2. Broadcasters must also comply with the Television Advertising Standards Code issued by the Broadcast Committee on Advertising Practice.

## Definitions

3. In this Code:
  - a) 'television advertising' means any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes by a public or private undertaking or natural person in connection with a trade, business, craft or profession in order to promote the supply of goods and services, including immovable property, rights and obligations, in return for payment<sup>45</sup>;
  - b) the 'broadcasting day' for the purposes of this Code is deemed to start at 6am and run for the following 24 hours;
  - c) 'Parliamentary proceedings' includes proceedings on the floor of either House and Parliamentary Committees;
  - d) 'public service channels' means those television services designated in accordance with section 310 of the Communications Act 2003 other than the BBC services<sup>46</sup>;
  - e) a 'formal Royal ceremony' means a formal ceremony or occasion of which the Sovereign or members of the British Royal Family enjoying the prefix 'Royal Highness' are the centre. It applies to occasions such as the State Opening of Parliament and Trooping the Colour;

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<sup>44</sup> For the purpose of this Code, this includes S4C, which is authorised by the Broadcasting Act 1990.

<sup>45</sup> This definition is derived from Article 1(i) of the AVMS Directive. In accordance with Article 18(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, sponsorship announcements and product placements.

<sup>46</sup> Designated channels currently include any Channel 3 service, Channel 4, Channel 5, and S4C.

- f) 'films' includes cinematographic works and films made for television, but excludes series, serials and documentaries<sup>47</sup>;
- g) 'self promotion' means advertising for the broadcaster's own products and services<sup>48</sup>; and
- h) 'teleshopping' means television advertising which includes direct offers to the public with a view to the supply of goods or services, including immovable property, rights and obligations, in return for payment<sup>49</sup>.

### **Allowances for advertising and teleshopping**

4. Subject to paragraphs 5 to 8 below, time devoted to television advertising and teleshopping spots on any channel in any one hour must not exceed 12 minutes, and:

- a) on public service channels must not exceed:
  - i) an average of 7 minutes per hour for every hour of transmission time across the broadcasting day; and
  - ii) subject to (i) above, an average of 8 minutes an hour between 6pm and 11pm;
- b) on other channels must not exceed:
  - iii) an average of 9 minutes of television advertising for every hour of transmission across the broadcasting day; and
  - iv) an average of 3 minutes of teleshopping spots for every hour of transmission across the broadcasting day.

5. During programmes broadcast by the national Channel 3 licensee, the amount of time permitted for television advertising and teleshopping spots between 6am to 9.25am may be averaged across the week.

6. Channels exclusively comprised of teleshopping and advertising are not subject to the limits on advertising and teleshopping spots set out in paragraph 4(b) above.

7. Channels exclusively comprised of self-promotional content are not subject to the limits on advertising set out in paragraph 4(b), notwithstanding that self-promotional content is defined as television advertising in paragraph 3(a) above. On those channels comprising both self-promotional and other content, the self-promotional content will be treated as advertising, and will be subject to the limits on advertising set out in paragraph 4(b)(i).

8. Teleshopping windows must be at least 15 minutes long:

- a) on public service channels, teleshopping windows may be scheduled only between midnight and 6am; and
- b) on other channels, there are no limits on the number or scheduling of teleshopping windows.

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<sup>47</sup> This definition is derived from Article 11(2) of the AVMS Directive.

<sup>48</sup> This definition is derived from Article 1(i) of the AVMS Directive.

<sup>49</sup> This definition is derived from Article 1(l) of the AVMS Directive.

9. Channels licensed by Ofcom which are available only in a locality within the United Kingdom and which are not receivable outside the United Kingdom may use all or part of their teleshopping windows for local advertising features that do not include direct offers for sale, provided that a significant proportion of each feature refers specifically to the locality in which it appears.

### **Transfer of minutage**

10. If broadcasters have been unable to use their full allowance for television advertising and teleshopping spots for reasons of good programme presentation, or because of unforeseen technical or human errors, they may transfer the unused minutage to other parts of the schedule on the same or any other day within 7 days, provided that they comply with the rules in paragraph 4. If a proposed transfer would result in a breach of the rules in paragraph 4 (a) or paragraph 4(b), the broadcaster should seek Ofcom's prior permission<sup>50</sup>. Transfers that would result in more than 12 minutes of advertising and teleshopping spots in any one hour are not permissible.

### **Identification of advertising and teleshopping breaks**

11. 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 as well.

### **Advertising and teleshopping breaks during programmes**

12. 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.

13. To avoid excessive abruptness, transition between live coverage of Parliamentary proceedings and advertising should take place where natural breaks occur via a programme presenter in sound or vision. Programme directors / editors must have the discretion to reschedule or cancel breaks to avoid artificial interruptions in live proceedings. Breaks should be dropped altogether where this would be incompatible with editorial responsibility, for example in coverage of matters of great gravity or emotional sensitivity.

14. Breaks during programmes on public service channels may not exceed 3 minutes 50 seconds, of which advertisements may not exceed 3 minutes 30 seconds.

### **Scheduling restrictions**

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

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<sup>50</sup> Until 31 December 2009, Channel 4 will be allowed to continue with the present arrangements for substituting advertising minutage which would otherwise be used between schools programmes with an amount equivalent to 60% elsewhere in the schedule, subject to complying with the peak-time restrictions in paragraph 4(a)(ii) and the overall limit of 12 minutes of advertising and teleshopping spots in any one hour.

16. Restrictions apply when inserting advertising breaks during the following programmes<sup>51</sup>:

- a) films and news programmes may only include one advertising or teleshopping break for each scheduled period of at least 30 minutes;
- b) children’s programmes (other than schools programmes) with a scheduled duration of 30 minutes or less may not include an advertising or teleshopping break. Such programmes with a scheduled duration of longer than 30 minutes may have one break for each scheduled period of at least 30 minutes. Breaks are not permitted within schools programmes, but may be scheduled between programmes;
- c) programmes including a religious service may not include advertising or teleshopping breaks during the service;
- d) broadcasts of a formal Royal ceremony may not include advertising or teleshopping breaks during the ceremony;
- e) broadcasts of live Parliamentary proceedings may not include advertising and teleshopping breaks in programmes of a scheduled duration of 30 minutes or less;
- f) in programmes of live events, more breaks may be taken than are indicated in Tables 1 and 2 below, 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.
- g) live programme feeds from an overseas broadcaster 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 Television Advertising Standards Code.

17. With the exceptions described in paragraph 16 above, the number of internal breaks permitted in programmes on public service channels is set out Table 1; the number permitted in programmes on other channels is set out in Table 2. 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

<sup>51</sup> In the case of news programmes, and programmes for children (excluding schools programmes), this restriction will come into force on 1 December 2009. Until then, sections 3.2(i) and 3.2(iii) of RADA will apply. RADA can be found at <http://www.ofcom.org.uk/tv/ifi/codes/advertising/rules/>.

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**

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

## Annex 3

# Impact assessment

## Introduction

- A3.1 The analysis presented in this document represents an Impact Assessment (“IA”), as defined in section 7 of the Communications Act 2003 (the Act).
- A3.2 IAs provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making. This is reflected in section 7 of the Act, which means that generally we have to carry out IAs where our proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in Ofcom’s activities. However, as a matter of policy Ofcom is committed to carrying out and publishing IAs in relation to the great majority of our policy decisions. Further information about our approach to IAs is set out in Ofcom guidelines<sup>52</sup>.
- A3.3 This IA is divided into six sections. Section 2 details the modelling-focused responses to the IA that accompanied the October 2008 consultation document. This includes those that commented on the overall approach we adopted as well as more detailed comments about the modelling assumptions.
- A3.4 Section 3 details the options we presented in the October 2008 consultation for regulating the overall advertising minutage and peak time minutage, and summarises key comments from stakeholders directly related to these options. It also presents an alternative option for regulating overall advertising minutage put forward by a respondent, of converging non-PSBs and PSBs at 8 minutes per hour.
- A3.5 Section 4 evaluates these options in the light of the modelling to date. This section also summarises our plans for a further review of the options for harmonising the regulation of advertising minutage for PSB and non-PSB channels, including those discussed in this impact assessment, and any further options that may be identified. As part of this review, we shall be considering whether changes to the modelling would be appropriate. We expect to consult on the review in Spring 2010.
- A3.6 Sections 5 and 6 set out our assessment of Ofcom’s proposals in relation to the rules on:
- a) the frequency and length of advertising breaks; and
  - b) the amount of teleshopping.
- A3.7 Whilst our initial modelling provides a reasonable estimate of both the scale and direction of the impact of the options, we have decided not to implement any of them for the time being, pending the outcome of a more broadly-based review to be published in Spring 2010. The main purposes of this further review will be to consider:
- a) whether the circumstances indicate the need to harmonise regulation of advertising as between PSBs and non-PSBs, and if so, over what period;

<sup>52</sup> *Better policy-making: Ofcom’s approach to Impact Assessments.*  
[http://www.ofcom.org.uk/consult/policy\\_making/guidelines.pdf](http://www.ofcom.org.uk/consult/policy_making/guidelines.pdf)

- b) what options there are for harmonising advertising regulation, and whether there would be advantage in phasing the process over time, to allow broadcasters, viewers and advertisers time to adjust; and
- c) whether or not the Airtime Sales Rules<sup>53</sup> (which require the PSB channels to sell all their advertising minutage) should be modified, retained or scrapped.

A3.8 As part of that review, we shall look at whether further changes should be made to the modelling to take account of issues such as phasing, and of the inter-relationships between the options discussed in this IA, and others that might arise from changes to the Airtime Sales Rules. In addition, we shall consider whether the IA can be enhanced in other ways, including taking account of those suggestions made by consultees which we consider may have merit. In the meantime, where the IA provides a quantitative assessment of the options, we have presented it at the aggregate level, in order to provide an indication of the scale and direction of the impact the different proposals could have. Where this has not been possible, we have provided a qualitative assessment of the likely scope and magnitude of the impact of our proposals.

### **The citizen-consumer interest & regulatory objectives**

A3.9 As set out in the October 2008 consultation document, Ofcom considers that, as regards television advertising regulation, the interests of citizens and consumers concern:

- a) the availability of a wide range of television services that, taken as a whole, are both of high quality and calculated to appeal to a variety of tastes and interests;
- b) the maintenance of a sufficient plurality of providers of different television services;
- c) the fulfilment of the purposes of public service television broadcasting;
- d) such other matters as appear, having regard to the opinions expressed by consumers, important to them.

A3.10 In respect of (d) we are aware, both from issues raised by individual viewers, and by research that we have commissioned, that viewers are concerned both with the amount of advertising and the frequency of advertising breaks on television. While viewers also express opinions from time to time about the content of individual advertisements, these issues lie outside the current consultation, which deals only with issues related to the rules on the amount and distribution of advertising.

### **Ofcom's regulatory objectives**

A3.11 As set out in the main document, we have concluded that our first regulatory objective is that we should seek to further the interests of citizens and consumers, in particular, in relation to:

- a) the range, quality and appeal of television services available throughout the UK and in different parts of the UK and, in particular, public service channels;

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<sup>53</sup> The background to the Airtime Sales Rules is explained at [http://www.ofcom.org.uk/tv/ifi/guidance/ITV\\_airtime\\_sales/](http://www.ofcom.org.uk/tv/ifi/guidance/ITV_airtime_sales/). In brief, ITV1, Channel 4 and Five are required to sell all their advertising minutage, whereas other channels are not.

- b) the importance of securing a sufficient degree of plurality of providers of television services; and
- c) such other matters as appear, having regard to the opinions expressed by consumers, important to them.

A3.12 Further to this, Ofcom considers that any changes to current regulation should, in furthering the interests of citizens and consumers, so far as possible:

- a) be evidence-based, transparent, proportionate, consistent and limited to the measures needed to achieve the first objective;
- b) avoid the imposition or maintenance of regulation that is unnecessary; and
- c) take account of the desirability of promoting competition, and the nature and interests of different consumers, in relevant markets.

A3.13 Given these objectives, and having regard to section 7 of the Communications Act 2003, the IA focuses on the impact of different options for advertising regulation on:

- a) Viewers: e.g. whether the change is likely to adversely affect the viewer in terms of the viewing experience and the perceived quality of the programming;
- b) broadcasters, and in particular PSBs: e.g. whether the burden imposed on broadcasters by either existing or new rules is proportionate and/or the likely financial impact of any proposed change; and,
- c) other stakeholders: for instance, the impact on advertisers or media buying agencies and in the case of teleshopping, teleshopping providers, or whether there is an impact on the use of television as an advertising medium.

A3.14 We have not carried out separate Equality Impact Assessments in relation to race or gender equality or equality schemes under the Northern Ireland and Disability Equality Schemes at this stage. This is because we are not aware that the proposals being considered here would have a differential impact in relation to people of different gender or ethnicity, on viewers in Northern Ireland or on disabled viewers compared to viewers in general. Similarly we have not made a distinction between viewers in different parts of the UK or between viewers on low incomes. Again, we believe that the proposals under consideration will not have a particular effect on one group of viewers over another.

A3.15 In the IA section of the October 2008 consultation we invited input from respondents as to whether this view was appropriate. None of the responses suggested that our proposals could give rise to a differential impact on particular groups of viewers.

## **Discussion of the Modelling Approach**

A3.16 As indicated in previous IAs, we have approached the analysis of the market for television advertising as a two-sided market framework. This economic framework was set out in detail in the October 2008 consultation document<sup>54</sup>. We have continued to use this economic framework as the conceptual basis for modelling the

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<sup>54</sup> The October 2008 consultation set out our quantitative approach for analysing the regulatory options. So for a detailed description of the quantitative model, we refer the reader to Section 1 of the IA that accompanied the October 2008 consultation.

different options for changes to the RADA rules on the amount and frequency of advertising that we are assessing in this consultation.

- A3.17 In response to the October 2008 consultation, we received a number of comments from stakeholders relating to our modelling of the regulatory options. In the following section, we summarise and discuss the views submitted by respondents together with any additional modifications we have made to the model in light of these comments. Most of the comments received related to the modelling of changes to airtime minutage; very few related to the frequency of breaks or teleshopping. Therefore most of the following focuses upon the minutage options and we have not undertaken any further quantitative analysis for the proposals relating to break frequency or teleshopping.

### **Issues with the elasticity approach**

- A3.18 Within the model, it is necessary to translate the changes in impacts that arise from a relaxation in the advertising rules into changes in broadcasters' revenues. We used an economic price elasticity approach to do this, and it was this approach which attracted most of the discussion from stakeholders in their responses. This was due to the apparent inconsistencies between industry expectations that the demand for TV advertising airtime was inelastic, and the results of the PwC econometric study which indicated that the demand for TV airtime was price elastic<sup>55</sup>.
- A3.19 In that consultation, we asked respondents for their views on the elasticity approach we adopted. We also put forward a number of proposals for reconciling the industry views with the econometric study. The majority of respondents continued to dispute the conclusion, drawn from the econometrics study, that the demand for TV advertising was elastic. Respondents argued that industry observations led to the conclusion that demand is actually price inelastic i.e. demand is not very responsive to changes in the price of advertising. This would mean that a fall in the price of airtime would not encourage an offsetting increase in demand, so market NAR would fall. For instance, one respondent calculated that between 2000 and 2007, the total number of impacts increased by 27% while price actually decreased by 34% in real terms, reducing real revenue by 16%. They argued that this proved demand was inelastic.
- A3.20 As a result of this disparity between industry observations and the econometrics the IA was based upon, many respondents did not agree with the fundamental elasticity assumptions of the modelling. They argued that the IA did not adequately reflect the realities of the advertising industry and ultimately, the likely impact of the options. In particular, many claimed it was plausible that the model was underestimating the likely transfer of revenue from non-PSBs to PSBs, as well as the overall net revenue position. As a result, one non-PSB suggested the lower case scenario should be one in which industry NAR declined and the central assumption should be one in which NAR was constant.
- A3.21 Some respondents attempted to offer an explanation for the disparity in views on the price responsiveness of TV advertising. One PSB has suggested that although their experience implied that overall industry demand was inelastic, it was possible that it was price elastic at the level of individual broadcasters.

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<sup>55</sup> A full description of the initial discussion about the elasticity approach is in the October 2008 consultation.

- A3.22 Another PSB reported the work of an industry commentator who suggested that the UK TV advertising market was not suitable for traditional elasticity modelling because changes in price and volume were not causally interconnected. The reason given for this was that at any given time, the supply of impacts is virtually fixed and almost independent of demand. This was because of the must-sell criteria for PSB airtime, the fact that the advertising inventory of non-PSBs was reliant on the viewing levels of the channels, and the restrictions on the overall amount of advertising permitted.
- A3.23 A multi-channel broadcaster argued that the PwC model was flawed and as a result, had been a poor predictor of actual advertising industry output, thus distorting the elasticity estimate and the modelling figures we presented in the October 2008 IA. They suggested two reasons for this: firstly, the complex dynamics of the market have changed over time; and secondly the study was designed for a different purpose to the one it is currently used for (i.e. to predict overall industry revenue, not to predict the impact of minutage scenarios on different broadcasters). They also argued that the updated PwC model commissioned by one of the PSBs was inadequate and inaccurate, because it indicated demand had become more elastic, contradicting industry views. They argued that a new elasticity model needed to be developed.
- A3.24 Following on from this, the multi-channel broadcaster argued that our modelling approach built on the inaccuracies and shortcomings of the PwC elasticity model in that there was no estimate of the price elasticity of demand for non-PSBs, and that there was no evidence to support the price ratio we used.

### Ofcom's response

- A3.25 In relation to the arguments presented about the industry experience of changes in the supply and price of impacts over time, it is important to recognise that price is not the only factor that is changing within the TV advertising market and thus affecting demand. Our modelling relies upon the fundamental assumption that it is only the price of advertising that changes, i.e. "all other things remain equal". However, the demand function estimated by PwC related the demand for TV advertising to a range of different variables – not just price but also corporate profitability, consumer spending, viewing of the BBC and viewing of multi-channel television etc. It is highly unlikely that price will be the only factor changing at any one time in the market. It is likely that other variables would also have an impact on actual demand. This helps to explain why the simple comparison between the change in supply of impacts and price over time as well as the overall change in NAR does not capture the other factors that influence demand for TV advertising.
- A3.26 We recognise that it is possible for the elasticity of demand faced by the overall industry to be different to that faced by individual broadcasters. For example, the individual broadcasters could be "price-takers", meaning the price of advertising would effectively be set at the industry level, and therefore the demand for TV advertising of an individual broadcaster could be elastic, reflecting the competition between firms within the same market. In this scenario, any change to their individual supply of impacts would not affect the price of advertising. However, changing the advertising constraints of the industry as a whole (e.g. by reducing the advertising minutage permitted) would have an effect on the industry price, and so at the industry level the demand for TV advertising could be less elastic, or indeed inelastic. This reflects the fact that advertisers are more likely to respond to a price increase by an individual broadcaster by shifting to one of their competitors within

the industry (as they are a closer substitute) than they are likely to switch away from television advertising if the overall industry price increases.

- A3.27 However, it is useful to note that the result of this view of demand in the TV advertising market is broadly aligned with our analysis and initial modelling, whereby the overall minutage options have a relatively limited impact upon industry revenues as a whole, but result in a transfer of SOCI and revenues from non-PSBs to PSBs.
- A3.28 We have also considered the argument that the UK television advertising market is unsuitable for traditional price elasticity of demand modelling. We believe that while this point could have some merit in the short term, it is unlikely to be correct in the longer term. This is because the supply of impacts is not fixed in the longer term, meaning that changes in price and volume are likely to be causally connected. We have specifically noted that our IA assesses the longer term effect of regulatory changes, and as a result, is not necessarily inconsistent with the view reported<sup>56</sup>.
- A3.29 When the PwC model was updated by one of the respondents to the March consultation, the results indicated that the elasticity of demand for non-PSBs had reduced, but remained higher than that for the PSBs. Although we accept that the PwC study does not provide estimates of price elasticity for individual non-PSB channels, we believe that the basic results (i.e. that demand for TV advertising is price elastic and that the price elasticity for non-PSB channels is higher than for PSB channels) still hold.
- A3.30 Given that the PwC econometrics model (and the updated version) indicates that the demand for TV advertising is price elastic, we do not think it is consistent to consider a scenario in which demand is inelastic. Therefore we do not think it is appropriate to replace our current lower-case scenario with an assumption that the demand was inelastic.
- A3.31 As indicated before, we note that broadcasters do not necessarily agree with the PwC estimate of the price elasticity of demand for TV advertising in the UK market. However, the comments received have not provided us with sufficient reasoning to reconcile the two views or to dismiss the PwC estimate, nor have they suggested a realistic alternative to the PwC study. In addition, we note that the results of our analysis based on the central elasticity estimate are broadly consistent with the views expressed by many in the industry. That is, there would be little change in overall industry revenue (with the exception of the full liberalisation option). The main impact in both our and industry analysis is a transfer of revenue from non-PSBs to PSB channels.
- A3.32 In order to estimate the impact of PSB minutage changes on the non-PSBs, we factored in a constant price ratio between PSB and non-PSB prices<sup>57</sup>. In the March 2008 consultation, we recognised that while this might be a reasonable approximation across all non-PSBs in general, it would not pick up the specific details of individual channels<sup>58</sup>.

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<sup>56</sup> The point about the demand for TV advertising being less elastic in the short-run than in the long-run was something that was explicitly commented upon in the PwC study.

<sup>57</sup> This was based on the understanding that non-PSB channels often “price off” the PSB channels, so as prices for PSBs fall (as impacts increase), the price for non-PSBs also falls, using the assumption of a stable price ratio.

<sup>58</sup> Paragraph A4.154, March 2008 document.

- A3.33 In light of the general modelling comments we received from respondents and our own subsequent review, we shall be undertaking further work on the constant price ratio and the existing model as part of the further review on which we plan to consult in Spring 2010. This may improve the basis on which are able to model the effect of different regulatory options; in particular the effect that a change in the price of PSB impacts might have on the demand for (and hence ultimately the price of) non-PSB impacts, and vice versa.
- A3.34 We accept that the analysis in this IA and the IA that accompanied the October 2008 consultation represents an analysis of the market for advertising at a particular point in time and under specific assumptions. That is, we are only considering a change in volume of commercial impacts and we are not attempting to factor in changes to other determinants of the demand for TV advertising (e.g. changes to the macro-economy, possible downturn in the market for advertising). These other factors give rise to a more general uncertainty about the future direction of the TV advertising market which needs to be borne in mind when considering the impact of the different proposals.

### **Minutage optimisation - circumstances of individual broadcasters**

- A3.35 In response to the March and October 2008 consultations, several broadcasters argued that Ofcom’s minutage optimisation did not reflect the circumstances specific to individual broadcasters or how airtime management works in practice. The issues raised included:
- a) the practical constraints on increasing advertising minutage such as the existing programme lengths;
  - b) using a single price elasticity of demand rather than individual estimates for each broadcaster as it failed to take account of variations between broadcasters – particularly important given the alleged market power of ITV;
  - c) the use of annual data instead of monthly averages – the latter would more closely reflect how airtime management works in practice;
  - d) a uniform scaling factor to reduce the scale of changes in impacts in order to reflect that broadcasters would not be able to optimise their minutage to the same degree of accuracy as our model (which benefited from so called “perfect hindsight”); and
  - e) basing the analysis on clock-hours.
- A3.36 The final two issues require more explanation. One PSB suggested the use of a uniform scaling factor failed to take account of variations between broadcasters in the level of optimisation they aim for. For example, some broadcasters maximise the overall volume of commercial impacts, while others target specific demographics at particular times of the day. They therefore suggested that it would be more appropriate to vary the scaling down factor by broadcaster otherwise it risks underestimating the change in impacts for some channels and overestimating for others. However, they did not propose their own relative scaling factors.
- A3.37 A different PSB argued that the use of full clock hour data rather than half-hour slots for the analysis of peak time minutage changes caused distortions to the estimated impact of the options. They argued that many high rating programmes between 6pm and 8pm were half an hour in length. Our optimisation was based upon

impacts per minute averaged over the hour, whereas in practice, broadcasters could have one half hour programme which performs well and one that performs less well in any given hour between 6-8pm. As a result broadcasters could in fact choose to maximise the commercial potential in the higher performing half hour and reduce advertising in the lower performing half. Therefore optimising on a half hourly basis would show they could not actually put in any more advertising in particular slots between 6-8pm as they were already maximised, whereas our hourly analysis may imply more minutes should be scheduled in these slots.

- A3.38 Some respondents thought it would be more appropriate for Ofcom to take a much more detailed, ‘bottom-up’ approach in order to reflect the differing circumstances of broadcasters, including their different scheduling patterns and commercial pressures. They suggested such an approach should analyse the way each individual channel would schedule additional minutage, and how this would subsequently translate into additional impacts.

### Ofcom’s response

- A3.39 In the October 2008 consultation, we explicitly considered operational issues such as programme length to be short term issues. In the longer run we would expect these operational constraints to not necessarily restrict broadcasters to the same extent, since they could for example adjust the length of the programmes they commission to allow more advertising to be inserted. As a result, they would be better placed to take full advantage of any changes to RADA.
- A3.40 The PwC study developed a structural econometric model which generated an estimate of the price elasticity for non-PSBs as well as PSBs – albeit in aggregate terms rather than at the level of individual broadcaster. As regards the uniform scaling factor, we recognised in the October 2008 consultation that this factor is an approximation and is unlikely to be uniform across all channels<sup>59</sup>. The volume of data and analysis that would be required to estimate individual price elasticities of demand and scaling factors for each broadcaster make it an infeasible task for us to carry out, and none of the stakeholders provided any alternative estimates in their responses. On balance, we consider that using a uniform price elasticity of demand for the main PSB broadcasters and a different but uniform price elasticity for non-PSBs is a reasonable approach which also removes the need to introduce additional assumptions for individual channels.
- A3.41 We also recognise that modelling on a monthly basis rather than annually could make the results more comparable to the way scheduling decisions are actually made, and in fact there are many ways in which broadcasters can and do schedule advertising differently. This can be according to the day of the week, whether it is weekday or weekend, or the time of the year. Although this may allow for a more accurate estimation of the impact of specific regulatory change on broadcasters, it would also require a significant amount of data and specialist understanding to model to the level of granularity suggested by respondents.
- A3.42 The use of clock hours could indeed have overlooked the subtleties of how audiences fluctuate over any hour. Our optimisation approach is based on average impacts per hour. Therefore, it could mean that in reality additional minutes of

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<sup>59</sup> We have subjected this feature of the model to sensitivity testing. This involved varying the scaling factor within the range 0% to 20% to observe how this assumption permeated through the model. The outcome of these tests indicated that a 0% to 20% range typically caused the percentage change in NAR to fluctuate within a range of one percentage point.

advertising are allocated to what is actually the lower performing half hour. As a result, the impacts in the half hour where the minutes would have actually been placed would have been much lower than the hour's average, meaning our estimates could be overstated.

- A3.43 However, for several reasons, the potential overstatement of the volume response as a result of using annual and hourly data (which may not reflect broadcaster-specific variations) could be limited. Firstly, the respondent's argument appears to rely on the assumption that programme lengths will not change and therefore will act as a constraint to increasing the amount of advertising. However, the analysis in our IA is explicitly a long term view, and so we have assumed that programme lengths could be varied in the long-run to enable broadcasters to take full advantage of any minutage changes<sup>60</sup>. Therefore, although operational constraints (including programme duration) are relevant in the short to medium term, we do not believe they would prevent the re-optimisation of advertising minutage by broadcasters under new rules in the long term.
- A3.44 Secondly, the respondent modelled the impact of the regulatory options using data from a four week period and did so based on its own judgement about scheduling of advertising in each day. Clearly this alternative to our less subjective approach is able to pick up operational issues relevant to an individual broadcaster. In addition, if the broadcasters make their own scheduling decisions based upon half hourly audiences, we would expect them to be able to optimise more efficiently than our model, potentially generating more impacts than we have suggested.
- A3.45 Based on the data provided by the PSB, the half hourly issue only seems to be relevant in the 6-7pm slot<sup>61</sup> which in fact was usually the last hour to which any additional peak-time advertising minutage would be allocated in our model. This is because although there are lots of half hour programmes in the 7-8pm slot, the airtime around these already tends to be maximised. Therefore whilst we acknowledge that our modelling may overestimate the increase in the volume of commercial impacts, we believe any overstatement is likely to be small due to the very specific and limited parts of the schedule when this half hourly issue is relevant
- A3.46 Finally, half hourly programming and corresponding fluctuations in audiences between 6-8pm appear to be relevant to the other PSBs as well as the respondent. Therefore any skew in the outcome as a result of hourly analysis is likely to affect all PSBs in the same way rather than being specific to the one channel.
- A3.47 Although we recognise the variations between individual broadcasters, we are not in a position to model all broadcasters individually by looking at each broadcaster's schedule in detail and making assumptions regarding their commercial behaviour. This is because we are not directly engaged in the broadcasting or advertising industry and do not have direct experience of programming and scheduling decisions. As a result, we accept that abstracting from operational issues (such as programme lengths, targeting particular demographics, time of year etc) may cause us to overestimate changes in impacts in the short-run. However, as we are specifically modelling the long term impact, we consider that averaging over a 12 month period and scaling back the results should address some of these issues, even though we are unable to undertake a "bottom-up" approach. Therefore whilst

<sup>60</sup> Para A5.20, October 2008 consultation.

<sup>61</sup> The respondent also commented that their peak time schedule is dominated by hour long programmes; therefore any overstatement is likely to be relatively limited given that this half hour scheduling is only applicable between 6-7pm.

these issues around scheduling and the level of granularity in the raw data may warrant further consideration as part of the review to be published in Spring 2010, it may well be that the scaling factor introduced in the October 2008 IA is the most appropriate way to account for any overstatement.

### **Use of individual impacts**

A3.48 A PSB queried the use of ‘Individual’ commercial impacts in the analysis instead of ‘Adults’ as they argue that it is the ‘Adult’ demographic that tends to be sold in the market, while ‘Individuals’ are rarely sold.

#### Ofcom’s response

A3.49 We recognise that ‘Adult’ is a commonly used metric. Using ‘Adult’ impacts instead of ‘Individuals’ may be relevant if we were just considering one channel which did not broadcast children’s airtime or sell ‘Child’ impacts directly. However, the model includes all available channels, some of which will actively sell ‘Child’ impacts. As a result, we consider it appropriate to base the analysis on ‘Individuals’ rather than just ‘Adult’ impacts, so as to reflect the different audiences across all broadcasters.

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

A3.50 In the October 2008 consultation, we acknowledged the importance of recognising how changes in the amount of advertising impact upon the broadcaster-viewer side of the market. In the March and October 2008 documents, we assumed that audiences would not decline if there was an increase in the volume of advertising, and we asked for views on this assumption in relation to the options being considered. On the whole, respondents agreed that it seemed reasonable to assume that there would not be any audience ‘drop-off’ for a modest increase in advertising, but that this was much less certain under a significant increase<sup>62</sup>.

A3.51 One of the PSBs argued that audience drop-off was a real and significant risk in any increase in the amount of advertising, potentially increasing the regulatory risk of particular options. They suggested that the possibility of audience drop-off should be borne in mind for all scenarios that lead to a significant uplift in commercial impacts, including Option 2a and the peak liberalisation options. As a result, they also questioned why audience drop-off was only considered to be relevant in the modelling for the frequency of advertising breaks, but not under other options that also increase the volume of impacts.

#### Ofcom’s response

A3.52 This assumption that audience drop-off is only relevant for larger increases in advertising is the reason why audience drop-off is only specifically looked at in the analysis of break frequency options. We did not expect the other scenarios (with the exception of full liberalisation) to increase the amount of advertising to the extent that they would trigger audience drop-off. For example, those options involving changes in the rules governing peak time restrictions do not involve any increase in the overall amount of daily advertising: viewers are already accustomed to 12 minutes of advertising an hour in some peak hours; and there is already an average of 9 minutes an hour over the day on non-PSB channels. However in the case of

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<sup>62</sup> Some respondents commented that an increase in advertising minutes would “degrade” the viewing experience in some sense, but did not challenge the assumption that there would be no audience drop off.

the break frequency analysis, we are explicitly trying to assess how broadcasters would manipulate advertising breaks to reduce any existing audience drop-off effects and thus balance programming and advertising.

- A3.53 In light of the consultation responses, we continue to believe that the assumption of no additional audience drop-off is reasonable for most of the scenarios considered in the October 2008 consultation. However, we also agree that for the full liberalisation and break frequency options, the increase in advertising is likely to trigger some degree of drop-off by viewers. Therefore we restate the point that because the audience drop-off assumption was unlikely to hold for full liberalisation, ‘the results presented for this scenario in the October 2008 consultation should be regarded very much as upper estimates’<sup>63</sup>. However, this is an area that may benefit from further consideration in the Spring 2010 consultation in order to develop estimates for the impact of any new policy options which may result in a larger impact on the level of advertising.

### **CRR Review**

- A3.54 A number of respondents raised concerns that the additional impact of the Contract Rights Renewal (CRR) remedy<sup>64</sup> and the ratchet mechanism had not been included in our modelling. They commented that the CRR has the potential to multiply any benefits that accrue to ITV in the longer term because any increase in minutage will increase their share of commercial impacts (SOCi). This would then have implications for the operation of the CRR ratchet mechanism.
- A3.55 Under the CRR ratchet mechanism, the share of an advertiser’s or agency’s advertising commitments that go to ITV1 changes proportionately with changes in ITV1’s SOCi. Therefore changes in regulation which result in an increase in ITV1’s SOCi would enable it to extract a greater share of commitments from media agencies, which would generate additional longer term benefits. Therefore respondents were concerned that this has not been taken into account in the modelling or evaluation of the options.
- A3.56 Given that the CRR Review is ongoing, a number of respondents believed it was not possible or appropriate for Ofcom to weigh the ‘positive’ programme investment implications that changes in the advertising rules would bring for commercial PSBs, against other ‘negative’ implications for viewers and non-PSBs. In particular, they questioned how it is possible to identify the relative value of additional revenue for the commercial PSBs when it is still unclear how much revenue they may be receiving in the future from other regulatory changes. Therefore balancing the benefits of programme investment against any negative implications of regulatory change becomes particularly difficult.

### Ofcom’s response

- A3.57 The respondent has used the CRR ratchet to estimate the effect that a change in the supply of impacts has on revenue. This is because it links changes in SOCi to changes in NAR. However we have used an alternative method and modelled the impact on revenue using changes in the volume of impacts and the price elasticity

<sup>63</sup> Para. A5.39, p65, <http://www.ofcom.org.uk/consult/condocs/rada08/rada08.pdf>

<sup>64</sup> The Contract Rights Renewal (CRR) remedy was introduced by the Competition Commission following the merger of Carlton and Granada to protect the advertising market from the potentially significant market power of the newly-formed ITV plc. For more information, please see [http://www.adjudicator-crr.org.uk/crr\\_summary.htm](http://www.adjudicator-crr.org.uk/crr_summary.htm)

of demand for TV advertising. As a result, we do not think we need to make an additional adjustment for the impact of the CRR as the increased share of advertising commitments through the ratchet mechanism is inherent in our NAR calculation. Our approach also means that the estimated impact of the proposals on advertising revenue are not dependent upon the outcome of the CRR review and it remaining in its current form.

A3.58 The OFT consultation on CRR was published in January 2009, and the consultation period closed at the end of February. The OFT's consultation document set out a range of options for the future of CRR, and the preliminary recommendation presented was that the CRR be eased, but only if an effective means of protecting against the remaining adverse effects of the merger could be introduced. Following the end of the consultation period, the OFT will make their recommendations to the Competition Commission about the future of the CRR mechanism. We anticipate that the Competition Commission will take account of the implications for ITV1 of Ofcom's view that it may be necessary to move towards a level regulatory playing field as regards advertising regulation.

### **Changing environment**

A3.59 One respondent raised concerns about how we have taken account of the impact of changes in the broadcasting landscape on non-PSBs. They expected that the transfers in advertising spend to commercial PSB channels would be greater than we have estimated in our modelling and would have a very significant impact on non-PSBs. They argued that the non-PSB sector has already had to absorb the impact of the downturn in the UK TV advertising market, HFSS food and drink advertising restrictions, and the worsening macroeconomic situation. As a result, they commented that the revenue transfer that would occur as a result of the regulatory changes would be yet another pressure on the non-PSB sector.

### Ofcom's response

A3.60 The point of the modelling work carried out for this IA is to identify the impact on different groups of stakeholders. At the same time, we also need to balance the impact against our regulatory objectives. In terms of the downturn in the UK TV advertising market and the current economic climate, these are issues faced by all broadcasters alike, and are therefore not just relevant to non-PSBs. However, we note that with digital penetration increasing and hence the availability of non-PSB channels, in general the revenue loss suffered by non-PSBs has been proportionately smaller than that suffered by PSBs.

A3.61 In addition, some non-PSB channels derive revenue from subscription as well as advertising, and so are not completely dependent upon the latter, as is the case for the PSB channels. For the main non-PSB channel groups, subscription revenues typically account for at least 35% of their total revenue, with this figure significantly higher for certain channels. However, the conclusions detailed in the statement have taken into account the current deterioration in the advertising market in general and in TV advertising specifically.

A3.62 Finally, we note that our interim review of the HFSS advertising restrictions<sup>65</sup> indicated that the impact of the advertising restrictions on advertising revenues

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<sup>65</sup> *Changes in the nature and balance of television food advertising to children – a review of HFSS advertising restrictions*, Ofcom, December 2008  
(<http://www.ofcom.org.uk/research/tv/reports/hfssdec08/hfssdec08.pdf> )

appeared, on the whole, more limited than originally anticipated. That is, many broadcasters had been able to mitigate the losses of HFSS advertising with advertising of other products. It is therefore not clear that those particular regulatory restrictions have had a significant detrimental impact on the advertising revenues of non-PSBs.

### **Concluding comments**

- A3.63 For some of the modelling issues raised by respondents, it has either been unnecessary or infeasible to make changes to the model used in the October 2008 IA (or the assumptions underlying it) to the extent suggested by stakeholders. Whilst some of the issues raised could help refine the model, on balance we do not think they significantly affect the reliability of the broad conclusions that can be drawn from the model outputs. Therefore we continue to believe that our estimate gives a good indication of the overall scale and direction of the impact the options could have on broadcasters.
- A3.64 However, some respondents have raised interesting issues which warrant further consideration. This is particularly true in light of the potential need for harmonisation of PSB and non-PSB advertising minutage rules. As a result we intend to undertake further work to explore the assumptions used in the current modelling in order to inform our understanding of the impact that both the options presented in this IA and any new minutage proposals would have on broadcasters and viewers. We will do this in the course of the further review we are planning to publish in Spring 2010.

### **Options for advertising minutage**

- A3.65 The AVMS Directive allows Ofcom to permit up to 12 minutes of advertising (including teleshopping spots) per hour of transmission. Given these changes to the European regulatory framework, the March 2008 document set out a broad range of potential options for the regulation of overall advertising minutage.
- A3.66 In the light of responses to the March 2008 document, we consulted on a range of options for regulating both the overall amount of advertising on TV channels and peak-time minutage on PSB channels in the October 2008 consultation. The assessment of the regulatory options focused on the impact on broadcasters in terms of changes in the volume of commercial impacts and on advertising revenue. The flow through effect in terms of the impact on media buying agencies, advertisers and viewers was also discussed.

### **Overall amount of advertising on TV channels**

- A3.67 In the October 2008 consultation we identified three main options:
- a) Option 1 – the status quo;
  - b) Option 2 – levelling up; and
  - c) Option 3 – levelling down.
- A3.68 We received several comments in response to the October 2008 consultation about our modelling of the specific options, and these are detailed below.

### Advertising minutage – levelling up to 9 minutes per hour

- A3.69 One PSB carried out its own modelling to calculate the impact of levelling up on its advertising revenue. Although they accepted a benefit to PSBs, their modelling generated a significantly different estimate of the impact than we had presented, and they suggested that the Ofcom model had overstated the increase in commercial impacts among PSBs. In particular, they noted that under option 2a (raising daily average to 9 minutes) their modelling showed ITV1 gaining a greater increase in volume of impacts than C4 – the opposite result to our modelling.
- A3.70 A multi-channel broadcaster, however, suggested that our assessment of the impact of levelling up was conservative. It claimed that, while it was difficult to assess due to the potential for audience drop-off, the transfer in revenue to PSBs was likely to be the largest under levelling up. It considered that we had underestimated the scale of the effect in our modelling. This is because they felt that the margin of error in the estimated impact (caused by the modelling assumptions and limitations) was most significant under full levelling up, thus causing the biggest distortion to the results.

#### *Ofcom's response*

- A3.71 The differences in the results from the modelling stem from the different assumptions used. We based our modelling on the assumptions we deemed to be reasonable, and requested views from stakeholders on them. Whilst the scale of the benefits vary, on the whole they are in the same direction and lead to similar conclusions to those put forward by respondents. Therefore although there may be differences in our modelling approach due to the assumptions we have used, they do not appear to distort the broad direction of the impact to a significant degree in comparison to the different modelling carried out by a respondent.
- A3.72 In the October 2008 consultation document we accepted that the margin of error in our modelling could potentially be significant under the full levelling up scenario. This is because we would expect this option to result in a significant increase in the amount of advertising airtime, which in turn raises questions about our assumption that there would be no audience drop-off. However, no respondent suggested an alternative approach. On balance, we continue to recognise that there might be some change in audience size<sup>66</sup>, and as such, although the broad scale and direction of the impact on broadcasters is reasonable, our modelling represents an upper estimate of the effects.

### Advertising minutage – levelling down to 7 minutes per hour

- A3.73 Some respondents suggested the benefits of this option had been understated in our analysis, but very few have provided their own estimates. However, the 'benefit' most respondents referred to was the price support that would result from this policy option, effectively protecting broadcasters' advertising revenues.
- A3.74 One respondent was strongly in favour of this option. It argued that it would reduce the supply of commercial impacts and help to put a floor under the price of airtime at a time when expectations are that prices will continue to fall as demand continues to weaken and the supply of impacts increases (with migration to digital). They believed it would be beneficial for TV broadcasters as a whole due to the effect on the overall price of airtime, but recognised that it would be more beneficial

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<sup>66</sup> Para A5.94, P75, <http://www.ofcom.org.uk/consult/condocs/rada08/rada08.pdf>

for the PSB channels. However, they believed this was consistent with our first regulatory objective to preserve the quality of PSB programming, particularly in light of the PSB Review.

### *Ofcom's response*

- A3.75 The benefits this respondent referred to result from the increase in the price of television advertising due to the reduction in the volume of commercial impacts. However, we have concerns about whether Ofcom, in its role as a competition authority, could justify a policy that could lead to an increase in the price paid by advertisers<sup>67</sup>. We would need to consider carefully whether the benefits (including those for viewers) significantly outweighed the costs.
- A3.76 The respondent's argument that the non-PSBs could in fact experience a positive effect on their advertising revenue is reliant upon the demand for advertising being inelastic. However, as discussed above, Ofcom's econometric analysis does not support this view, and we would anticipate that the reduction in volume would result in a reduction in revenue.

### Potential new option – converge PSB and non-PSB minutage at 8 minutes per hour

- A3.77 One respondent suggested an alternative option for regulating overall advertising minutage, whereby PSB and non-PSB minutage is converged at 8 minutes per hour. Our initial assessment suggests that:
- a) the effects on PSB and non-PSB advertising revenues would be broadly similar to the effects of the options discussed above; that is, PSB channels would increase their SOCI, and hence their advertising revenue, while the reverse would be true of non-PSB channels;
  - b) in the case of the significant number of non-PSB channels currently unable to sell all of their advertising minutage, the 'loss' of surplus minutage would not necessarily result in an actual loss of revenue for all channels;
  - c) if peak-time restrictions on PSB channels remained, all non-PSB channels would be able to mitigate the effects to some degree. This is because, unlike PSB channels, non-PSB channels are not constrained by peak-time advertising limits, and thus have the flexibility to concentrate their advertising minutage during the times when they can earn most advertising revenue, and cut advertising time from those parts of the day which generate comparatively little revenue;
  - d) advertisers would benefit from the availability of more advertising minutage on the more popular channels; and
  - e) viewers would benefit to the extent that PSB channels gained revenue, since PSB channels are responsible for the bulk of original production, and they attract significantly more viewers than other channels. However, viewers could also expect to see more advertising in off-peak periods, provided peak-time restrictions remained, or more in peak periods if they did not<sup>68</sup>.

<sup>67</sup> This would be the opposite effect to that described in Figure 4 of the October 2008 consultation document.

<sup>68</sup> If peak-time restrictions were removed, then viewers would see more advertising in peak-time on PSB channels, regardless of whether PSB channels were permitted more minutage, as they would be incentivised to move it from off-peak periods to more profitable peak-time periods.

A3.78 We see merit in carrying out a more detailed assessment of this option, and propose to do so in the context of the further review planned for publication in Spring 2010.

### **Options for regulating peak-time minutage on PSB channels**

A3.79 In addition to their daily minutage restrictions, PSBs must currently limit their advertising to an average of 8 minutes an hour during the morning and evening peak-time periods (7am to 9am, and 6pm to 11pm respectively)<sup>69</sup>. In other words, PSBs can only show up to 16 minutes of advertising per day in morning peak, and 40 minutes of advertising per day in evening peak.

A3.80 We identified the following main options:

- a) Option 4 – the status quo i.e. no change to the current peak time restrictions;
- b) Option 5 – relaxing peak-time restrictions; and
- c) Option 6 - weekly averaging of peak-time restrictions.

A3.81 We received several comments in response to the October 2008 consultation about our modelling of the peak time options, and these are detailed below.

A3.82 Some respondents agreed with our assessment that all of the possible changes for the regulation of peak time minutage on PSB channels would result in a revenue transfer from non-PSBs to PSB channels. They also supported our reasoning for this – there would be a shift in minutage to the highest rating PSB programmes, which in turn increases total commercial impacts and therefore results in a transfer of revenue from non-PSBs to PSBs.

A3.83 One respondent claimed that this transfer of revenue would be greatest for the weekly peak time averaging option because PSBs and non-PSBs have significantly different viewing patterns. They argued that non-PSB viewing figures showed a fairly constant level across the day, but PSBs tended to see viewing spikes at certain times of the day and at certain times of the week, potentially making weekly averaging across the peak hours very beneficial.

A3.84 These responses are in line with our analysis of the peak time restrictions, and so are already included in our evaluation of the options and resulting conclusions. However, some stakeholders did not agree with our analysis, and these responses are detailed below.

A3.85 One PSB was concerned that Ofcom had overstated the benefits of weekly peak time averaging to PSBs in terms of SOCI and advertising revenues. They predicted a more modest impact on overall PSB revenues as they thought it would only have a significant impact on particular programming decisions rather than across the schedule as a whole. Therefore they would expect it to have a very limited effect on the total number of impacts, meaning market revenues would be relatively unchanged and there would be only a marginal impact on PSB revenues. As a

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<sup>69</sup> Note that our modelling of these options has been based on the existing rules regarding the definition of peak time i.e. both a morning and an evening peak. However, we might expect the impact of regulatory change to the morning peak period estimated by the initial modelling to very much represent the upper limit for GMTV due to the existing arrangements they already have in terms of averaging their advertising minutage across the week (as detailed in paragraph 3.48 of the October 2008 consultation)

result, they expected weekly peak time averaging to marginally benefit all PSBs, with a marginal negative impact on non-PSBs and no viewer detriment.

- A3.86 The limited impact of weekly peak time averaging estimated by this PSB is due to the different assumptions used in the modelling. However, it is worth noting that no other respondents share the view of this PSB. We would expect this option to have a more significant effect on the total number of impacts than has been suggested by the respondent. This is because more advertising will be shown at those times when audience numbers are highest during peak hours, increasing the total volume of impacts. As a result, it seems unrealistic to assume that peak time averaging would have such a limited effect on the total number of impacts, benefiting all PSBs with an insignificant impact on non-PSBs. Therefore we have not made any modifications to our modelling on the basis of these comments.
- A3.87 A different PSB noted the relevance of long term broadcaster behaviour and the dynamic effects a change in the rules for peak time minutage would have on this. They argued that a minutage change could result in scheduling modifications by broadcasters in order to exploit the new rules, which could in turn mean the actual impact of the regulatory changes would be much higher in the long run. In particular, the respondent was concerned that the benefits of the weekly averaging option would be especially great for those PSBs who already have a strong position in key peak time programming. This is because scheduling investment levels could change, with investment being moved from less successful days to more successful days. Therefore those broadcasters who do not already have a strong position to build on would not be able to benefit to the same degree from changes in the peak time allowance relative to particular PSBs due to their existing programming. The PSB also argued that even significant investment in programming would not put them on a similar level, and that this uneven distribution of benefits between broadcasters could have major implications for the content acquisitions market.
- A3.88 As mentioned earlier, our modelling recognised the ability of broadcasters to alter programme lengths in the long term to maximise advertising revenue according to the regulatory change. As a consequence, the results from the model are based upon broadcasters fully optimising to the new rules, and the above response tends to lend weight to our approach. However, there are a number of other dynamic factors that will affect the impact of regulatory change on broadcasters. These include the quality of programming (both existing and new), and the effect this has on the ability of broadcasters to benefit from changes in peak time minutage rules by re-optimising their schedules. However, we are unable to include these factors in our model as we are not able to anticipate the interaction of commercial decisions made by broadcasters.
- A3.89 One PSB respondent did submit their own detailed modelling of the impact of the peak time restrictions. The comments they presented alongside this are summarised below.

#### *Relaxing peak time minutage restrictions*

- A3.90 The modelling carried out by one PSB suggested that not only had we overstated the impact of relaxing the peak time restrictions on PSBs, but that we had also underestimated the impact of the changes on its position relative to the other main PSBs. We have looked at the outputs from the modelling submitted by the respondent and compared them with our own results to determine the extent of any differences.

- A3.91 In terms of the absolute number of impacts, the respondent argued that we had overstated the increase in impacts for three PSBs by between one and three percentage points. However, in terms of broadcasters' shares of commercial impacts, the new shares generated by our model are almost identical to those provided by the respondent, where any variation is less than half a percentage point.
- A3.92 The difference in the absolute number of impacts is likely to be due to the different data used (the PSB has used an average across four weeks whereas we have used a full year's average) as well as the different modelling approaches we have adopted. We believe that our use of an annual average smoothes out any unusual scheduling or particular programming which may skew the results to generate a more reliable long term estimate of the impact the proposals could have on broadcasters. Therefore we do not think it is necessary to limit our modelling to specific sample week. However as mentioned previously, we will be undertaking further work to determine whether it is possible and practicable to refine our model and the underlying assumptions, and this will form part of our review to be published in Spring 2010.

#### *Weekly averaging of peak time minutage*

- A3.93 The same PSB respondent modelled the impact of the flexi-peak option and the estimated increase in impacts was significantly lower for the PSBs than we had predicted. However, the estimated SOCs under this option were again broadly aligned with our results, with the largest variation being an overstatement by us for one PSB of slightly over one percentage point.
- A3.94 This difference in modelling outcomes is likely to be partially due to the different data that was used (an average number of impacts across four weeks as opposed to the annual average we used), as well as the different modelling approaches. In particular, after further discussions with the respondent, we established that they had used a much more detailed, subjective modelling approach by analysing the schedules modelled on a daily basis with their schedulers to determine where they would place any additional minutage and where they could remove it. Any movement in minutage was only carried out if there was significant justification rather than as part of an automatic process. Additionally, this was carried out within the existing scheduling constraints e.g. within existing programme lengths.
- A3.95 We explicitly noted in the IA that accompanied the October 2008 consultation that we were assessing the long term impact of the regulatory changes and therefore our modelling would 'focus on the long-run elasticity of demand rather than the short run'<sup>70</sup>. This may explain the lower results in the modelling by the respondent as they will not be able to optimise to the extent that we have assumed if they are working within existing constraints of programme length.
- A3.96 We reiterate the argument presented in the consultation document that we would not expect operational constraints such as programme lengths and existing schedules to limit the long run ability of broadcasters to take full advantage of any changes to regulation e.g. by adjusting the length of programmes. Therefore our results may be more representative of the longer term impact when the constraints are unlikely to be relevant.

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<sup>70</sup> Paragraph A5.294, October 2008 consultation.

A3.97 The detailed judgement-based approach used by the respondent is something we cannot replicate on a broadcaster by broadcaster basis across a year due to the experience of scheduling decisions it would require as well as the vast amount of data and time that would be needed. Given that we do not expect operational constraints to continue to be relevant in the longer term, we do not believe that the higher level optimisation approach significantly affects the broad conclusions that can be drawn in terms of the scale and direction of the impact that the minutage options could have.

## Final Comments

A3.98 Whilst we recognise that some of the comments we have received raise interesting issues in relation to our modelling approach, we do not believe any significantly weaken the reliability of our estimates of the scale and direction of impact the minutage options could have. Therefore we continue to believe that the estimated impact of regulatory change on broadcasters in terms of the overall scale of impact and the transfer of revenue effect from non-PSBs to PSBs is reliable. However, some of these issues may warrant further consideration to improve the granularity of the analysis in order to inform the policy proposals as part of the further review in spring 2010.

A3.99 The next section details our assessment of these regulatory options. We look first at how the status quo affects broadcasters, viewers and advertisers. We then consider how the different options would affect the share of commercial impacts for different channels types. The section then examines how this would affect net advertising revenues and considers the impact of alternatives to the status quo on stakeholders – broadcasters, viewers and advertisers.

## Evaluation of Minutage Options

A3.100 In the following assessment, the 'status quo' provides the reference point for assessing the extent of change. The modelling procedure is as detailed in the IA in the October 2008 document.

A3.101 It is important to note that our modelling assumes that everything else beyond the supply of impacts and change in price that results from the change in regulation remains constant. However, we recognise that the TV advertising market is currently experiencing a significant downturn, and this is an important context in which to place the results of our modelling, particularly given that the data used for the model was from 2007. Since then, revenues have fallen 10-20%. We are in a recession, the TV advertising market has been declining very steeply, and, as a result, its short term and medium term behaviour – even under status quo regulation – is particularly hard to predict.

A3.102 In addition, we have considered the overall comments made to us by respondents. For the reasons we have set out in the last section, we believe that our modelling of the effect of regulatory changes on the level of commercial impacts, and hence the share of commercial impacts delivered by different broadcaster groups represents a reasonable estimate of the overall scale and direction of the impact that such changes would have in the market, and that it offers an effective comparison of the relative effect of alternative options.

A3.103 By contrast, although we believe that the quantification of the impact on revenues generated by our modelling is broadly in the right direction and order of magnitude (i.e., the options will indeed cause a transfer of revenue from non-PSBs to PSBs),

we believe that we do not yet have a sufficiently sophisticated tool with the necessary granularity to distinguish clearly between the effects of different policy options. This is particularly true given that the impacts the different options have on revenue are broadly similar. Uncertainty also arises due to the assumptions we have had to make in the modelling, for example in relation to using a stable price ratio as a proxy for the cross price elasticity of demand between different broadcaster types.

- A3.104 Furthermore, we may want to consider alternative policy options to those we consulted on in October 2008 in order to move towards convergence of PSB and non-PSB advertising rules – for example, phasing a rule change over time, or the converging at 8 minutes per hour for PSBs and non-PSBs suggested by ISBA.
- A3.105 As a result we intend to undertake further work to explore the assumptions used in the modelling and the impact that convergence of advertising minutage would have on broadcasters and viewers, in order to better inform our policy making. We will do this in the course of the further review we are planning to publish in Spring 2010. Therefore we have presented the estimated impact on broadcasters of the different minutage options at an aggregated level for the purposes of this IA as we believe the scale and direction of travel of these estimates are reasonable. Further refinement of the model will be carried out as part of the spring 2010 review.

## **Evaluation of potential changes in overall advertising minutage**

### Option 1 – status quo

- A3.106 The status quo proposal was to retain the existing rules whereby PSBs are permitted a daily average of 7 minutes an hour of advertising whereas non-PSBs are permitted 9 minutes. Each may use up to 12 minutes in any one hour but PSBs are subject to additional restrictions in that they are not allowed more than an average of 8 minutes of advertising per hour in peak hours.

#### *Impact on broadcasters*

- A3.107 We do not expect this proposal to have any particular impact on broadcasters. The current system has been in place since 2000: it is therefore well understood and broadcasters currently optimise their inventory against these constraints. However, the differential treatment of PSBs and non-PSBs in terms of the advertising minutage rules could have significant implications in the longer term for the PSB channels which are subject to tighter advertising rules.
- A3.108 In response to the October 2008 document, the majority of broadcasters indicated on balance that they would prefer the status quo because they were concerned that, under alternative proposals, their advertising revenues would at best remain static. Broadcasters also expressed concern that advertisers could be put off by an increase in on-screen “clutter” i.e. there was a risk that an increase in the amount of advertising minutage would reduce the effectiveness of television as an advertising medium.

#### *Impact on advertisers*

- A3.109 In response to the March 2008 document (as reported in the October 2008 consultation), the main view expressed by advertisers in response to the status quo was that any changes to the current system could result in a devaluation of the effectiveness of television as an advertising medium. Therefore advertisers

indicated that, on balance, they preferred the status quo for the time being. This has not altered in responses to the October 2008 consultation, although ISBA has suggested that, in due course, there would be good reasons for removing the differences between the way PSBs and non-PSBs are regulated.

*Impact on viewers*

- A3.110 Our initial assessment suggests that in the short term the status quo would mean little or no change for viewers. In fact, responses to the October 2008 consultation and deliberative research indicated that viewers would prefer this option. Given that broadcasters aim to optimise the delivery of audiences against their schedule, it would be unlikely that broadcasters would change their current advertising patterns significantly if there were no change in the existing rules as we would expect them to already be at their optimal level. Of course, there could be changes to advertising patterns in response to changing audience demographics, but such changes tend to be gradual.
- A3.111 However, the existence of more restrictive advertising rules applying to PSB channels imposes a cost on those PSBs. It is already clear from the analysis undertaken by Ofcom as part of the PSB review<sup>71</sup> that the costs of PSB status will shortly outweigh the benefits for some PSB channels. If the existence of more restrictive advertising rules were to be a factor contributing to some PSBs' decision to relinquish PSB status this would clearly have a very significant impact on viewers.
- A3.112 For the other options – for both the overall volume of advertising minutage and changes to peak time restrictions – we start by considering the impact on the volume of commercial impacts delivered before going on to consider the potential impact on advertising revenues.

Option 2 – levelling up

A3.113 Two variants were considered under this option, namely:

- a) raising the daily average for PSBs from 7 minutes to 9 minutes an hour (whilst holding non-PSBs at the present 9 minute average). Under this scenario, the peak time minutage limits for PSBs were held at 8 minutes per hour; and
- b) full liberalisation for all channels to 12 minutes an hour.

*Impact on broadcasters*

A3.114 We noted in our October 2008 consultation that none of our UK -focused stakeholders expressed any support for the full liberalisation option, although there was some support from broadcasters based in the UK who target other countries.

**Table 1: Estimated impact of levelling-up on the delivery of commercial impacts**

Option 2	a) Raising the PSB daily average to 9 minutes		b) Full liberalisation to 12 minutes		
	Current SOCI	New SOCI	% change in impacts	New SOCI	% change in impacts

<sup>71</sup> [http://www.ofcom.org.uk/consult/condocs/psb2\\_phase2/psb2\\_phase2.pdf](http://www.ofcom.org.uk/consult/condocs/psb2_phase2/psb2_phase2.pdf)

<b>Total PSB channels</b>	56.4%	58.7%	9.9%	62.0%	35.9%
<b>Total PSB groups</b>	70.6%	72.1%	7.9%	74.3%	30.2%
<b>Other non-PSBs</b>	29.4%	27.9%	0.0%	25.7%	7.7%
<b>Total Market</b>			5.6%		23.6%

- A3.115 In scenario (a), there is no change in the minutage rules applying to the non-PSB channels, therefore the clear beneficiaries would be the PSBs. However, there are differences in the extent to which different PSBs might benefit from this type of change.
- A3.116 Firstly, it is important to recognise that any scenario which relaxes the overall daily minutage, whilst maintaining the current peak-time restrictions, only affects the amount of advertising that can be shown off-peak. With this in mind, we note that ITV1's audiences are heavily concentrated in evening peak: we estimate that only 34% of its current impact delivery takes place in off-peak hours although they account for 76% of its broadcast day<sup>72</sup>. In contrast, Channel 4's pattern of impact delivery is more evenly distributed between peak and off-peak, with around 50% of its impacts generated outside evening peak. Five sits between Channel 4 and ITV1. This means that this option has a differential impact as between the PSB channels.
- A3.117 Given that there is no change in the rules applying to non-PSB channels, the effect of scenario (a) is to increase the PSBs' SOCI at the expense of the non-PSB channels. However, because non-PSB channels do not benefit under this option, there is an offsetting effect on the sales houses of the PSBs in that their respective portfolios of digital channels would be adversely affected. Although the main PSB channels would stand to increase their SOCI under these changes, there would be a reduction in SOCI for their non-PSB portfolio channels – reducing the overall impact on their respective sales houses. We estimate that the net effect of this option would be that, collectively, the 'other non-PSBs'<sup>73</sup> would lose around 1.5 percentage points in SOCI to the PSBs and their portfolios of channels.
- A3.118 Scenario (b) – full liberalisation – has the potential to result in a significant increase in the number of commercial impacts for many channels – more so than levelling up to nine minutes. For PSBs especially, this option could represent a significant increase in the amount of minutage that can be dedicated to advertising, which could result in an increase in the volume of impacts in the region of 36% for all the PSBs (more for S4C). However, as set out in the October 2008 document, we recognise that such a significant increase in the amount of advertising airtime does call into question our modelling assumption that there would be no change in audience size. This is therefore very much an upper estimate of the change in impact delivery.
- A3.119 As noted in the October 2008 consultation, we considered using a sensitivity analysis to examine the impact of this change on audience size but there does not appear to be any relevant research in this area which might enable us to develop a reasonable range of sensitivities to consider. We requested input from respondents to the October 2008 consultation on this issue but none addressed this specific point in any detail.

<sup>72</sup> Note that ITV typically only broadcasts for approximately 20.5 hours a day, with GMTV accounting for the remainder.

<sup>73</sup> By the term 'other non-PSBs', we mean all non-PSBs except for the PSB spin-off channels owned by ITV, Channel 4 and Five.

- A3.120 Even though non-PSBs also benefit from a relaxation of the rules under this scenario, the modelling indicates that any increase in impacts would be dwarfed by the increase in impacts accruing to PSB channels. Overall we estimate that the non-PSB digital channels would experience a reduction in their SOCI of around 3.7 percentage points.
- A3.121 The overall percentage increase in the volume of impacts for “Other non-PSB channels” may seem particularly low compared to the increases projected for PSB broadcasters. However, this is because our data indicates that a large number of these channels do not currently use all their permitted airtime i.e. they appear to have unsold inventory. As set out in the March 2008 document, we have assumed that these channels would not be able to take advantage of increases in minutage.

### Option 3 – levelling down to 7 minutes per hour

#### *Impact on broadcasters*

- A3.122 Under this option, the non-PSB daily average has been harmonised downwards to the current PSB daily average of 7 minutes per hour, but the PSB peak-time minutage restriction has not been applied to non-PSBs.

**Table 2: Estimated impact of levelling-down on the delivery of commercial impacts**

Option 3	7 minutes per hour daily average for non-PSBs		
	Current SOCI	New SOCI	% change in impacts
<b>Total PSB channels</b>	56.4%	58.1%	0.0%
<b>Total PSB groups</b>	70.6%	71.8%	-1.3%
<b>Other non-PSBs</b>	29.4%	28.2%	-6.9%
<b>Total Market</b>			-2.9%

- A3.123 Under this option, the rules governing PSBs do not change. This means that our modelling approach assumes that their overall impact delivery is also unaffected. For non-PSBs however, a tightening of the rules to 7 minutes an hour – combined with an assumption of no change in audiences – results in a reduction in the amount of impacts that can be generated. In particular, our modelling indicates that a 22% reduction in minutage (as is implied by this option) could lead to a fall in the volume of impacts in the region of 7% for non-PSBs.
- A3.124 In terms of SOCI, the effect of tightening the daily minutage restrictions for non-PSBs is then similar to relaxing the daily minutage for PSBs (see above); i.e. the “Other non-PSBs” would lose just over 1 percentage point in SOCI to the PSBs and their portfolios.

### **Impact on net advertising revenue of broadcasters and on other stakeholders**

- A3.125 As stated in Section 2, we have continued to focus on the price elasticity approach to estimate the effect on advertising revenue. Whilst we recognise that the disparity between the econometric study results and industry observations still remains, we have been unable to reconcile the two positions in light of responses. We continue to use the elasticity of demand estimate from the PwC study for the reasons detailed above. However, as before we have tried to take account of stakeholders’

responses by indicating the results for an upper and lower elasticity around the central case.

A3.126 As noted in the October 2008 IA, we have exercised considerable caution in applying this methodology to options which generate particularly large changes in volume of commercial impacts. Additionally, the overall impact on broadcasters of any changes will be affected by other factors that influence the overall demand for TV advertising market e.g. the macro-economy and the impact on corporate profitability. Our modelling focuses only on the effect a change in the supply of advertising minutage as a result of regulation has on its price and consequently, the advertising revenue of broadcasters. Therefore against a backdrop of some uncertainty about the TV advertising market, we would reiterate that our results are estimated within a ‘ceteris paribus’ (all things being equal) scenario and so do not reflect any other influences on the market for TV advertising.

A3.127 For reasons of commercial confidentiality, the tables below show the aggregate results for the effect on net advertising revenue rather than results for individual channels.

### Option 2 – levelling up

A3.128 Although we looked at changes in the volume of impacts for two variants of this option, given the increase in the volume of impacts, we reiterate our concerns that our estimates of price elasticity would not be valid in the case of the full liberalisation option. As indicated in the October 2008 consultation, we consider that our estimates of the price elasticity of demand would be valid for increases in the volume of impacts of up to 10-15%. As a result, we do not feel that we can reliably quantify the effect of the full liberalisation to 12 minutes option on broadcasters’ revenues. However, we refer the reader to our estimates of the changes in the volume of impacts implied by this option (see above, and also the related caveats) in order to get some sense of the scale of this option.

#### *Impact on broadcasters*

A3.129 In the following table we present our revised estimates of how a relaxation in the PSB daily average from 7 to 9 minutes would be likely to affect broadcasters’ revenues.

**Table 4: Estimated impact of levelling-up on net advertising revenues<sup>74</sup>**

Option 2	a) Raising the PSB daily average to 9 minutes					
	Change in NAR (£m)			Percentage change in NAR		
PSB price elasticity	1.00	<b>1.44</b>	2.00	1.00	<b>1.44</b>	2.00
<b>Total PSBs channels</b>	0	<b>69</b>	114	0.0%	<b>2.9%</b>	4.8%
<b>Total PSB groups</b>	-35	<b>44</b>	96	-1.3%	<b>1.6%</b>	3.5%
<b>Total other non-PSBs</b>	-65	<b>-46</b>	-34	-9.0%	<b>-6.4%</b>	-4.7%

A3.130 If we apply the central elasticity estimate, our modelling indicates that PSBs could increase their NAR by approximately £70m, or around 3% of current PSB NAR.

<sup>74</sup> As mentioned above, all the revenue estimates are based on data for 2007.

- A3.131 However, when we consider the PSB sales houses as a whole, we estimate that the net increase in NAR for PSBs is in the region of £44m (assuming the central elasticity scenario). This is because we have assumed in our modelling that the increase in PSB commercial impacts drives down the prices that both PSB channels and non-PSB channels (including the digital spin-off channels of PSB broadcasters) can command for television advertising. This assumes a stable price ratio. Because non-PSBs do not benefit from any increase in minutage the modelling implies that they suffer a loss in revenue. On balance therefore, under our central price elasticity scenario, we estimate that the PSB sales houses would gain in the region of 1.5% in NAR overall.
- A3.132 The assumption of a stable price ratio between PSB and non-PSB channels means that the remaining non-PSBs would also be expected suffer a loss in NAR. We estimate that the other non-PSB channels suffer a revenue loss in the region of £46m in the central case, which amounts to a fall in total non-PSB NAR of an estimated 6%.
- A3.133 Overall, under our central price elasticity scenario, we note that our modelling estimates a slight increase in overall industry revenue. Therefore the main effect of this proposal would be a re-distribution of revenue from non-PSB channels to PSB channels.
- A3.134 However, under our lower-case price elasticity estimate we can see that the change in PSB impacts does not generate any additional revenue for them, but still leads to a reduction in the price faced by non-PSBs, and as a result a significant fall in the advertising revenues for non-PSBs.
- A3.135 In contrast, if the PSB elasticity were as high as 2, then the revenue gains to PSBs would increase to more than £100m. This is driven by the fact that the greater the PSB elasticity, the lower the proportionate fall in price in response to a given change in impacts – and therefore the greater the increment in revenue. This scenario would also result in an increase in overall industry revenue.
- A3.136 One might expect that the increase in revenue for PSB channels would allow them to increase (or at least maintain) the level of investment in PSB programming. On the other hand, the reduction in revenue for non-PSB channels, while spread across a far larger number of channels, could result in more imported programming, more repeats, lower quality programming or even in some extreme cases, the closure of some smaller channels. However, not all non-PSB channels are solely dependent upon advertising revenue – some also generate income from alternative sources such as subscription charges. Therefore, these sources may be able to mitigate some of the revenue losses of non-PSBs, although the degree to which this would be possible is uncertain given that advertising revenues continue to represent a relatively high proportion of total revenue for many non-PSBs.

*Impact on advertisers*

- A3.137 An increase in the overall amount of advertising allowed for PSBs should benefit advertisers in that it would lead to a fall in the price of advertising on those channels. However, an increase in the volume of advertising on PSBs and/or an adverse impact on the quality of non-PSB channels could reduce the effectiveness of television as an advertising medium. This could constrain the ability of advertisers to target particular audiences/customer groups as effectively as before.

*Impact on viewers*

A3.138 We recognise that viewers have indicated their opposition to any increase in the overall amount of advertising. They would regard an increase in the amount of advertising as an increase in the “price” they pay for television, and therefore would be likely to criticise the increase in advertising that would occur, particularly on the most-watched PSB channels. However, advertising minutage in much of peak-time viewing is already close to the maximum permitted.

A3.139 In terms of the redistribution of revenue from non-PSBs to PSBs the impact on viewers is mixed. On the one hand there could be more money to fund programming on the PSB channels. On the other, with the caveats set out above, there would be reduced funding for non-PSB channels which could mean greater reliance on imported programming, repeats, or lower quality programming or conceivably, in some extreme cases, the closure of some smaller channels.

### Option 3 – levelling down to 7 minutes per hour

**Table 5: Estimated impact of levelling-down on net advertising revenues**

Option 3	Central elasticity estimate	
	Change in NAR (£m)	Percentage change in NAR
<b>Total PSBs channels</b>	<b>50</b>	<b>2.1%</b>
<b>Total PSB groups</b>	<b>33</b>	<b>1.2%</b>
<b>Total other non-PSBs</b>	<b>-34</b>	<b>-4.8%</b>

#### *Impact on broadcasters*

A3.140 As set out above, the impact of levelling down would appear to result in a loss of revenue to non-PSB channels and an increase in revenue to PSBs. As such the impact on broadcasters might be expected to be broadly similar to that for Option 2.

A3.141 For this scenario we continue to present estimates only under our central elasticity assumption (as we did in the October 2008 IA). We consider the results to be a good indicator of the overall scale and direction of revenue flows, and will consider whether we can refine the model as part of our review in the Spring.

A3.142 In this scenario, the levelling down approach implies an increase in the price for advertising on non-PSB channels which – through our price ratio assumption - would also imply an increase in price for PSB channels. We noted in the October 2008 consultation that we were not convinced that the stable price ratio assumption would be valid in this hypothetical scenario. We requested industry input into what the impact of levelling down would be on relative prices but no respondents provided any information – neither challenging the approach nor offering an alternative. Nonetheless, we shall look again at whether the price ratio might increase or decrease as part of the review to be published in Spring 2010.

#### *Impact on advertisers*

A3.143 On the one hand viewers have indicated that they would prefer less advertising (see below) so that this option could result in an improvement in the effectiveness of television as an advertising medium e.g. if viewers now paid more attention to advertising and this would be to the benefit of advertisers. However, it is likely that

non-PSB channels would continue to show as much advertising as they could at times of peak-viewing, which might tend to limit these effects. Moreover, if the effect of the redistribution of revenue from non-PSBs to PSBs was to result in a worsening of programming on non-PSB channels then there could be an offsetting loss of audiences for these services. At the same time, there would be no need for PSBs to change the amount of advertising that they offered.

A3.144 In addition, the increase in the price of advertising that would result from the reduction in the supply on non-PSB channels means that advertisers would have to pay higher prices than they otherwise would. In principle, this could harm consumers by increasing costs for those who advertise their products and services, thereby potentially increasing the prices paid by consumers. It is also likely to have an impact on competition within the advertising market itself as detailed above.

*Impact on viewers*

A3.145 Although, as indicated in the October 2008 consultation, viewers would be likely to welcome a reduction in the amount of advertising, it is not in fact clear that Option 3 would have much impact on viewers. A significant proportion of viewing time remains on PSB channels – which would not be affected by this option. Non-PSB channels would maintain the current levels of advertising at the times when most people are likely to be watching. It would only be around the fringes of the schedules of non-PSB channels e.g. late at night when viewers might notice a reduction in the amount of advertising. This too would limit the impact on advertisers.

**Summary of overall minutage options**

A3.146 Full liberalisation to 12 minutes represents a large increase in advertising minutage, and therefore would be expected to cause a substantial increase in the volume of impacts. Raising the PSB daily minutage to 9 minutes and levelling down the non-PSBs are estimated to have relatively similar effects on broadcasters’ SOCI and, in our current modelling, on advertising revenues, although the former increases the amount of advertising and supply of impacts, whereas the latter results in a decrease in both.

A3.147 In all cases the impact on advertising revenues of a change to the advertising rules have been estimated using 2007 data, and no other factors which influence demand have been included in the modelling. Nonetheless, the current conditions within the TV advertising market and wider economy are clearly relevant to decisions on which options to pursue, and we shall take them into account in the further review planned for publication in Spring 2010.

**Table 7: Comparison of effect of overall minutage options on volume of commercial impacts**

	Current SOCI	Raising the PSB daily average to 9 minutes		Full liberalisation to 12 minutes		Levelling down to 7 minutes per hour daily average for non-PSBs	
		New SOCI	% change in impacts	New SOCI	% change in impacts	New SOCI	% change in impacts
<b>Total PSB channels</b>	56.4%	58.7%	9.9%	62.0%	35.9%	58.1%	0.0%

<b>Total PSB groups</b>	70.6%	72.1%	7.9%	74.3%	30.2%	71.8%	-1.3%
<b>Other non-PSBs</b>	29.4%	27.9%	0.0%	25.7%	7.7%	28.2%	-6.9%
<b>Total Market</b>			5.6%		23.6%		-2.9%

## Evaluation of potential changes in peak time minutage

### Effect on impacts

#### Option 4 – status quo

##### *Impact on broadcasters*

A3.148 As set out in the October 2008 document, we do not expect this proposal to have any particular impact on broadcasters. The current system has been in place since 2000: it is therefore well understood and broadcasters currently optimise their inventory against these constraints. However, the status quo could have implications in the longer term given the differential treatment of PSBs and non-PSBs in terms of peak time minutage rules, with the former subject to much stricter restrictions than the latter.

A3.149 From responses to the March and October 2008 documents, it is clear that at least one PSB considers that the specific rules on peak time minutage do restrict its flexibility i.e. continuing with the status quo imposes a “cost” on it. However, the majority of broadcasters (including the PSBs) stated that they would prefer the status quo option.

##### *Impact on advertisers*

A3.150 The implication of the economic framework set out in the March document is that an effect of the current constraints could be that the price of advertising at peak times on PSBs was higher than might be the case if the current restrictions were not in place. Thus it was possible that the status quo would mean that advertisers were paying too much.

##### *Impact on viewers*

A3.151 As indicated in the October 2008 consultation, we considered that the status quo would mean little or no change for viewers, and the reported responses indicated that viewers would prefer this. Given that broadcasters aim to optimise the delivery of audiences against their schedule, it would be unlikely that broadcasters would change their current advertising patterns significantly if there were no change in the existing rules. Of course, there could be changes to advertising patterns in response to changing audience demographics but such changes tend to be gradual.

A3.152 However, as suggested above, if in the long run, the stricter rules applying to PSBs influenced them in a decision to relinquish PSB status this would have a significant adverse impact on viewers.

Option 5 – relaxing peak-time restrictions to 9 minutes per hour

A3.153 This option would have involved loosening the peak-time restrictions for PSBs from 8 minutes to 9 minutes per hour, whilst maintaining the current rules for non-PSBs.

**Table 9: Estimated impact of relaxing the cap on peak-time minutage on the delivery of commercial impacts**

Option 5	Raising the peak time allowance for PSBs to 9 minutes per hour		
	Current SOCI	New SOCI	% change in impacts
<b>Total PSB channels</b>	56.4%	57.9%	6.5%
<b>Total PSB groups</b>	70.6%	71.6%	5.2%
<b>Other non-PSBs</b>	29.4%	28.4%	0.0%
<b>Total Market</b>			3.6%

A3.154 It is important to point out that because we assumed that PSBs must still adhere to a 7 minute daily average, this option did not constitute an overall increase in the amount of advertising that could be shown over the course of the day. Rather, it would have allowed PSBs the extra flexibility to reallocate up to 5 minutes of advertising from off-peak to evening-peak in any given day.

A3.155 Our initial modelling indicates that the PSB channels stand to benefit from this option due to an increase in commercial impacts, and it estimates this increase to be in the region of 7%. However, this increase is offset by the reduction in impacts delivered by their digital channels, and so our modelling estimates that the PSB Groups as a whole would experience an increase in impacts in the region of 5%. As between the PSBs, ITV benefits to a greater extent than Channel 4 or Five because a greater proportion of its impacts are delivered in peak time.

A3.156 Meanwhile, the impact delivery of non-PSBs is once again unchanged in our modelling as they face the same rules as before. In terms of SOCI, we estimate that this will cause non-PSBs to lose approximately 1 percentage point of SOCI to PSBs and their portfolio channels.

Option 6 – weekly averaging of peak-time restrictions

A3.157 The table below presents the estimated impact of allowing PSBs to aggregate their existing peak-time minutage over the week, giving them 280 evening peak minutes to allocate at any point in the week<sup>75</sup> instead of the current restriction of 40 minutes per day<sup>76</sup>.

<sup>75</sup> Subject to the 12 minute cap in any given clock-hour.

<sup>76</sup> Note, this option also allows PSBs to average their morning peak minutes in the same manner should the morning peak time designation remain.

**Table 10: Estimated impact of allowing weekly averaging of peak-time minutage on the delivery of commercial impacts<sup>77</sup>**

Option 6	Allowing the PSBs to average their peak-time minutage across the week		
	Current SOCI	New SOCI	% change in impacts
<b>Total PSB channels</b>	56.4%	58.3%	7.9%
<b>Total PSB groups</b>	70.6%	71.8%	6.4%
<b>Other non-PSBs</b>	29.4%	28.2%	0.0%
<b>Total Market</b>			4.5%

A3.158 As with the previous option, it is important to point out that because we assumed that PSBs must still adhere to a 7 minute daily average, this option does not constitute an overall increase in the amount of advertising that can be shown over the course of any one day<sup>78</sup>. However, it would allow PSBs the extra flexibility to reallocate peak minutes across the week (this is a key difference with the previous option).

A3.159 Under this proposal, PSBs might find it attractive to transfer some advertising minutage from early evening-peak during weekdays and reallocate these minutes to peak times at weekends. In doing so, they would be allowed to exceed the current 40 minute daily cap on advertising in evening peak on some days, provided this is offset by a corresponding reduction in advertising during evening-peak on other days in the week. In principle, PSBs would be able to schedule up to the maximum 12 minutes per hour for an entire evening: that is up to 60 minutes of advertising during evening peak on certain days. As PSBs already tend to schedule close to 10-11 minutes per hour of advertising between 7-10pm, we expect the main changes would be more advertising in the 6-7pm and 10-11pm slots.

A3.160 Our modelling indicates that the PSB channels would increase their impact volumes by approximately 8%. As they would be unable to take advantage of this extra flexibility on their digital channels, the actual increase in impacts for the PSB groups as a whole would be in the region of 6.5%. We estimate that ‘non-PSBs’ that are not part of a PSB group would lose just over a percentage point in SOCI.

## Impact on net advertising revenue

### Option 5 – relaxing peak-time restrictions to 9 minutes per hour

**Table 11: Estimated impact of relaxing the cap on PSB peak-time minutage on net advertising revenues**

Option 5	Raising the peak time allowance for PSBs to 9 minutes per hour	
	Change in NAR (£m)	Percentage change in NAR

<sup>77</sup> As discussed in the October 2008 consultation, modelling this option required a much more detailed dataset, and the appropriate data on S4C was not available. Therefore the modelling of this option assumed no change for S4C.

<sup>78</sup> The original proposal by the PSB suggested that, in some cases, the overall daily average of 7 minutes an hour might be exceeded. However, the option we have explored maintains the overall daily average of no more than 7 minutes per hour.

PSB price elasticity	1.00	<b>1.44</b>	2.00	1.00	<b>1.44</b>	2.00
<b>Total PSBs channels</b>	0	<b>47</b>	77	0.0%	<b>2.0%</b>	3.2%
<b>Total PSB groups</b>	-23	<b>30</b>	65	-0.8%	<b>1.1%</b>	2.4%
<b>Total other non-PSBs</b>	-44	<b>-30</b>	-22	-6.1%	<b>-4.2%</b>	-3.0%

#### *Impact on broadcasters*

- A3.161 Although this option would raise the peak time allowance for PSBs from 8 minutes per hour to 9 minutes per hour (equating to a total of 45 minutes of advertising across the evening peak), in aggregate, the results of this option appear very similar to those for Option 2 i.e. relaxing the daily average. However, on closer inspection these two options would have very different implications for the distribution of benefits between broadcasters.
- A3.162 Our central elasticity estimates suggest that PSBs would benefit from an increase in NAR in the region of £50m. However, after taking into account the impact on their non-PSB digital channels, the net increase would be reduced to approximately £30m. Our modelling suggests that the other non-PSB channels would lose in the region of £30m in NAR. Again, this would suggest that overall there would be little change in overall industry NAR – rather there would be a redistribution from non-PSB to PSBs.
- A3.163 If we assume that elasticity of demand for PSBs is at the lower end of our estimates then the main effect of this proposal would be no net change in the position of the PSBs channels but there would be a loss in overall industry revenue. If the elasticity of demand for PSB channels is greater than the central estimate, then the effect could be a net increase in industry revenue of around £40m but non-PSB broadcasters would still suffer a loss (in the region of £20m).

#### *Impact on advertisers*

- A3.164 This option could have benefits for advertisers. We would expect there to be some reduction in the price of advertising. At the same time it would increase the amount of advertising in parts of the schedule which are likely to be particularly attractive to advertisers i.e. mass audience programming. We would not anticipate a particularly adverse reaction in terms of a reduction in audiences as viewers already see close to 12 minutes an hour of advertising between 7-10pm on PSB channels. Therefore the effectiveness of television as an advertising medium should not be affected.

#### *Impact on viewers*

- A3.165 In the first instance, we would expect this option to be perceived as having a detrimental impact on viewers, as there would be an increase in the effective price to viewers of watching television at peak times i.e. at times when large numbers of viewers are likely to want to watch. However, if there were to be a parallel increase in the amount invested in programming by the PSBs resulting in better quality programming, this might offset the negative impact outlined above.

Option 6 – weekly averaging of peak-time restrictions**Table 12: Estimated impact of weekly averaging of PSB peak-time minutage on net advertising revenues**

Option 6	Allowing the PSBs to average their peak-time minutage across the week					
	Change in NAR (£m)			Percentage change in NAR		
PSB price elasticity	1.00	<b>1.44</b>	2.00	1.00	<b>1.44</b>	2.00
<b>Total PSBs channels</b>	0	<b>59</b>	97	0.0%	<b>2.5%</b>	4.1%
<b>Total PSB groups</b>	-28	<b>39</b>	83	-1.0%	<b>1.4%</b>	3.0%
<b>Total other non-PSBs</b>	-53	<b>-36</b>	-26	-7.4%	<b>-5.1%</b>	-3.6%

*Impact on broadcasters*

- A3.166 As set out above, this option would allow PSBs to aggregate their existing peak-time minutage over the week, giving them 280 evening peak minutes to allocate at any point in the week<sup>79</sup> instead of the current restriction of 40 minutes per day.
- A3.167 Under this option, our central case (which assumes constant price elasticity) suggests that PSBs might derive an increase in NAR of approximately £60m. Once we have taken into account the impact on the PSBs' digital channels and the other non-PSB channels, the net effect would be a very small increase in overall industry NAR. Again the key effect would be a redistribution of revenue from non-PSB to PSB channels.
- A3.168 However, if we assume that if price elasticity is lower for PSBs, then the overall impact is a fall in overall industry NAR and no benefit to PSBs. Equally, if the elasticity of demand is greater than in the central assumption then there is a growth in overall industry NAR but there is still a negative effect on non-PSBs broadcasters in the region of £25m.

*Impact on advertisers*

- A3.169 The impact of this option on advertisers is perhaps less clear cut than that of Option 5. An increase in the amount of advertising could be expected around the mass audience programmes which could be welcomed. At other times in the peak schedule there would be a reduction in the amount of advertising airtime and this might constrain some advertisers' ability to target particular demographics.

*Impact on viewers*

- A3.170 The impact on viewers of this option could be more significant than that for Option 5. Although the overall amount of advertising in peak would not change across the week, it is possible that there could be a significant increase in the amount of advertising on certain days. Under this proposal, it would be possible in theory – on some days – for a broadcaster to schedule 60 minutes of advertising between 6-11pm. This would represent a 50% increase on the current 40 minutes that is permitted. Of course this would be offset by a reduction in advertising on other

<sup>79</sup> Subject to the 12 minute cap in any given clock-hour.

evenings during the week, as well as the potential for increased investment in programming due to the upward effect on revenue. However, given the potential scale of increase on certain evenings – when large numbers of viewers are watching – we would expect there to be a detrimental impact overall.

### Summary of peak time minutage options

A3.171 The weekly averaging option would result in a larger increase in total impacts in the TV advertising market than would occur by increasing the PSB peak time allowance to nine minutes. It would also lead to a higher increase in revenue for the industry as a whole. However, the transfer of advertising revenue from non-PSBs to the PSBs would also be higher under weekly peak time averaging of minutes. Again, it is important to keep the estimated impact on revenue in context, given the current conditions within the TV advertising market and the wider economy, neither of which are reflected in our modelling for the reasons detailed in Section 2.

**Table 13: Comparison of Effect of Peak Minutage Options on Volume of Commercial Impacts**

	Current SOCI	Raising the peak-time allowance for PSBs to 9 minutes per hour		Allowing PSBs to average their peak-time minutage across the week	
		New SOCI	% change in impacts	New SOCI	% change in impacts
<b>Total PSB channels</b>	56.4%	57.9%	6.5%	58.3%	7.9%
<b>Total PSB groups</b>	70.6%	71.6%	5.2%	71.8%	6.4%
<b>Other non-PSBs</b>	29.4%	28.4%	0.0%	28.2%	0.0%
<b>Total Market</b>			3.6%		4.5%

### Advertising in breakfast time slots

A3.172 GMTV1 broadcasts from 6am to 9.25am on ITV1, and, in common with other public service broadcasters, has an advertising allowance of 7 minutes for every hour of transmission. This brief slot limits GMTV's ability to optimise advertising allowance across the day. For this reason, Ofcom has allowed GMTV to optimise its allowance over the week, while ensuring that it did not exceed an average of 7 minutes an hour over each week, and a daily average of 9 minutes an hour. These arrangements have enabled GMTV to schedule more advertising during the adult programmes it shows on weekdays, by reducing advertising from children's programming at weekends.

A3.173 Due to this special dispensation, we do not expect our proposal to remove the morning peak period to have any significant effect on GMTV's ability to deliver commercial impacts. This is particularly true given that there is relatively little variation in viewing figures between 7am to 9am – the existing morning peak period – and between this and the rest of the daytime audience. In addition, the other PSBs do not currently use the full 16 minutes permitted over the same period, and so given the relatively low impacts per minute at this time, we would not expect

them to significantly change their advertising scheduling as a result of this greater flexibility.

A3.174 As we do not think GMTV would be able to benefit from any additional flexibility afforded by the regulatory change, and given that the other PSBs are unlikely to substantially change their advertising pattern, we do not expect there to be any significant impact on other broadcasters, viewers, or advertisers as a result of removing the rules for the morning peak period.

### Further review

A3.175 For the reasons set out in section 4, Ofcom considers that there is a strong case for harmonising the regulation of advertising minutage (including both overall amounts and peak-time limits) on PSB and non-PSB channels within the next few years.

A3.176 This IA makes clear that, by removing the additional restrictions imposed on PSBs and thus allowing them to compete on a more equal basis, harmonisation will have a detrimental effect on non-PSB revenues. As explained in section 4:

- a) we do not consider that it would be sensible to start these changes now, as all broadcasters are suffering from the effects of the recession, which has resulted in a sharp decline in advertising revenues;
- b) we consider that there may be an advantage to phasing the changes over a period of time, in order to allow more time for broadcasters and advertisers to adjust, although the implications of this require further study; and
- c) although the options discussed in this section could contribute to a process of harmonisation, there may be other options that would also do so. An example is the suggestion made by one respondent that both PSBs and non-PSBs be permitted an average of 8 minutes of advertising an hour;

A3.177 Accordingly, we plan a further review to be published in Spring 2010. Though we believe that the current modelling provides reasonable estimates of the broad scale and direction of the impacts of the various options we have considered, we shall be considering whether refinements would be appropriate to improve the granularity of the modelling. The review will look at whether there are better alternatives to the current constant price ratio assumptions (see paragraph A3.33 above), and the implications of phasing the changes. We shall also consider whether or not the Airtime Sales Rules<sup>80</sup> (which require the PSB channels to sell all their advertising minutage) should be modified, retained or scrapped.

## Assessment of Frequency Options

### Number of internal advertising breaks

#### Summary of analysis in October 2008 document

A3.178 In the March 2008 document, we set out the economic framework which was used to assess the impact of different options for regulating the number of internal breaks (those within programmes) in the October 2008 consultation. Essentially, this

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<sup>80</sup> The background to the Airtime Sales Rules is explained at [http://www.ofcom.org.uk/tv/ifi/guidance/ITV\\_airtime\\_sales/](http://www.ofcom.org.uk/tv/ifi/guidance/ITV_airtime_sales/).

analysis assumed that the impact of any changes to the current regulation could be broken down into a demand response and a supply response.

- A3.179 On the demand side, increasing the number of internal breaks (whilst maintaining the amount of advertising airtime) would increase an advertiser's "share of break" and also create more first and last in break positions. The research available to Ofcom suggested that both of these benefit advertisers due to lower viewer drop-off<sup>81</sup> and higher brand recall<sup>82</sup>, potentially improving the effectiveness of TV advertising. In addition, more advertising breaks would help broadcasters to manage the convention that adverts for competing products are not shown in the same break. All of this would make advertising more valuable to advertisers, and so we would expect demand to increase.
- A3.180 By similar arguments, if shorter, more frequent internal breaks encourage less of a 'drop-off' in audiences then – even though the overall amount of advertising is unchanged – there would be a small increase in the overall supply of commercial impacts.
- A3.181 The increase in the demand and supply of commercial impacts would increase the quantity of impacts traded, although the effect on price is unclear. The increase in demand would tend to have an inflationary effect as advertisers would be willing to pay more, although the small increase in supply would tend to deflate the price. As a result, it is difficult to be definitive about the impact of the options concerning the number of advertising breaks.

### Consultation options

- A3.182 As set out in the October 2008 document, we have considered three basic sets of options for the regulation of break frequency.
- A3.183 The three central options we outlined were:
- a) Option 1 – the status quo;
  - b) Option 2 – more breaks in programmes of 60 minutes or longer; and
  - c) Option 3 – allowing more breaks for programmes with autonomous parts.
- A3.184 In response to the October 2008 consultation, we received several comments from stakeholders regarding our approach for assessing the options we put forward, and these are summarised below.

### Stakeholder views

- A3.185 One PSB argued that the inevitable effect of allowing four centre breaks in an hour long programme would be that within a relatively short period of time, the majority of eligible programmes would move to four breaks. This was because once one broadcaster chose to have four centre breaks, there would be a considerable commercial incentive for others to adopt the same break pattern as their major competitors. The PSB argued that this was particularly true given the existing limit on the length of centre breaks and the fact that centre breaks are more commercially valuable than end breaks. It therefore claimed that the effect on PSBs

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<sup>81</sup> Song, June-Young (2005)

<sup>82</sup> Billets Share of Break Study (1993)

would be greater than we had assessed as many more programmes would move to this break pattern.

- A3.186 These comments are consistent with the modelling assumptions we used in evaluating this option in that we had assumed that all those programmes which are eligible to schedule more breaks under Option 2 would do so. The results we presented were based upon a new break pattern of shorter, more frequent breaks for all eligible programmes<sup>83</sup>.
- A3.187 We raised the issue about the combined effect of increasing break frequency and removing the restrictions on centre break duration in the IA that accompanied the October 2008 consultation. We noted that: 'if the amount of advertising were to be increased as well as the cap on the length of advertising breaks then we might also expect to see some increase in the length of breaks within programmes. The net effect of these changes on broadcasters is likely to be an incentive to increase the amount of advertising within programmes.'<sup>84</sup>
- A3.188 The response from the PSB therefore also supported our view that an increase in advertising within programmes would be the most likely outcome if both the regulation for the frequency and length of centre breaks were relaxed. However, we have not attempted to quantify this cumulative effect due to data limitations, and no respondents offered their own data on the scale of such a combined effect.
- A3.189 The same PSB also commented on potential negative implications at the margin for viewer enjoyment of advertiser-funded TV. They argued that increasing the number of breaks would not just increase the number of spot adverts viewers were exposed to, but would also increase the sponsorship bumpers and programme promotions as well. As a result, there would be a significant increase in the volume of commercial messages within any programme of 60 minutes or longer in duration, something that viewer research has revealed they do not want. We would expect the length of programmes to reduce slightly in the long term in order to accommodate these additional commercial messages, to the potential detriment of viewer enjoyment.
- A3.190 We have acknowledged this issue of viewer enjoyment in our modelling of the break frequency options by examining the audience drop-off effect. Whilst we do not quantify the effect of increased advertising on viewers directly, it is implicitly included in the modelling of the advertising scheduling decisions made by broadcasters – as audiences drop off, the extra value generated by additional advertising minutage also decreases. By recognising that viewing will drop-off as break duration increases, the impact on viewer enjoyment is reflected in the scheduling decisions, and this balance of incentives should act as a deterrent to broadcasters increasing advertising beyond levels acceptable to viewers.
- A3.191 However, it is useful to note that additional modelling presented in the IA of the October 2008 consultation actually suggests that shorter, more frequent breaks actually result in less of a drop-off in audiences<sup>85</sup>. Therefore, this may not be such a significant issue if the absolute hourly advertising minutage remains unchanged.
- A3.192 The comments we received in relation to the number of internal advertising breaks broadly supported our findings, therefore we do not believe they require or justify a

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<sup>83</sup> Para A5.172 (b), October 2008 consultation.

<sup>84</sup> Para A5.217, October 2008 consultation

<sup>85</sup> Para A5.184, October 2008 consultation

change to our modelling approach. As a result, the following summarises the approach we adopted in the October 2008 consultation. For a more detailed description we refer the reader to the IA that accompanied that document.

## Modelling approach

- A3.193 Our starting hypothesis was that an increase in the number of advertising breaks could deliver a benefit to both advertisers and broadcasters (as summarised above). In addition, we commented that a limited increase in breaks might be acceptable to viewers, provided they were scheduled sympathetically and there was no overall increase in advertising minutage.
- A3.194 However, in attempting to quantify the impact of these different options, we were only able to focus on the increase in the supply of impacts that might arise and what this might mean in revenue terms for broadcasters. We have not been able to quantify the demand response due to a lack of information about the increased value that advertisers might attribute to an increase in the efficacy of TV advertising.
- A3.195 In addition, we have not made a specific attempt to quantify Option 3 as we cannot predict how broadcasters might make use of the additional flexibility this option would provide. Instead we have drawn general insights about the value of increased breaks from our modelling of Option 2.
- A3.196 In general terms, the modelling approach we developed to consider this issue can be broken down into three stages.
- A3.197 Firstly, we analysed the pattern of audience ‘drop-off’ in breaks of different lengths for a week’s worth of data on a specific subset of channels. As detailed in the October 2008 consultation, this was performed by dividing the existing advertising breaks up into 30 second intervals and looking at the average audience over that interval. This found that the drop-off in audiences is more pronounced the longer the advertising break for all three channels that we modelled, although the scale of the drop-off varies between them. It is worth noting that this is fundamentally different to the analysis of the minutage options where we assumed audience drop-off would not occur.
- A3.198 Secondly, we identified all the programmes on these channels in our week of data that would be eligible to schedule more breaks under Option 2. We then manually fitted a break pattern of shorter, more frequent breaks for these programmes – assuming total minutage in each programme remained the same, and duration and scheduling of breaks were as even as possible. We then used the audience drop-off data to estimate the increase in impacts that would occur from the new break patterns.
- A3.199 Finally, we translated these changes in impacts into revenue changes using a price elasticity approach similar to that used in the model for the amount of minutage.
- A3.200 Due to the size and intensity of the modelling task, we have restricted our analysis to a single week’s worth of BARB advertising spot data for two PSBs and one non-PSB channel. We therefore recognise that our modelling may not be fully representative of all channels, but we did not receive any input from respondents on alternative modelling approaches.

## Impact of options

### Option 1: status quo

- A3.201 As set out in the October 2008 document, this option would mean the experience for viewers would remain the same in the context where there is no change in the overall scheduling pattern operated by broadcasters.
- A3.202 Most individual respondents to the March 2008 document supported this option and were opposed to any increase in the number of breaks, while most broadcasters argued for deregulation of the number of breaks. The broadcasters claimed that the combination of viewer irritation and the hourly minutage restriction would prevent an excessive number of breaks. Many broadcasters continued to call for deregulation in response to the October 2008 document on the basis that existing regulation is a constraint, but none has submitted any data which attempts to quantify the impact of the current rules.

### Option 2: more frequent breaks in programmes of more than 60 minutes or more

- A3.203 As set out in the October 2008 document, Option 2 is to allow two breaks for every half-hour of programming in programmes of 60 minutes or more. This is an increase in break frequency for both PSBs and non-PSBs, although the increase is greater for PSBs as their break frequency is currently more tightly restricted. As now, PSB channels would still be allowed to take only one break in a half-hour programme, and non-PSB channels would be allowed two.
- A3.204 Due to the volume of data and intensity of the modelling task, we only modelled changes to break patterns in programmes that occurred in evening peak. If these results were extrapolated across the day as a whole, we might expect only a relatively modest impact on the results presented here, mainly because (certainly for the PSBs), upwards of 55% of impacts are generated in evening peak.
- A3.205 The key result of the analysis we have carried out is that the extra flexibility to schedule more breaks afforded by Option 2 would lead to a relatively modest annual increase in overall impacts in the order of 0.3% to 1.5% (according to the channel).

#### *Impact on broadcasters*

- A3.206 We translated these impact changes into revenue changes for each of the three channels, using a similar price elasticity approach to that used in the modelling of minutage restrictions. By assuming the change in impacts in the PSBs' London regions mapped to the same change in impacts for the channels as a whole, we applied the PSB and non-PSB price elasticities to the channels we modelled. We could then estimate how the increase in commercial impacts would reduce each channel's cost per thousand impacts (CPT), and subsequently, how it affects revenue.
- A3.207 The results suggest that the extra flexibility of increased breaks might increase NAR for individual channels in the region of less than 1% for the channels we looked at. There is a potential differential effect between PSB and non-PSB channels in that non-PSB channels are already allowed more breaks in longer duration programmes than PSBs. In practice, however, the impact on broadcasters is likely to be driven more by the actual composition of their schedule than by whether the broadcaster per se is a PSB or non-PSB.

A3.208 Beyond the financial benefits to broadcasters' advertising revenues, an increase in the frequency of advertising breaks for programmes longer than one hour would also increase the flexibility of broadcasters' scheduling of advertising spots. This is because it is common for advertisers to want to avoid product category clashes, so they will not want to advertise their product in the same break as another from the same product category. Therefore the extra breaks this proposal would generate would give broadcasters much greater flexibility to avoid such clashes and potentially, in turn, further increase their revenues.

*Impact on advertisers*

A3.209 As set out above, we consider that this option could have certain benefits for advertisers compared to the status quo. It would help to reduce the level of audience drop off in advertising breaks and could improve the effectiveness of television as an advertising medium e.g. offering better recall, more first-in-break/last-in-break opportunities, more advertising time during programme time etc.

A3.210 In addition, they may also benefit from the increased flexibility this option would afford broadcasters (as mentioned above), and therefore give them greater scope to advertise during the programmes they want to whilst avoiding product category clashes.

*Impact on viewers*

A3.211 Given no change to the overall minutage permitted, the result of allowing more frequent advertising breaks is likely to be shorter, more frequent breaks. In turn, this would result in shorter programme segments as well as a greater exposure to sponsorship bumpers placed at the beginning and end of each break. Responses from individuals to the October 2008 consultation generally opposed more frequent breaks. The deliberative research indicated that viewers would prefer the status quo, but might be prepared to accept one more break in a 60-minute programme. However, there was concern that this might give rise to frequent and repetitious sponsorship bumpers at the beginning and end of each breaks. The research did not examine the reaction of viewers to more breaks in programmes longer than 60 minutes.

A3.212 Therefore on balance, we consider that viewers are likely to regard an increase in the number of breaks in programmes of 60 minutes or less as detrimental to their viewing. This is because it would shorten the average length of the programme segment between breaks, it would most likely lead to more advertising being placed within programmes rather than between them, and it would also increase the number of sponsorship bumpers within a programme.

A3.213 However, allowing PSBs to have the same number of breaks as non-PSBs in programmes of greater than 60 minutes in duration could have some benefits for viewers. It would remove a disincentive on PSBs to schedule longer programmes such as dramas, and this, combined with any additional advertising revenue, could result in a greater variety and/or quality of PSB programming. The negative effect on viewers of this option is likely to be relatively limited, both because it would apply to relatively few programmes, and also because it would only result in a small incremental increase in break frequency (e.g. six internal breaks in a two-hour programme compared to the current maximum of five).

### Option 3: more breaks in programmes with autonomous parts

- A3.214 The description “programme with autonomous parts” covers a range of types of programming and indeed types of broadcaster. For instance, the term could be applied to the “magazine” type programming that features on GMTV and This Morning on ITV1 as well as to music video programming.
- A3.215 This option would allow broadcasters to insert as many breaks as they like between the autonomous parts of such programming. However, broadcasters would still have to comply with the relevant rules on the overall amount of advertising: this would not amount to an increase in the volume of advertising.
- A3.216 As we mentioned above, we have not attempted to model the effect of this option as we have no way of knowing which of the many channels licensed by Ofcom would wish to take advantage of it and, if so, to what extent and in what parts of their schedules<sup>86</sup>. Therefore we considered other proxies that we might use in order to develop a qualitative assessment of the impact of the option under consideration.
- A3.217 In essence the option being considered would allow broadcasters to schedule more frequent but shorter breaks in programming. There is thus a parallel with the modelling that we carried out in relation to the previous option where we considered a limited increase in the number of breaks without changing the overall amount of advertising allowed.
- A3.218 Our modelling for Option 2 seemed to confirm the hypothesis that allowing broadcasters more flexibility in the number of advertising breaks was likely to result in more frequent but shorter breaks in programmes. This is a view supported by some broadcasters who responded to the October 2008 consultation, and is because it would tend to counter the “audience drop-off” effect apparent with longer advertising breaks. If broadcasters were able to schedule more, shorter breaks then that could result in an increase in the volume of commercial impacts delivered and with that there could be some financial benefit to broadcasters. The actual scale of this was likely to be relatively small.

#### *Impact on broadcasters*

- A3.219 Applying the same reasoning to Option 3 we anticipated that there would similarly be a small but positive impact under Option 3 for broadcasters who offer such programming. It is difficult to assess the overall magnitude of this Option more exactly because we cannot precisely identify which broadcasters might stand to benefit from the change. However, broadcasters did not generally argue that increasing breaks would generate significantly more revenue in their responses to the consultation.
- A3.220 In addition, it would be difficult to anticipate whether broadcasters might change their programming in order to take advantage of this proposal. At this stage we can anticipate that some of the main broadcasters that already offer magazine format programmes could benefit from this option together with music video channels but it is difficult to be more precise than that.

#### *Impact on advertisers*

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<sup>86</sup> For the full reasoning behind this, we refer the reader to the October 2008 consultation.

A3.221 As with Option 2 above, we consider that this option could have certain benefits for advertisers compared to the status quo. Allowing more frequent breaks within programmes with autonomous parts could help to reduce audience drop-off during advertising breaks, though (depending on the frequency of ad breaks) it is possible that some viewers would choose not to watch programmes with very frequent breaks, which would have an off-setting effect on the benefits for advertisers.

#### *Impact on viewers*

A3.222 The potential impact on viewers may be limited provided that the scheduling of more frequent breaks is done sympathetically and complements the programme content. As set out in the October 2008 document – the audience for music video programmes would probably not find increased frequency of advertising breaks too intrusive. The deliberative research also suggests that viewers might find more frequent advertising breaks acceptable in certain genres e.g. quizzes, makeover shows, reality TV etc.

A3.223 However, as noted in the deliberative research, there is a potential negative reaction to the increased exposure of sponsorship bumpers that could come with this. Individual responses to the consultations in March 2008 and October 2008 tended to express opposition to programming with more frequent breaks, which they characterised as ‘US-style’ television. In addition, allowing more centre breaks within programmes of autonomous parts could create an incentive for broadcasters to devise more programmes made up of autonomous parts. This could distort programme structure or the genre mix of broadcasters’ schedules which might not be to the advantage of viewers.

A3.224 It is also worth noting that we are not aware of any evidence that would suggest the current rules have limited the choice of content to viewers which could be configured in autonomous parts (e.g. music channels).

### **Length of advertising breaks on PSB channels**

A3.225 The options we considered here were to retain the status quo or an option to scrap the existing rule which sets a cap on the maximum length of an advertising break on a PSB channels. We received some comments regarding our assessment of these options from stakeholders, and these views are presented below.

#### **Stakeholder Views**

A3.226 The majority of respondents did not raise any issues with our assessment of the likely impact of these options. One PSB explicitly agreed that it is difficult to assess them as the impact depends upon the outcome of other areas of the consultation.

A3.227 One PSB carried out their own quantitative analysis of the impact of removal of this rule, and found that the impact would be neutral for them. They therefore supported the removal of this rule on the basis that detailed regulation in this area is unnecessary, rather than because it could generate greater revenues. They suggested this rule was unnecessary given the overall limits on advertising minutage and their incentive to schedule advertising in such a way as to ensure a high-quality viewing experience.

A3.228 A different PSB also modelled the effect of removing the break length cap. It assessed the impact on six popular soaps and similar programming across the PSBs. Their results showed all three PSBs benefiting as they all experienced an

increase in the number of impacts. The respondent stated that we must consider the combined effects of allowing both an extra centre break in hour long programmes and longer centre breaks as they argued that both together would lead to a significant increase in impacts. However it is important to note that this would only be the case if these regulatory changes were accompanied by an increase in the overall PSB minutage. This is because if the number of centre breaks increased but the minutage was unchanged, the breaks would actually get shorter.

A3.229 We have not attempted to model this option quantitatively due to the difficulties in doing so and the assumptions that would be required. The estimate submitted by the second PSB was based upon very specific programmes and assumptions which makes it difficult to infer an overall annual effect from these results. However, we did make a qualitative assessment in the context of the conclusions made for the overall minutage and break frequency regulation. This concluded that it is unclear that any benefits would be significant or that there would be any substantial costs. Therefore, the comments from the PSBs were broadly in line with our assessment of this option.

A3.230 On that basis, we do not believe the comments we received mean that we need to adjust our approach to assessing the options for the regulation of the length of internal breaks on PSB channels. As a result, the following assessment is based upon the approach used in the October 2008 consultation, taking into account the comments made and also the other decisions on minutage and the number of breaks which Ofcom has arrived at.

## **Impact of the options for break lengths on PSBs**

### Option 1: status quo

#### *Impact on broadcasters*

A3.231 As set out in the October 2008 document, the effects of retaining the existing rule would depend on whether changes were made to the number of breaks allowed within programmes and the amount of advertising permitted during peak time.

A3.232 As we are not proposing to change either the number of breaks allowed in programmes of one hour or less, or overall PSB minutage, it is likely that PSB channels would continue to schedule breaks with close to the maximum permitted duration during those peak time hours with the largest audiences (7pm to 10pm). In addition, it is likely that broadcasters will continue with the existing break pattern. Therefore, given the conclusions to leave the overall amount of minutage and number of breaks unchanged, we would not expect the status quo to have a significant effect on broadcasters.

*Impact on advertisers*

A3.233 As the overall minutage and break frequency rules would not change under this option, we would not expect the status quo to have a significant impact on advertisers.

*Impact on viewers*

A3.234 As we commented in the October 2008 consultation, the impact on viewers was also difficult to assess, although it seemed probable that viewers would prefer options that maintained or reduced the amount and length of advertising that could be taken within programmes. As a result, it seems reasonable to expect the status quo to have a limited effect on viewers, and may even be positive relative to options that increase the amount of advertising.

Option 2: deregulation

A3.235 We acknowledged in the October 2008 consultation that we had limited evidence available to assess this option and that the arguments for and against deregulation were finely balanced. We did not state a preference.

A3.236 Although two PSBs told us that they had carried out their own quantitative analysis of the impact of removal of this rule (with differing results), these analyses were both based on assumptions and circumstances specific to the PSBs in question. As we cannot be certain how each of the PSBs in question would make use of the scope offered by deregulation, we are not in a position to undertake a quantitative assessment. However, we have made a qualitative assessment of how stakeholders might be affected, and this is set out below in the following paragraphs.

*Impact on broadcasters*

A3.237 If we do not make any significant change to the rules on the number of breaks or the overall amount of minutage permitted, we would anticipate that PSB channels could well seek to increase the length of breaks within programmes and reduce the length of breaks between programmes. This is because we understand that it is generally accepted that breaks within programmes are perceived as relatively more valuable by advertisers compared to breaks at the end of programmes, in part due to the perception that audiences hold up better across breaks within programmes. However, in the absence of an increase in minutage, the potential extent of any increase in centre break length will be limited.

A3.238 As noted in the October 2008 consultation, we would expect this freedom to be exercised carefully by PSBs for two reasons. Firstly, the modelling of Option 2 indicated that the longer the break, the greater the audience drop-off effect. Secondly, responses to the consultations indicated that viewers are opposed to longer breaks. Viewer reaction to longer advertising breaks may make broadcasters wary of increases to the length of breaks. However, given that internal breaks on non-PSB channels (including those owned by PSB groups) are often 4 minutes or longer, we would expect breaks on PSB channels to get longer over time.

*Impact on advertisers*

A3.239 The conflict between increasing the length of the more valuable and effective internal breaks and limiting viewer drop-off is apparent for advertisers too.

Therefore although there may be an incentive (albeit limited in the current macroeconomic climate) to demand longer centre breaks to increase advertising given that we are not changing the overall minutage, viewer-reaction is likely to result in a cautious approach to doing so in order to balance the demands of viewers and the effectiveness of advertising.

#### *Impact on viewers*

A3.240 Responses to our consultations, our own modelling and deliberative research all suggested that viewers are opposed to longer breaks. Therefore whilst it might be reasonable to expect the removal of this rule to lead to an increase in the length of internal breaks, one would also expect the real possibility of audience drop-off to limit the ability of broadcasters to do this.

A3.241 Break lengths are not capped for non-PSB channels, and as a result, most schedule all or most of their permitted advertising within programmes, rather than between them. This means that break lengths tend to be longer than on PSB channels, and can run up to 5 minutes when promotions and sponsorship bumpers are included.

## **Teleshopping**

### **Comments on options in October 2008 document**

A3.242 In the March 2008 document we set out two sets of potential options in relation to teleshopping: one set in relation to non-PSB channels and one set in relation to PSB channels. As a result of the responses<sup>87</sup> we received to this document as well as our policy objectives, the options that we formally considered as part of the October 2008 consultation process were:

- a) Option 1: Status quo;
- b) Option 2: Full deregulation;
- c) Option 3: Full deregulation for non-PSBs/no change for PSBs; and
- d) Option 4: Full deregulation for non-PSB/partial deregulation for PSBs with restrictions on the time periods in which they can offer teleshopping windows.

### Stakeholder views

A3.243 In their responses to the October 2008 consultation, several broadcasters provided comments about teleshopping. Many reiterated concerns they raised in response to the March 2008 document, particularly in relation to the link between the need to relax the current restrictions and the anticipated changes to the definition of teleshopping<sup>88</sup>. None of the responses from broadcasters quantified the benefit that they might expect to receive from a relaxation of the current restrictions.

A3.244 Many respondents, including two PSBs, explicitly commented on the potential for teleshopping to be a valuable source of revenue in the future, particularly in the

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<sup>87</sup> For a full discussion of the teleshopping-related responses to the March 2008 document, we refer the reader to the IA which accompanied the October 2008 consultation

<sup>88</sup> In the *TV and gambling services statement* (May 2009) published simultaneously with this statement, Ofcom said that transactional services would be regulated as teleshopping with effect from 1 June 2009.

context of declining spot advertising revenues. Within this category of ‘teleshopping’, many included quiz-based programming. Quiz-based content is one example of what, for ease of reference, we call ‘transactional services’ in this IA.

- A3.245 One PSB noted how transactional services can be an important revenue source at times of day when spot advertising revenue is traditionally low due to low audiences (i.e. late at night). However two PSBs agreed that, as not all broadcasters were making full use of their existing allowances, it was unlikely that there was pent-up demand for (traditional) teleshopping airtime. In addition, one PSB agreed with our assessment in the October 2008 document that the deregulation of the teleshopping rules was unlikely to have a negative effect on existing teleshopping businesses. They suggested that it could in fact provide opportunities for such businesses, on the grounds that broadcasters who lacked teleshopping experience would seek partnerships with existing teleshopping businesses.
- A3.246 An industry respondent stated that broadcasters would make a trade-off between editorial with spot advertising and teleshopping slots (in the absence of regulation of their volume) as consumers tend to favour channels which have a mix of both editorial and transactional-based entertainment content. Referring to the example of ITV Play, they argued that a channel wishing to maximise its audience share and revenue from spot advertising or teleshopping would offer a wide range of content.
- A3.247 The options for the regulation of teleshopping on PSBs attracted the most mixed opinions from respondents. Some non-PSB respondents did not anticipate that they would be adversely affected if PSB channels were to have greater flexibility to offer teleshopping windows as it would only be at the fringes of the schedule. Other non-PSB channels were opposed to any change arguing that for PSBs to carry teleshopping windows would not be in line with their PSB remits.

### The teleshopping market

- A3.248 In the October 2008 consultation we provided an overview of the current provision of teleshopping services in the UK. We broadly divided services into two categories:
- a) dedicated teleshopping channels (e.g. QVC, price-drop TV, JJB Sports, Gems.tv1 etc); and
  - b) other channels which offer teleshopping windows in their schedules (e.g. ITV2, ITV4, Paramount Comedy, Sci Fi Channel etc). These windows tend to be late at night/early in the morning, and are often a simulcast of dedicated teleshopping channels.
- A3.249 Based on returns to Ofcom and companies annual reports, we estimate that the three largest teleshopping channels (QVC, bid-up tv and price-drop tv<sup>89</sup>) account for between 55-60% of total teleshopping revenue. Some 15-20 smaller teleshopping channels account for perhaps a further third of teleshopping revenues. A further 40 or so channels offer teleshopping windows.

### **Assessment of options**

- A3.250 In this section, we consider first the impacts of the status quo (Option 1), then the possible impacts of deregulating teleshopping on non-PSB channels (Option 3) before looking at the impacts of full deregulation on all channels (Option 2). Finally,

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<sup>89</sup> These are owned by two groups – QVC and Sit-up TV Limited (now part of Aurelius).

we look at the possible impacts of full deregulation for non-PSB channels and partial deregulation for PSB channels (Option 4).

- A3.251 In order to assess the possible impacts of different options for regulating teleshopping in quantitative terms, it would be necessary to make a significant number of assumptions. These include assumptions as to whether or not transactional services may be classified as teleshopping; if so, what types of transactional programming may be developed; if not, whether PSB channels might wish to schedule conventional teleshopping content or whether they would be concerned that the likely financial benefits would not justify the risk to their brands. Given this, we considered that any quantitative assessment that might be made could be misleading, and that it is more appropriate to describe the range of possible impacts. As we did not receive any alternative suggestions from stakeholders in their responses to the October 2008 consultation, we are continuing to assess the teleshopping options on a qualitative basis.

### **Status quo (Option 1)**

- A3.252 At present PSB channels do not have a separate teleshopping allowance; any teleshopping windows they do show would have to be scheduled between midnight and 6am, using their allowance for spot advertising. This is not a commercially attractive option, so PSB channels do not air teleshopping windows. Non-PSB channels are allowed to show up to 3 hours of teleshopping a day, at any time of the day or night.

#### *Impact on broadcasters*

- A3.253 If the current rules are maintained, PSB channels might be disadvantaged if (as is possible) certain kinds of transactional services (e.g. quiz programming or gambling content) currently categorised as editorial content are treated as teleshopping. The practical effects would be to prevent them showing this kind of programming on PSB channels (though not on allied non-PSB channels, such as ITV2, E4 or Fiver).

#### *Impact on teleshopping providers*

- A3.254 It seems unlikely that the impacts on teleshopping providers would change significantly if the current rules were maintained. Although it is possible that, in the event that transactional programming is to be treated as teleshopping, there will be fewer opportunities for scheduling conventional teleshopping windows on third party channels, there are still a number of channels that do not make full or any use of their teleshopping allowances. Therefore it seems unlikely that there would be a significant impact on teleshopping providers.

#### *Impact on viewers*

- A3.255 If the current rules are maintained, the impact of teleshopping on viewers is unlikely to change significantly over the short term. Over the longer term, if the real value of spot advertising revenue to each channel continues to decline, the quality and / or range of PSB programming may suffer as PSB channels are unable to develop teleshopping as an additional source of revenue. The possible impact of changes to the rules on what types of content are treated as teleshopping will be dealt with in a separate Ofcom document<sup>90</sup>.

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<sup>90</sup> TV and gambling services statement, May 2009

### Deregulation for non-PSBs / no change for PSBs (Option 3)

#### *Impact on PSB channels and advertisers*

- A3.256 Conventional teleshopping serves a fairly specialised market of producers and on-air retailers wishing to retail directly to consumers through the medium of television. Any increase in the 'supply' of teleshopping is unlikely to affect the market for spot advertising to any significant degree, due in part to the different nature of the advertising (for which teleshopping could not easily substitute) and to the fact that relatively few commercial impacts are delivered through late night / early morning teleshopping by comparison with peak-time spot advertising. Accordingly, the impact on advertisers using spot advertising is likely to be relatively small, as would be the impact on PSB channels. Those using teleshopping windows might find it cheaper to procure these, as the opportunities to provide them increased.
- A3.257 However, there could be other, indirect, effects on PSB channels. For instance, if the rules for non-PSB channels are relaxed, but the teleshopping restrictions on PSB channels remain, the effect would be to increase the opportunity cost of retaining PSB status. However, the effects on PSB groups are less easy to determine; while their main channels would not be able to show such content, their non-PSB channels could do so.

#### *Impact on teleshopping channels, and those with teleshopping windows*

- A3.258 Given that a significant number of non-PSB channels choose not to make use of their teleshopping allowance, and those that do mostly show teleshopping at times of the day when their audiences are naturally very low, it seems unlikely that there is significant pent-up demand for additional time. The responses we received from broadcasters tend to support this view.
- A3.259 We do not consider that dedicated teleshopping channels would be directly affected by any deregulation: they are already able to operate 24 hours a day. The channels that would be directly affected are those that currently offer teleshopping windows. To the extent that channels that currently offer teleshopping windows continue simply to simulcast the services of dedicated teleshopping channels, we do not think that there would be any significant impact on competition between different types of teleshopping service.
- A3.260 There could be some positive financial benefit to both dedicated teleshopping channels and the channels that simulcast their services. That is, making use of longer teleshopping windows on other channels could offer dedicated teleshopping channels a cost effective way to extend their reach and availability which could lead to an increase in revenue. This is a view supported by at least one respondent. Similarly, channels offering teleshopping windows might expect to benefit from a reduction in overall programming costs (because more time was now given over to the simulcast of teleshopping services) and potentially some additional payments from the simulcasting teleshopping channels.
- A3.261 In the event of de-regulation for non-PSBs, decisions about whether to extend teleshopping windows would be a matter of commercial judgement as to whether the revenue available to non-PSBs from offering more teleshopping would be greater than the revenue from (say) conventional spot advertising.
- A3.262 It is possible that de-regulation in the rules for non-PSBs could lead some channel operators that had previously simply simulcast dedicated teleshopping services to

develop their own teleshopping services. If so, that would represent an increase in the extent of competition in this sector. We do not anticipate that such a development would be a problem: we would anticipate that increased competition would be good for consumers.

*Impact on viewers*

A3.263 As indicated above, a significant number of non-PSB channels choose not to make use of their teleshopping allowances, and those that do mostly show teleshopping at times of the day when their audiences are naturally very low. Accordingly, it seems likely that, in the event of deregulation, channels would continue to use teleshopping to fill parts of their schedules that attract few viewers. It follows that the effects of additional teleshopping on viewers are unlikely to be significant. There may be benefits to viewers if teleshopping allows otherwise marginal channels to provide a greater range of programming than would otherwise be available, or if existing channels are able to afford better quality programming.

**Full deregulation for PSB and non-PSB channels (Option 2)**

A3.264 Under this option, both PSB and non-PSB channels would be free to decide how much teleshopping to schedule, and when.

*Impact on broadcasters*

A3.265 If PSBs were to take advantage of deregulation to offer conventional teleshopping windows by simulcasting dedicated teleshopping channels, this could increase competition with non-PSB channels doing the same. Dedicated teleshopping channels might well find the option of simulcasting on PSB channels more attractive than on non-PSB channels, given the larger potential audiences.

A3.266 The corresponding impact on the finances of the non-PSBs could be significant, given that revenue from teleshopping windows can help smaller channels to cover their fixed costs. If PSBs were to develop their own branded teleshopping services then that could also represent a more immediate competitive threat to the dedicated teleshopping channels.

A3.267 However, if transactional services such as quiz TV were categorised as teleshopping, some PSB channels might seek to produce entertainment-based transactional programmes, and schedule them in off-peak slots (e.g. daytime and late night) when audiences were modest, but rather more significant than those overnight.

A3.268 The experience with quiz TV services suggests that the reach and availability of PSBs are likely to be significant factors in the ability of channels to monetise new services. In the past, the PSBs experimented with both stand alone channels and also the broadcast of programming blocks on their core channels but most of the quiz TV revenue generated for them came from the programming blocks on their core channels. For instance, in a report to Ofcom<sup>91</sup> as part of the work on Participation TV services, Mediatique estimated that less than 10% of total ITV Play revenues were generated by the standalone ITV Play channel – the overwhelming majority of revenue was generated through blocks of ITV Play programming broadcast late-night on ITV1 and ITV2.

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<sup>91</sup> Mediatique. “*Participation TV: market overview*”. Final Report. March 2007.

*Impact on teleshopping providers*

- A3.269 The impact on teleshopping providers of deregulating teleshopping broadcast by non-PSBs is likely to be relatively limited for the reasons discussed above in paragraph A3.259 above.
- A3.270 The impact of PSB deregulation is likely to be very similar to that of non-PSBs, although potentially to a smaller degree. This is because PSBs are less likely to broadcast large periods of conventional teleshopping, particularly at peak times, given the role of their PSB obligations, their viewer image, and the higher value they are likely to derive from spot advertising rather than teleshopping.
- A3.271 Although it seems unlikely that PSBs will broadcast long teleshopping slots, it is possible that they could look to develop their own teleshopping services late at night when spot advertising does not generate a large number of impacts. If so, that would represent an increase in the extent of competition in this sector. However, as one stakeholder noted in their response, PSBs are unlikely to have the specialist resources to launch a teleshopping service themselves. Therefore there is the potential for them to look to partner existing teleshopping providers should they decide to launch a service, which could actually benefit the existing providers.
- A3.272 As mentioned in the October 2008 consultation, if the definition of teleshopping was extended to include services which had either previously been classified as editorial services (e.g. quiz TV) or which had not previously been permitted (e.g. betting and gaming services), then there could be benefits from increasing the length of the teleshopping window to accommodate such services. We understand that there could be scope for the simulcasting of existing gaming services in the same way as there is simulcasting of dedicated teleshopping services.

*Impact on viewers*

- A3.273 Our assessment of the impact on viewers of deregulating teleshopping on non-PSB channels is set out in paragraph A3.263 above.
- A3.274 As regards PSB channels, teleshopping could generate additional revenue that would help to pay for PSB programming that is not profitable. However, if it could be shown at any time of the day or night, it is possible that, say, entertainment-based transactional programming would displace conventional editorial content, to the detriment of viewers who look to PSB channels for a wide range of high quality editorial content.

**Full deregulation for non-PSBs; partial deregulation for PSBs (Option 4)**

- A3.275 In this option, non-PSB channels would be able to offer as much teleshopping as they wanted, whenever they wanted, but PSB channels would be limited to, say, 6 hours a day overnight.

*Impact on broadcasters*

- A3.276 In this scenario, the starting point for assessing the impact on non-PSB channels is the assessment for Option 3 (deregulation for non-PSBs). Although it is still not possible to quantify the impact of full liberalisation for non-PSBs, the discussion above suggests that the risks or downside from such an approach are likely to be relatively limited if the extent of deregulation for PSBs is constrained i.e. there is not likely to be a detrimental impact on either dedicated teleshopping channels or those

channels offering teleshopping windows. The responses we received from stakeholders appeared to broadly support this view.

A3.277 In relation to a partial deregulation for PSBs, the above discussion suggested that there could be a detrimental impact on non-PSBs to the extent that PSBs chose to use the teleshopping windows to offer simulcasts of existing teleshopping services. To the extent that PSBs made use of teleshopping windows to offer other services that were now considered to be teleshopping then such deregulation would tend to enable them to maintain/develop existing sources of funding and the impact on other teleshopping services would be reduced. We noted, for instance, that ITV is already able to offer quiz TV and programming based around a Bingo related game format.

*Impact on teleshopping providers*

A3.278 The impact of deregulation of non-PSBs is unlikely to be significant due to the same reasons listed above in paragraph A3.259 in relation to partial deregulation, even though they could broadcast as much teleshopping as they wanted.

A3.279 In terms of the partial deregulation of PSBs, teleshopping providers are unlikely to be significantly affected as PSBs are unlikely to have particularly strong incentives to fill their schedules with teleshopping. This is due to the partial nature of the deregulation under this option, as well as for the reasons detailed above in paragraph A3.270 and A3.271 under full deregulation which are also relevant here.

*Impact on viewers*

A3.280 A key concern here is the extent to which allowing PSBs to carry specific teleshopping windows might result in a detrimental impact on viewers. The more attractive it was to PSBs to schedule teleshopping windows at times of the day when relatively large numbers of viewers might be available the greater the risk of a detrimental impact on the delivery of editorial content.