

1<sup>st</sup> October, 2014

Daniel Maher  
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Dear Daniel

**ISBA'S RESPONSE TO OFCOM'S CONSULTATION ON THE SCHEDULING OF TELEVISION ADVERTISING**

Thank you for the opportunity to respond to this consultation. Having had extensive dealings with Ofcom since its inception, and as a regular respondent to all relevant consultations, we will not protest our reasons for responding in this instance, save to reiterate that ISBA is the representative body of British Advertisers. For more information, please see [www.isba.org.uk](http://www.isba.org.uk).

As the consultation refers not to the rules governing the amount and scheduling of television advertising themselves, but to their clarification and enforcement, we can keep our comments brief. This response opens with some general comments and observations and then follows the order of questions set out in the consultation document.

**GENERAL COMMENTS AND OBSERVATIONS**

We are pleased that the contents of the Code on the Scheduling of Television Advertising (COSTA) themselves are not at issue in this consultation. We believe that, after very considerable debate with stakeholders, they were framed in such a way that keeps them relevant and has made them durable.

To coin a phrase, they 'ain't broke' and so do not need fixing. Periodic, albeit anecdotal, comparisons by our members who operate internationally indicate that UK television advertising content and scheduling are both exemplarily and quite heavily-enough regulated already.

We also support Ofcom's diligent approach to their review for clarity, particularly with regard to the European Union's Audiovisual Media Services Directive, and to the details of their enforcement. That said, this consultation suggests that considerable relish and zeal on Ofcom's part has made a rather elaborate exercise out of what is in essence simply a regulatory 'tidying up exercise'.

Looking at the impact assessments, it appears that a 'mixed economy' has emerged in response to previous attempts at precise and deep regulatory intervention.

The uniting fact is that every commercial channel, however funded, must seek viewers and it is those viewers who attract advertisement revenues. No channel will therefore knowingly do anything that might disenfranchise and deter those viewers. This includes some of the behaviours COSTA seeks to prevent. From this perspective, there is a fine line between Ofcom seeking to guide and perhaps in some cases nanny its licensees on the one hand and natural commercial 'forces for good' on the other.

However, there is also a clear sense from this consultation that one small group of broadcasters, certain childrens' channels, sees commercial opportunity in recalibrating enforcement metrics in a way that others do not. This presents the possibility of 'throwing baby out with the bathwater', which we argue Ofcom should resist. Given the periodic threats to freedoms to advertise responsibly to children, we believe it would be unwise for Ofcom to bend towards constituents that might at some point be critically threatened by other forms of legislative or regulatory intervention to the cost of the rest of its licensees.

#### RESPONSES TO SPECIFIC RELEVANT OFCOM QUESTIONS

##### **QUESTION 1: DO YOU AGREE WITH OUR ASSESSMENT CRITERIA AS SET OUT IN SECTION 5?**

The criteria seem very thoroughly-considered and we can envisage no other practical options.

##### **QUESTION 2: WHAT ARE YOUR VIEWS ON THE ENFORCEMENT APPROACHES SET OUT IN SECTION 5?**

**QUESTION 3: WHAT ENFORCEMENT APPROACH SHOULD OFCOM ADOPT FOR THE PURPOSE OF ENFORCING COSTA RULES ON THE SCHEDULING OF ADVERTISING DURING PROGRAMMES? IF YOU CONSIDER THAT OFCOM SHOULD USE AN APPROACH OTHER THAN THE EPG APPROACH OR ONE OF THE TX APPROACHES DESCRIBED IN THIS DOCUMENT, PLEASE EXPLAIN YOUR PREFERRED APPROACH IN DETAIL.**

On the one hand, we would naturally favour approaches which are more accurate, for example using actual second-by-second data, as they are more rigorous.

On the other, it is difficult from our vantage to determine between some broadcasters' keenness to maintain the status quo from others' quite esoteric arguments seeking marginal commercial advantage.

To be clear, we would not wish to see an outcome in which more programmes, however measured, were determined ineligible to carry centre commercial breaks. (Many of our members and their agencies consider these superior in terms of audience engagement, and therefore advertising effect, to end breaks).

**QUESTION 5: DO YOU AGREE THAT THE CLARIFICATION RELATING TO THE DEFINITION OF ADVERTISING APPROPRIATELY TRANSPOSES THE REQUIREMENTS OF THE AVMS DIRECTIVE? IF NOT, PLEASE EXPLAIN WHY.**

We have no issue with the clarification proposed provided that it does not somehow lead to the eventual conflation of advertising proper and broadcasters' own announcements, to the eventual detriment of or reduction to advertising allowances.

(Separately but related, we are becoming aware of growing concerns about the re-emergence of some broadcasters' deployment of significant amounts of their advertising airtime for their own products or services, as was the case more than a decade ago when ITV gave heavy ad rotation to its ultimately unsuccessful OnDigital service and its Friends Reunited acquisition).

**QUESTION 6: DO YOU AGREE WITH THE PROPOSED CLARIFICATION AND DEFINITION OF A CLOCK HOUR?**

**QUESTION 7: DO YOU BELIEVE THAT THERE ARE POTENTIAL IMPACTS OF THE ABOVE PROPOSAL THAT OFCOM HAS NOT IDENTIFIED?**

Point 6.15.1 is clear, but thereafter we feel that Ofcom is in some danger of 'gilding the lily'. Why not simply allow broadcasters to define a clock hour as "any period of exactly sixty minutes which does not overlap in any part whatsoever with any other similar period". This might give broadcasters useful flexibility on some occasions whilst continuing to protect viewers against higher levels of advertising. (We avoid use of the pejorative, 'excessive').

**QUESTION 8: DO YOU AGREE WITH THE PROPOSED CLARIFICATION OF THE DEFINITION OF FILMS? IF NOT, PLEASE EXPLAIN WHY.**

We believe that this clarification is in accordance with the Directive's intentions.

**QUESTION 9: DO YOU AGREE THAT THE PROPOSED CLARIFICATION OF THE DEFINITION OF TEleshopping IS APPROPRIATE? IF NOT, PLEASE EXPLAIN WHY.**

We believe that the intention here is correct but that it would further benefit from the line from 6.26 (eg on-Screen display giving product, price and ordering details) being imported into the definition itself, as per :

*..."teleshopping' (eg on-Screen display giving product, price and ordering details) means direct offers broadcast to the public with a view to the supply of goods or services, including immovable property, rights and obligations, in return for payment".*

**QUESTION 10: DO YOU HAVE ANY COMMENTS ON THE HOW THE EXEMPTION FOR L-DTPS IS REFLECTED IN THE DRAFT CODE?**

As one of several organisations that urged great caution as to the likely fortunes of L-DTPS and are now seeing these warnings become manifest as stations launch, we consider this exemption entirely technical and moot.

Firstly, if an average of 7.5/9 minutes per hour and an absolute maximum of 12 in any clock hour does indeed represents a 'threshold of acceptability', why should it be any different for L-DTPS? The viewers are after all the same people.

Second, we do not consider L-DTPS to have any greater chance of survival however much advertising stations are allowed to carry (effectively becoming local teleshopping channels in extremis). We are humble enough to understand that while viewers may enjoy much advertising, they switch to and view channels for the content they seek and find there. No content, no audience, no appeal to advertisers...

**QUESTION 11: DO YOU HAVE ANY COMMENTS ON THE PROPOSAL TO UPDATE COSTA TO REFLECT THE CHANGES TO THE RULES ON ADVERTISING BREAK LENGTHS ON PSB CHANNELS?**

We warmly support this proposal on the basis of the evidence gathered during the trial waiver.

**QUESTION 12: DO YOU HAVE ANY COMMENTS ON THE PROPOSAL TO CHANGE THE LAYOUT OF COSTA OR ON THE MINOR REVISIONS PROPOSED?**

**QUESTION 13: DO YOU BELIEVE THAT THERE ARE POTENTIAL IMPACTS OF THE ABOVE PROPOSALS THAT OFCOM HAS NOT IDENTIFIED? IF SO, PLEASE PROVIDE DETAILS.**

**SUMMARY OF THIS RESPONSE**

In summary, we concur with many of the enhancements to COSTA proposed by Ofcom. However, given the sensitivities that attach to almost any considerations involving children, broadcasting and advertising, we do not believe on balance that the calibration and implementation of COSTA should be unduly influenced by the commercial wishes of a relatively few minority childrens' channels.

We have no further comments in addition to those made in response to previous questions above, but please do not hesitate to contact us if you require further information and/or comment.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Bob Wootton', with a long horizontal stroke extending to the right.

**Bob Wootton**

*Director of Media & Advertising*