

We herewith provide our reverts to each of the thirteen questions, posed in this consultation paper

Question 1: Do you agree with our assessment criteria as set out in Section 5?

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.

### **TV Today Comment**

The assessment criteria taking into account consumer interests, practicality of enforcement and regulatory certainty, are apt for assessing the feasibility of the Scheduling procedure for television advertising. From TV Today Network Limited perspective, however it is essential that a clear distinction be drawn between “clock hour” and “programming hour”.

Also essential is clarity on the permitted duration of the advertisement in a scenario, say where the program is intended to be of a duration of only 30 minutes, so in such case whether the pro-rata application of the twelve minute rule would be enforceable and whether in such circumstance only 6 minutes of advertising are permitted in the said 30 minute program. This would require clarity say if the TV Today’s program commences at 7:30 am and goes on till 8:30 am, would the company be entitled to show only twelve minute of advertisements or can the company adjust the timings of the advertisement

It is pertinent to note that it is the editorial content for which a channel is watched and not for the advertisement content. However, a program say spanning an hour’s time (being inclusive of advertisements) cannot be considered an hour long purely on editorial content or else it would go on into the next hour once the ads are inserted in between.

*As has been discussed earlier -- you would appreciate that the clock hour cannot be taken on a per hour basis, since the viewer does not view the TV on per hour basis. We have further analyzed the term “hour” from various dictionaries and are of strong view that the term “clock hour” cannot be used as an accurate measure or medium to assess viewership.*

***Consequently clock hour has little relevance in the news genre since we are compelled as broadcasters to drop ads to cater to the breaking news***

*The concept of what is an appropriate length of advertisement time, therefore, would have to be based on genre given that various television programming genres have varied needs. Ensuring that this unique requirement of certain genres over others is catered to would therefore need to be taken up by the Ofcom.*

*In continuation to the above, this is especially pertinent, in light of the fact that the COSTA has Tables providing for the number of internal breaks in programmes on “public service channels” and “other channels”. Also I have noticed a discrepancy in interpretation of the twelve minute Rule as laid by OFCOM COSTA Regulations UK, since as per Table 2, a program that has a scheduled duration of less than 26 minutes can show only one ad break. This means that in a half hour (as per the EPG schedule for the program) only one Ad break of four minutes would be permitted.*

*This would mean that in the next half hour, TV Today will only be eligible to only 4 minutes of advertisement time, and with carry forward provisions of a self defeating nature, since even for the next hour the twelve minute Ad Cap needs to be adhered*

It is also pertinent to note that while Rule 4 b) of the COSTA Regulations states – “...time devoted to television advertising and teleshopping spots must not exceed an average of 12 minutes of television advertising and teleshopping spots for every hour of transmission across the broadcasting day, of which no more than 9 minutes may be television advertising.”

However, would seek clarity whether the rule may be interpreted as:

**Commercial advertisements (9 minutes) + Self-promotional advertisements (3 minutes)**

I would request clarity from Ofcom on the issue and vide Ofcom’s communiqué received on 18<sup>th</sup> September 2014 (pursuant to TV Today Network Limited’s meeting with Ofcom’s representatives), it was clarified as follows

*“We also discussed the distinction between television advertising (as defined in COSTA) and self-promotional items, and confirmed that self-promotional items (such as programme trailers, continuity announcements, etc.) are not treated as advertising for the purposes of calculating advertising minutage.”*

This would therefore imply that all self-promotional content would not be treated as part of the 12 minutes (per hour) of permitted advertisement time. This seems to be cleared up by the text box proposed to be above Rule 2 by way of a clear amendment and does away with the ambiguity on the issue.

*Question 4 is for broadcasters that transmit children’s programmes and therefore the same is fine with us has not been commented on.*

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? Please identify any areas of this proposal which, if it is accepted, you consider Ofcom should issue guidance on.

### **TV Today Comment**

The proposal for amendment to the definition of “television advertising” provides for the footnotes to be deleted; i.e. now self advertisements are also included in the definition of television advertising. Don’t you think that this would once again create an ambiguity in an area which the Ofcom was kind enough to clarify?

It is also pertinent to note that the following language, though meant to grant clarity, requires further explanation:

*“Accordingly, to make this position clearer, we propose to remove the footnote and clarify that the exemption for announcements made by a broadcaster in connection with its own programmes and ancillary products directly derived from those programmes relates only to those rules limiting the amount of advertising that broadcasters can transmit.”*

*So does that mean that above will form an integral part of the twelve minute rule?*

Question 6: Do you agree with the proposed clarification and definition of a clock hour? If not, please explain why.

Question 7: Do you believe that there are potential impacts of the above proposal that Ofcom has not identified? If so, please provide details. Please identify any areas of this proposal that, if adopted, you consider Ofcom should issue guidance on.

### **TV Today Comment**

While the definition of a clock hour provides sufficient clarity, but there is a problem which is created for the programming schedules. This problem is that as per the UK Law, where a one hour slot is to be filled which begins at the start of a clock hour, it is 48 minutes of the editorial content that can be shown while 12 minutes of advertisements may be aired.

However, if 50 minutes of editorial content is shown, it leaves a balance of 2 minutes of advertisement time from one clock hour. How is this balance of 2 minutes proposed to be used, without a breach of the 12 minute rule?

Question 8: Do you agree with the proposed clarification of the definition of films? If not, please explain why.

Please identify any areas of this proposal that you consider Ofcom should issue guidance on.

## **TV Today Comment**

The amended definition of “films” though purely a rearrangement of the words used in the original definition, sufficiently sorts the issue raised by the paper in the original definition. While UK rules gives benefits and clarity from the laid time duration for the films, TV Today would suggest that its exclusive “documentaries” should also be included within the definition of the films, so that equal treatment is met to the same. Currently documentaries are not a cinematographic work, as per the Ofcom UK guidelines.

Question 9: Do you agree that the proposed clarification of the definition of teleshopping is appropriate? If not, please explain why.  
Please identify any areas of this proposal that you consider Ofcom should issue guidance on.

## **TV Today Comment**

Since the wording of the definition is now brought in-line with the AVMS Directive provided for by the EU, and is a certain exclusive definition rather than an inclusive one, there are no comments that we as broadcasters can give on the same.

Questions 10 and 11 relate to Public Service Broadcasters and Local Digital Television Programme Services and therefore have not been commented on. \_\_

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.

## **TV Today Comment**

Rule 2 and Rule 3 as proposed in the minor revisions appear to be in contradiction, as Rule 2 suggests that the ad cap for channels is 12 minutes in a clock hour, while Rule 3 suggests that a non public service channel (like TVTN’s channels) can show no more than 9 minutes of adverts in an hour of transmission. This throws up the question of the distinction between “hour of transmission” and “clock hour” and how this would affect scheduling.

Trust TV Today’s concerns would be aptly addressed by clarification from the Ofcom UK.

I would be happy to lend further clarity to any points which the Ofcom UK considers ambiguous in this response.