



# The Scheduling of Television Advertising

Approaches to Enforcement

Consultation

Publication date: 18 July 2014

Closing Date for Responses: 10 October 2014



# About this document

Ofcom sets rules that restrict the number of advertising breaks that may be shown during programmes depending on their length and genre. These rules are intended to protect viewers and are, in some cases, based on requirements stipulated in European law.

This document is consulting on options available to Ofcom in order to secure effective and consistent enforcement of rules on the extent to which television programmes can be interrupted by advertising.

Although European law specifies the number of advertising breaks permitted during certain programmes, it does not specify the approach that national regulators like Ofcom should take in enforcing these rules. Broadcasters have argued strongly in favour of different approaches. In this document, we set out our view of the advantages and disadvantages of each possible approach.

The document also outlines proposals for changes to the advertising scheduling rules which are designed to make them clearer and easier to follow.

Following this consultation, we expect to issue a statement in early 2015.

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## Section 1

# Executive summary

- 1.1 Ofcom’s Code on the Scheduling of Television Advertising (“COSTA”) contains rules that restrict the number of advertising breaks which broadcasters may transmit during programmes; these are known as “internal breaks”. The number of internal breaks permitted in a programme is determined by a range of factors, including the programme’s genre and its scheduled duration.
- 1.2 In this consultation we seek views on the enforcement approach we should adopt in future in order to secure compliance with the COSTA rules on the scheduling of internal breaks in programmes. We also propose a number of revisions to the wording and layout of the COSTA rules to aid clarity.

## **Advertising scheduling rules, as well as Ofcom’s objectives, are framed by European and UK legislation**

- 1.3 European law, the Audiovisual Media Services (“AVMS”) Directive sets a number of minimum standards in relation to the content and scheduling of television advertising with which EU member states must comply. These rules are intended to protect the interests of television viewers. They seek to safeguard the specific character of European television by limiting both the amount of advertising that television services may show and the extent to which advertisements may interrupt programme content.
- 1.4 The AVMS Directive makes clear that individual Member States may choose to apply more detailed or stricter rules, provided these are compliant with the principles set out in European legislation. In deciding on our approach to advertising regulation, including whether there is a need for regulation that goes further than the standards required under the European framework, Ofcom must act in accordance with its statutory duties, including our principal duty to further the interests of citizens and consumers.
- 1.5 In 2007 Ofcom began a multi-stage review of advertising regulation which was designed to take account of changing viewing patterns as well as amendments to the statutory framework that would be brought in as a result of the AVMS Directive. Although in that review we ultimately concluded that the rules on the amount of advertising which broadcasters are able to transmit should not change from previous levels, we did conclude that a number of rules governing advertising during programming should be removed or liberalised. These changes were formally introduced by Ofcom in COSTA during 2008.
- 1.6 In light of the requirement in the AVMS Directive that television advertising inserted during programming must take account of the integrity and nature of editorial content, COSTA contains specific rules restricting the number of times that programmes may be interrupted by advertising breaks. How many internal breaks are permitted in a programme depends on a number of factors including the programme’s genre and the channel on which it appears. For example, public service channels are more restricted in scheduling internal breaks than other services, while news, children’s programmes and films may be interrupted by advertising less frequently than other types of programmes.

- 1.7 Both the AVMS Directive and COSTA include restrictions on the insertion of internal breaks that are dependent on the ‘scheduled duration’ of the programmes concerned.

### **Effective and consistent enforcement of advertising scheduling requires choosing between alternative approaches to measuring programme length**

- 1.8 To enforce advertising scheduling rules across all broadcasters, it is necessary for Ofcom to adopt a transparent and consistent methodology for determining a programme’s scheduled duration. Traditionally, Ofcom has used information from published programme listings, such as electronic programme guides (“EPGs”), for this purpose. The use of such information means that scheduled duration is measured by reference to the programme slot shown in published listings services; an approach broadly accepted by industry stakeholders for many years.
- 1.9 However, some broadcasters specialising in children’s programming have argued strongly for an alternative approach to the measurement of scheduled duration, deriving from the information they record in their transmission logs. These logs set out each aspect of a programme’s transmission – including the start and end of editorial content and the timings of commercial breaks – to the nearest second.
- 1.10 Measurement on the basis of a broadcaster’s transmission data therefore enables regulation at a more granular level than permitted by programme listings. Whereas EPG information dictates that a programme’s scheduled duration must equate to the timeslot in which a programme is scheduled, the use of transmission logs would permit determination of a programme’s scheduled duration on the basis of:
- 1.10.1 the period between the start of one programme to the start of the next (“the programme slot”); or
  - 1.10.2 the time between the start and finish of a programme (i.e. including internal advertising breaks); or
  - 1.10.3 the duration of editorial material alone (i.e. excluding internal advertising breaks).
- 1.11 Because the rules which specify how many internal breaks may be scheduled depend on this measurement, the consequences for broadcasters and viewers of the approach used to measure a programme’s scheduled duration are potentially significant. Each of the potential approaches could affect the ability of broadcasters to generate advertising revenue and/or the level of advertising material to which viewers are exposed. The potential advantages and disadvantages of the alternative approaches are examined in Section 5 of this document.

### **Particular considerations apply to the enforcement of breaks in children’s programming**

- 1.12 The AVMS Directive makes clear that some categories of programming require specific protection above and beyond the general restrictions on the scheduling of advertisements. These additional protections include a stipulation that the transmission of a children’s programme may be interrupted by television advertising only if it has a scheduled duration that is “greater than 30 minutes”. Ofcom is required

to give effect to this regulation. How we do so is dependent on the approach we use to determine a programme's scheduled duration

- 1.13 Ofcom has stated previously that it is concerned about falling investment in UK children's programming. Ofcom's research shows that investment in UK children's programmes made by the public service broadcasters has fallen in recent years, from £136m in 2006 to £92m in 2012. Ofcom remains concerned about this trend and is aware of the potential implications for programme investment of adopting different enforcement approaches.
- 1.14 We are also aware that whatever enforcement methodology is adopted may raise questions about the effectiveness of the rules in achieving specific policy goals. An approach based on transmission logs may require a children's programme to be greater than 30 minutes only by a single second before it is permitted to include an advertising break. Enforcement based on an EPG listing could require programmes to be up to five minutes longer, in some circumstances leading broadcasters to insert more advertising into existing programme stock in order to retain an interrupting break.

### **A number of amendments to the advertising scheduling rules are also necessary to provide clarity for stakeholders**

- 1.15 Since Ofcom last updated COSTA, it has made a number of policy decisions that impact on the application of rules in the Code. Specifically, Ofcom's consultation *Commercial References in Television Programmes*<sup>1</sup> and Ofcom's statement *Licensing Local Television*<sup>2</sup> introduced limited exemptions for some broadcasters and for some programmes from specific rules. We are therefore proposing to amend COSTA to codify these exemptions.
- 1.16 We are also proposing a number of other amendments, on the basis of our experience of enforcing COSTA, that are designed to help broadcasters apply the rules consistently. These relate to the definitions of specific terms such as "teleshopping" and "clock hour" as well as amendments to the layout of COSTA so that it more closely reflects the structure of the Ofcom Broadcasting Code.<sup>3</sup>
- 1.17 Section 6 of this consultation explains the proposed amendments and seeks stakeholder views on the proposals.

### **Next steps**

- 1.18 Ofcom invites interested parties to make submissions on the issues set out in this document by 10 October 2014. Respondents are asked to structure their responses around direct answers to the questions asked in this document, which are listed together at Annex 4.
- 1.19 Following the consultation period, and after a full consideration of the responses that we receive, we expect to issue a statement in early 2015.

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<sup>1</sup> <http://stakeholders.ofcom.org.uk/consultations/bcrtv2010/statement/>

<sup>2</sup> <http://stakeholders.ofcom.org.uk/consultations/local-tv/statement>

<sup>3</sup> <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/>

## Section 2

# Introduction

- 2.1 The key purpose of this consultation is to determine what methodology Ofcom should adopt for the purpose of enforcing the Code on the Scheduling of Television Advertising (“COSTA”) rules on the scheduling of advertising during programmes.
- 2.2 The consultation also proposes some changes to the wording and layout of COSTA.
- 2.3 This section explains why Ofcom needs to address these issues.

## What are the relevant rules?

- 2.4 COSTA contains rules, with which Ofcom licensed broadcasters must comply, on the amount of advertising they can transmit and where advertising can be scheduled. These restrictions are in place to ensure that viewers are not exposed to excessive amounts of advertising, and that the quality of the viewing experience is maintained.
- 2.5 In relation to where advertising is scheduled, COSTA contains rules that limit the number of advertising interruptions (“internal breaks”) in a programme based on the type of channel on which it is broadcast. For example, the number of internal breaks permitted in programmes broadcast on public service broadcasting (“PSB”) channels<sup>4</sup> differs from the number permitted during programmes transmitted on non-PSB channels (see COSTA rules in Annex 7 for further details). The number of internal breaks permitted is based on a programme’s ‘scheduled duration’.
- 2.6 In addition, COSTA places restrictions on the number of internal breaks that can be included in certain programmes based on their genre. For example:
  - 2.6.1 films and news programmes may include one internal break for each scheduled period of at least 30 minutes; and
  - 2.6.2 children’s programmes with a scheduled duration of 30 minutes or less may not include an internal break. Such programmes with a scheduled duration that is greater than 30 minutes may have one break for each scheduled period of at least 30 minutes.
- 2.7 The restrictions on internal breaks in films, news and children’s programmes are derived from European legislation, the AVMS Directive.<sup>5</sup> The Communications Act 2003 requires Ofcom to give effect to the advertising restrictions set out in this Directive.<sup>6</sup>
- 2.8 The legislative framework that underpins these rules is set out in more detail in Section 4 of this consultation.

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<sup>4</sup> The relevant PSB channels are Channel 3 services, Channel 4, Channel 5, and S4C.

<sup>5</sup> Article 20(2), AVMS Directive, 2010 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:095:0001:0024:EN:PDF>

<sup>6</sup> Communications Act 2003, Section 319  
<http://www.legislation.gov.uk/ukpga/2003/21/section/319>

## Why are we consulting on what enforcement methodology to use?

- 2.9 While both COSTA and the AVMS Directive place restrictions on the insertion of internal breaks based on the 'scheduled duration' of programmes, neither define this term. In order to enforce the advertising scheduling rules, it is therefore necessary for Ofcom to adopt an enforcement methodology that determines a programme's scheduled duration that is appropriate to give effect to the Directive and the COSTA rules derived from it.
- 2.10 In deciding on an appropriate enforcement methodology, Ofcom must take into account that the potential sources of information that can be used to measure a programme's scheduled duration shape:
  - 2.10.1 the broadcasting period that can be included when calculating a programme's scheduled duration; and
  - 2.10.2 the minimum unit of time that can be used when considering whether the scheduled duration of a programme exceeds a specified period.
- 2.11 One enforcement methodology, traditionally used by Ofcom, is to use programme times shown in published listings, such as electronic programme guides (EPGs), as a proxy for a programme's scheduled duration. For example, a programme listed as starting at 19:00 followed by another starting at 19:30 would be deemed to have a scheduled duration of 30 minutes. Using this information, the broadcasting period that is covered by the 'scheduled duration' measurement is the programme slot in which the programme is scheduled.
- 2.12 Some children's broadcasters have challenged this approach on the basis that they believe it requires a children's programme to have a minimum scheduled duration of 35 minutes before it can contain an internal advertising break. This is because of the way in which programme times are reflected in published listings, which usually show the start times of programmes to the nearest five minute junction. In such cases, a children's programme that is scheduled in a 30 minute EPG slot (e.g. 07:00 to 07:30) would not be entitled to an internal break, but one scheduled in a 35 minute slot (e.g. 07:00 to 07:35) would be.
- 2.13 These children's broadcasters believe that it is more appropriate to use transmission data to calculate a programme's scheduled duration as this offers a more granular and precise measurement when establishing whether a programme's scheduled duration is 'greater than 30 minutes'. Using this approach, transmission time can be measured to the nearest second, therefore potentially allowing a children's programme that has a scheduled duration of 30 minutes and one second or more to be entitled to an internal break.
- 2.14 Unlike EPG information, which can only reflect a programme's length as a slot in a grid, transmission data potentially can be used to measure the precise start and end times of a programme. Adopting an enforcement methodology whereby transmission data is used as the basis for enforcing advertising scheduling rules therefore raises additional questions about the broadcasting period that is included when measuring a programme's scheduled duration (i.e. actual programme length, programme length including interrupting advertising or the slot in which a programme is scheduled).
- 2.15 These children's broadcasters have been scheduling advertising on the basis of calculating a programme's scheduled duration by measuring the duration of a programme slot to the nearest second using their own transmission data. This has

resulted in the inclusion of internal breaks in a number of children’s programmes that appear on EPGs as having a scheduled duration of 30 minutes.

- 2.16 Because of this, the European Commission has questioned the UK’s enforcement of the AVMS Directive’s advertising scheduling rules that apply to children’s programmes.
- 2.17 The primary focus of this consultation is therefore to decide what is the most appropriate enforcement methodology for Ofcom to adopt when determining a programme’s scheduled duration for the purpose of applying the rules that restrict internal breaks in programmes.
- 2.18 The potential enforcement options, along with further explanation of this issue, are set out in Section 5 of this consultation document.
- 2.19 Additional information on the background to the advertising scheduling requirements, and how the rest of Europe has enforced these, is included in Section 3 of this document.

### **What else does this consultation cover?**

- 2.20 In addition, the consultation sets out:
  - 2.20.1 proposed revisions to COSTA that reflect specific exemptions from rules introduced since the Code was last updated in 2010; and
  - 2.20.2 proposed amendments to the wording of some rules that we consider necessary to aid clarity or ensure regulatory certainty.
- 2.21 Section 6 of the document explains the proposed changes and the reasons for them.

### **Approach to consultation**

- 2.22 Ofcom recognises the important role advertising plays in enabling commercial broadcasters to deliver high quality and diverse programming. Imposing overly restrictive rules on the scheduling of television advertising could result in a reduction of investment in UK programming and potentially a decline in the range of services available to consumers. Conversely, permitting excessive advertising during television programmes is likely to be detrimental to the viewing experience. There is therefore a balance to be struck between these competing considerations.
- 2.23 We have taken this into account when considering the issues set out in this consultation. We have also had due regard to Ofcom’s statutory duties and regulatory objectives. We explain what these are in Section 4 of this consultation.
- 2.24 In particular, we have taken into account:
  - 2.24.1 our duty to secure a wide range of high quality television and radio services; and
  - 2.24.2 the need to ensure that the interests of consumers as television viewers are fully and properly protected.

- 2.25 We have also had regard to the purpose of the AVMS Directive in relation to advertising and the protection of children. In particular, the intention of the Directive to:
- 2.25.1 give flexibility to broadcasters in inserting advertising in programmes, where that does not unduly impair the integrity of those programmes; and
  - 2.25.2 at the same time, to safeguard the specific character of European television, where advertising is preferably inserted between programmes, and where possible interruptions to certain categories of programme requiring specific protection are limited.<sup>7</sup>
- 2.26 As indicated above, the Directive identifies children's programmes as a protected genre and imposes restrictions on the number of internal breaks they may contain. Therefore, a clear purpose of the Directive is to limit the amount of advertising to which children are exposed.
- 2.27 Stakeholders are invited to submit written views and comments on the issues raised in this consultation (see Annex 1 for details of how to respond).

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<sup>7</sup> Recital 86, AVMS Directive

## Section 3

# Background

- 3.1 As stated in the Introduction, the key purpose of this consultation is to determine what enforcement mechanism Ofcom should use when applying advertising scheduling restrictions set out in the Code on the Scheduling of Television Advertising (“COSTA”).
- 3.2 Although most programmes are subject to advertising restrictions based on their scheduled duration, we are consulting on the appropriate enforcement mechanism to adopt because of particular concerns around the scheduling of internal breaks in children’s programmes.
- 3.3 This section therefore sets out:
  - 3.3.1 the legislative history of the restriction on internal breaks in children’s programmes; and
  - 3.3.2 how the relevant advertising scheduling restrictions are applied in other EU Member States.

## History of advertising scheduling restrictions for children’s programmes

- 3.4 The scheduling of advertising on UK television has been subject to regulation since the launch of commercial TV in the 1950s. The amount of advertising UK television broadcasters are allowed to show was first determined by prescriptive UK legislation (since repealed) and then at a European level from 1989 through the Television Without Frontiers (“TVWF”) Directive.
- 3.5 In relation to internal breaks in children’s programmes, the TVWF Directive stated that such programmes could contain internal breaks if a period of at least 20 minutes had elapsed between each successive break *and* the scheduled duration of the programme was 30 minutes or longer.
- 3.6 In December 2009, the Audiovisual Media Services (“AVMS”) Directive replaced the TVWF Directive. During the drafting of the AVMS Directive, the European Commission proposed increasing, to 35 minutes, the minimum scheduled duration of a children’s programme before which it could contain an internal break.
- 3.7 This proposal was ultimately rejected. Instead the AVMS Directive introduced a requirement that a children’s programme must have a scheduled duration that is greater than 30 minutes before it can contain an internal break.<sup>8</sup>

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<sup>8</sup> Article 20(2) of the Directive states “The transmission of films made for television (excluding series, serials and documentaries), cinematographic works and news programmes may be interrupted by television advertising and/or teleshopping once for each scheduled period of at least 30 minutes. The transmission of children’s programmes may be interrupted by television advertising and/or teleshopping once for each scheduled period of at least 30 minutes, provided that the scheduled duration of the programme is **greater than 30 minutes**. No television advertising or teleshopping shall be inserted during religious services.”(emphasis added)

- 3.8 Ofcom, as the UK regulator responsible for enforcing broadcasting standards, is required to give effect to the advertising restrictions set out in the AVMS Directive.
- 3.9 As previously stated, Ofcom has enforced the relevant advertising scheduling rules by reference to the scheduling information set out in published programme guides.
- 3.10 Because programme guides generally list programme times to the nearest five minute junction, some children’s broadcasters have argued that by using this information as a basis for enforcement, Ofcom is effectively requiring a children’s programme to have a scheduled duration of 35 minutes before it can contain an internal break. These broadcasters note that the introduction of a 35 minutes minimum duration was specifically rejected when the AVMS Directive was drafted.
- 3.11 These broadcasters have therefore challenged the use of programme guides as an appropriate enforcement tool. They have submitted that the AVMS Directive does not specify by how much longer than 30 minutes the scheduled duration of a children’s programme must be before it is entitled to an internal break and accordingly that:
- 3.11.1 an internal break should be permitted in a children’s programme that has a scheduled duration of 30 minutes and a few seconds; and
  - 3.11.2 their actual transmission data should be used as the enforcement tool to calculate the scheduled duration of a programme because it offers a more precise measurement than information obtained from EPGs.

### **How are the relevant advertising scheduling restrictions applied throughout Europe?**

- 3.12 We have engaged with regulators in other European countries to understand how they had transposed the AVMS provisions relating to the scheduling of advertising into national legislation.
- 3.13 When asked how they measure the ‘scheduled duration’ of a programme:
- 3.13.0 five national regulators said they measured the actual programme (editorial) length excluding the duration of internal breaks;
  - 3.13.1 nine said they measured the actual programme length including the duration of internal breaks but not the duration of the break after the programme had finished; and
  - 3.13.2 three said they used the length of the programme slot as reflected in published listings.
- 3.14 The different approaches adopted by national regulators make it clear that no consensus exists on the appropriate basis for determining the scheduled duration of a programme for the purpose of enforcing the Directive’s advertising scheduling restrictions.

## Section 4

# Legal framework

## Introduction

4.1 In considering the issues addressed in this consultation, we must take account of Ofcom’s statutory duties, as set out in the Communications Act 2003 (“the Act”). In this section we explain the specific nature and purpose of our duties insofar as they relate to this consultation, referring to the relevant regulatory objectives and principles set out in the Act and in European legislation.

## Communications Act 2003

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

4.2.1 citizens in relation to communications matters, and

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

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

4.4 These standards objectives include:

4.4.1 “that persons under the age of eighteen are protected” (S319(2)(a)); and

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

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

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

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

4.6 In addition, section 321 (4) of the Act makes clear that Ofcom:

4.6.1 shall, in relation to programme services, have a general responsibility with respect to advertisements and methods of advertising.

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

- 4.7.1 the maximum amount of time to be given to advertisements in any hour or other period;
  - 4.7.2 the minimum interval which must elapse between any two periods given over to advertisements;
  - 4.7.3 the number of such periods to be allowed in any programme or in any hour or day; and
  - 4.7.4 the exclusion of advertisements from a specified part of a licensed service.
- 4.8 It also provides that directions under this section:
- 4.8.1 may be general or specific;
  - 4.8.2 may be qualified or unqualified; and
  - 4.8.3 may make different provision for different parts of the day, different days of the week, different types of programmes or for other differing circumstances.
- 4.9 In giving a direction, Ofcom must take account of such of the international obligations of the United Kingdom as the Secretary of State may notify to Ofcom for the purposes of these provisions.

## European legislation

- 4.10 The international obligations referred to in S319(2)(i) of the Act include those set out in the AVMS Directive.<sup>9</sup> This Directive sets out the European Union framework for the regulation of television services. It amended the TVWF Directive, which introduced minimum common standards of advertising regulation in order to facilitate a single market in broadcasting services.
- 4.11 The requirements of the AVMS Directive that are of particular relevance to the advertising regulation issues discussed in this document are contained in Article 20. This states:
1. “Member States shall ensure, where television advertising or teleshopping is inserted during programmes, that the integrity of the programmes, taking into account natural breaks in and the duration and the nature of the programme concerned, and the rights of the right holders are not prejudiced.
  2. The transmission of films made for television (excluding series, serials and documentaries), cinematographic works and news programmes may be interrupted by television advertising and/or teleshopping once for each scheduled period of at least 30 minutes. The transmission of children's programmes may be interrupted by television advertising and/or teleshopping once for each scheduled period of at least 30 minutes, provided that the scheduled duration of the programme is greater than 30 minutes. No television advertising or teleshopping shall be inserted during religious services.”

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<sup>9</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:095:0001:0024:EN:PDF>

- 4.12 The Directive contains a number of Recitals to guide Member States in their application of the legislation. Relevant to our consideration of the issues addressed in this consultation are the following:
- 4.12.1 Member States should be able to apply more detailed or stricter rules in the fields coordinated by this Directive to media service providers under their jurisdiction, while ensuring that those rules are consistent with general principles of Union law.<sup>10</sup>
  - 4.12.2 In order to ensure that the interests of consumers as television viewers are fully and properly protected, it is essential for television advertising to be subject to a certain number of minimum rules and standards and that Member States must maintain the right to set more detailed or stricter rules and, in certain circumstances, to lay down different conditions for television broadcasters under their jurisdiction.<sup>11</sup>
  - 4.12.3 Member States, with due regard to Union law and in relation to broadcasts intended solely for the national territory which may not be received, directly or indirectly, in one or more Member States, should be able to lay down different conditions for the insertion of advertising and different limits for the volume of advertising in order to facilitate these particular broadcasts.<sup>12</sup>
  - 4.12.4 Given the increased possibilities for viewers to avoid advertising through the use of new technologies such as digital personal video recorders and increased choice of channels, detailed regulation with regard to the insertion of spot advertising with the aim of protecting viewers is not justified. While the hourly amount of admissible advertising should not be increased, this Directive should give flexibility to broadcasters with regard to its insertion where this does not unduly impair the integrity of programmes.<sup>13</sup>
  - 4.12.5 The Directive is intended to safeguard the specific character of European television, where advertising is preferably inserted between programmes, and therefore limits possible interruptions to cinematographic works and films made for television as well as interruptions to some categories of programmes that need specific protection.<sup>14</sup>

## European Case law

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

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

- 4.14 This case considered the number of advertising breaks permitted in feature films by reference to Article 11 (3) of the TWF Directive (substantially the same wording as in Article 20 (2) of AVMS) in light of the purpose of the minimum standards set under

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<sup>10</sup> Recital 41, AVMS Directive

<sup>11</sup> Recital 83, AVMS Directive

<sup>12</sup> Recital 84, AVMS Directive

<sup>13</sup> Recital 85, AVMS Directive

<sup>14</sup> Recital 86, AVMS Directive

Article 26 of TWF 'to ensure that the interests of consumers as television viewers are fully and properly protected'.

- 4.15 Under Article 11 (3) of TWF, the frequency of internal advertising breaks was calculated by reference to each period of 45 minutes in a film with a scheduled duration of more than 45 minutes.
- 4.16 A question that arose was whether the duration of advertisements should be included in the period of time in relation to which the possible number of interruptions was calculated ('the gross principle') or whether only the duration of the films themselves should be included ('the net principle').
- 4.17 It was held that the wording of Article 11 (3) of the TWF as amended, did not provide any clear indication as to whether that provision prescribed the gross or the net principle so no conclusive arguments could be drawn in answer to the question whether Article 11 (3) of TWF as amended prescribed the gross principle or the net principle.
- 4.18 Moreover, the different language versions of the text, the history of the provision and the preparatory documents contained too many contradictory and ambiguous elements to provide a clear answer to that question. The wording of Article 11 (3) of TWF (as amended) was therefore ambiguous. In order to interpret the provision, it was necessary to consider its context and the objective of the rules in question (Case 11/76 Netherlands v Commission 1979 ECR 245 paragraph 6).
- 4.19 The Court noted that the main purpose of the Directive was to ensure freedom to provide television broadcasting services.
- 4.20 It held that a provision which imposed a restriction, in the matter of the provision of services on an activity involving the exercise of a fundamental freedom, such as the freedom to provide television broadcasting services, must express that restriction in clear terms. It therefore followed that where a provision of TWF imposed a restriction on broadcasting and on the distribution of television broadcasting services and the community legislature had not drafted that provision in clear and unequivocal terms, it must be given a restrictive interpretation.
- 4.21 Since Article 11(3) of TWF as amended imposed a restriction as regards the possibility of interrupting the transmission of audiovisual works by advertising, that restriction must be interpreted in the strictest possible sense.
- 4.22 Accordingly, the gross principle was prescribed, so that in order to calculate the 45 minute period for the purpose of determining the number of advertising interruptions allowed in the broadcasting of audiovisual works such as feature films and films made for television, the duration of the advertisements must be included in the period.
- 4.23 In addition, the Court held that if, as permitted under Article 3 (1) of TWF, Member States considered it appropriate to impose stricter or more detailed advertising rules, they could do so, provided those rules were proportionate and otherwise compatible with Community law.

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

- 4.24 This case concerned the frequency of advertising breaks permitted under Article 11 (3) TWF, in relation to films made for television and whether RTL had infringed the

relevant national rules by including more frequent advertising breaks than was permitted.

- 4.25 The case largely focused on the meaning of the terms: 'films made for television' and 'series' under TWF, but the following aspects of the Court's decision may be noted:
- 4.25.1 Article 11 (3) provided for a scheme of increased protection for feature films and films made for television by permitting only one advertising break per each 45 minute period with an additional break if the programme's duration is at least 20 minutes longer than 2 or more complete periods of 45 minutes.
  - 4.25.2 Such a restriction may amount to a restriction on the freedom of expression as enshrined in Article 10 (1) of ECHR but such a restriction was justified under Article 10 (2) of ECHR in that it pursued a legitimate aim involving the protection of the rights of others - namely, the protection of consumers as television viewers as well as their interest in having access to quality programmes.
  - 4.25.3 Those objectives may justify measures against excessive advertising. The protection of consumers against abuses of advertising or, as an aim of cultural policy, the maintenance of a certain level of programme quality are objectives which may justify restrictions by Member States on freedom to provide services in relation to television advertising (see Case 288/89 *Collectieve Antennevoorziening Gouda* 1991 ECR I-4007, paragraph 27 and Case C-6/98 *ARD* 1999 ECR I-7599, paragraph 50).
  - 4.25.4 The restriction was not disproportionate as it did not relate to the content of the advertising and was not a prohibition but only a limit on frequency applying to every operator and in principle, left broadcasters free to decide the timing and, subject to Article 18 of TWF, the length of the advertising breaks.
  - 4.25.5 National authorities have a discretion, in accordance with ECHR case law, in deciding whether there is a pressing social need capable of justifying a restriction on freedom of expression. Such a discretion is particularly essential in commercial matters and especially in a field as complex and fluctuating as advertising (see *VGT Verein gegen Tierfabriken v Switzerland*, judgment of the ECHR of 28 June 2001).
  - 4.25.6 The purpose of Article 11 of TWF was to establish a balanced protection of the interests of television broadcasters and advertisers on the one hand and those of the rights holders and consumers as television viewers on the other.
  - 4.25.7 In considering the proper meaning of 'series', it should not be based essentially on criteria of form, since that would undermine the purpose of Article 11 (above) and make it possible for the increased protection to be circumvented and therefore risk rendering it illusory.

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

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

- 4.27 However, it considered the concepts of "advertising spots" and of "other forms of advertising" which were not defined in the TWF directive and in doing so, the Court had regard to the context and purpose of the Directive in resolving the issue.
- 4.28 The following aspects of the Court's judgment may be noted in particular:
- 4.28.1 where a provision makes no express reference to the law of the Member States for the purpose of determining its meaning and scope, then its meaning and scope must normally be given an autonomous and uniform interpretation throughout the EU having regard to the context of the provision and the objective pursued by the legislation in question.
  - 4.28.2 Article 18 was intended to establish a balanced protection of the financial interests of television broadcasters and advertisers, on the one hand, and the interests of rights holders, namely writers and producers, and of consumers as television viewers, on the other.
  - 4.28.3 The Court emphasised that the protection of consumers, as television viewers, from excessive advertising is an essential aspect of the objective of that directive.

### **Balancing Ofcom's duties and other relevant considerations**

- 4.29 In carrying out its statutory duties to further the interests of citizens in relation to communications matters and to further the interests of consumers in relevant markets, where appropriate by promoting competition, Ofcom is required by Section 3 of the Act to have regard in all cases to a variety of factors, including:
- 4.29.1 the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and
  - 4.29.2 any other principles appearing to Ofcom to represent best practice.
- 4.30 In addition, s3(2) of the Act requires Ofcom to secure certain things in carrying out its statutory functions including:
- 4.30.1 the availability throughout the United Kingdom of a wide range of television and radio services which (taken as a whole) are both of high quality and calculated to appeal to a variety of tastes and interests; and
  - 4.30.2 the maintenance of a sufficient plurality of providers of different television and radio services.
- 4.31 In carrying out its duties, Ofcom must also have regard to certain matters listed in s3(4) of the Act, as appear to Ofcom to be relevant in the circumstances including:
- 4.31.1 the desirability of promoting competition in relevant markets;
  - 4.31.2 the desirability of encouraging investment and innovation in relevant markets;
  - 4.31.3 the vulnerability of children and others whose circumstances appear to Ofcom to put them in need of special protection;

- 4.31.4 the opinions of consumers in relevant markets, and of members of the public generally; and
- 4.31.5 the extent to which, in the circumstances of the case, the furthering or securing of the matters mentioned in paragraphs 4.2 and 4.3 above is reasonably practicable.
- 4.32 In performing its duty to further the interests of consumers, Ofcom is also required to have regard in particular to the interests of those consumers in respect of choice, price, quality of service and value for money.
- 4.33 Where it appears to Ofcom that any of its general duties conflict with one another, it must secure that the conflict is resolved in the manner it thinks best in the circumstances.<sup>15</sup>
- 4.34 Where the way in which Ofcom carries out its activities would have a significant impact on persons carrying on businesses in the markets regulated, the Act requires Ofcom to carry out and publish an assessment of the impact of a change.<sup>16</sup>
- 4.35 Ofcom is also required to keep the carrying out of its functions under review to ensure that regulation does not involve the imposition of burdens which are unnecessary or the maintenance of burdens which have become unnecessary.<sup>17</sup>

## Impact assessment

- 4.36 The analysis presented in this document represents an impact assessment, as defined in section 7 of the Act.
- 4.37 Impact assessments 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 Ofcom has to carry out impact assessments where its 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 impact assessments in relation to the great majority of its policy decisions. For further information about Ofcom's approach to impact assessments, see our guidelines.<sup>18</sup>
- 4.38 Specifically, pursuant to section 7, an impact assessment must set out how, in our opinion, the performance of our general duties (within the meaning of section 3 of the Act) is secured or furthered by, in relation to what we propose.

## Equality impact assessment

- 4.39 We are also required to assess the impact of our functions, policies, projects and practices on particular groups such as those identified by age, race, religion, disability, maternity, gender and sexual orientation. Equality Impact Assessments

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<sup>15</sup> Communications Act, Section 3(5)

<sup>16</sup> Communications Act, Section 7

<sup>17</sup> Communications Act, Section 6(1)(a) and (b)

<sup>18</sup> Ofcom, *Better Policy Making – Ofcom's approach to Impact Assessment*, Ofcom, 21 July 2005 [http://stakeholders.ofcom.org.uk/binaries/consultations/better-policy-making/Better\\_Policy\\_Making.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/better-policy-making/Better_Policy_Making.pdf)

also assist us in making sure that we are meeting our principal duty of furthering the interests of citizens and consumers.

- 4.40 We do not consider the impact of the alternative enforcement methodologies or the proposed COSTA revisions set out in this document to be to the detriment of any such group within society. Therefore, we do not consider it necessary to carry out a full Equality Impact Assessment. However, we invite stakeholders to provide information or evidence about any potential equality impacts they have identified that are associated with the options set out in this consultation document.

## Section 5

# Approaches to the enforcement of advertising scheduling rules

- 5.1 This section sets out:
- 5.1.1 why we are consulting on our approach to the assessment of compliance with advertising scheduling rules;
  - 5.1.2 a summary of the available enforcement approaches;
  - 5.1.3 the framework we have used in order to assess the suitability of those approaches; and
  - 5.1.4 our assessment of the advantages and disadvantages of each option available.

## Why are we consulting on our approach to assessing compliance with advertising scheduling rules?

- 5.2 The Audiovisual Media Services (“AVMS”) Directive establishes the need to protect the interests of consumers as television viewers, particularly by ensuring they are not exposed to excessive amounts of advertising.
- 5.3 Ofcom’s Code on the Scheduling of Television Advertising (“COSTA”) gives effect to the requirements of the AVMS Directive, as well as containing a number of more detailed rules that we have placed on UK licensed television services.<sup>19</sup> COSTA includes restrictions on the amount of advertising that a broadcaster may show. It also contains rules that restrict advertising interruptions (“internal breaks”) in programmes. The basis for determining the number of internal breaks a programme can contain is a programme’s ‘scheduled duration’ – a term which is also used in the AVMS Directive.
- 5.4 In COSTA the restrictions on internal breaks apply to most programmes on most channels. There are also specific restrictions that apply to certain programme genres. For most programmes, the number of internal breaks permitted is based on a programme’s scheduled duration: for example, a programme on a public service channel that has a scheduled duration of between 21-44 minutes may have one internal break.<sup>20</sup> For children’s programmes, however, a separate rule applies: the scheduled duration must be “longer than 30 minutes” before an internal break is permitted<sup>21</sup> – a requirement replicated from the AVMS Directive.<sup>22</sup>
- 5.5 As discussed in Section 4 of this document, the AVMS Directive does not define the term ‘scheduled duration’. Further, where the AVMS Directive requires the scheduled

<sup>19</sup> Recital 41 of the AVMS Directive permits Member States to apply more detailed or stricter rules to media services under their jurisdiction.

<sup>20</sup> See Table 1 in Annex 7.

<sup>21</sup> See Rule 16(b) in Annex 7.

<sup>22</sup> Article 20(2), AVMS Directive places a requirement on children’s programmes to have a scheduled duration that “is greater than 30 minutes” before they can be interrupted by advertising.

duration of a programme to be “greater than” a specified length before it can contain an internal break, it does not make clear how much longer that scheduled duration should be before the programme becomes compliant.

- 5.6 To enforce the relevant restrictions it is necessary for Ofcom to choose an approach to measuring a programme’s scheduled duration which is appropriate, proportionate, transparent and sufficiently robust. Ofcom has traditionally used information published in Electronic Programme Guides (EPG) as a proxy for a programme’s scheduled duration.
- 5.7 However, some children’s broadcasters have challenged this approach. They have argued that the effect of measuring scheduled duration in this way is that a children’s programme must have a scheduled duration of at least 35 minutes before it can contain an internal advertising break<sup>23</sup> – something that was neither explicitly required nor intended by the AVMS Directive. These children’s broadcasters have claimed that this approach would be detrimental to their channel revenues (for the reasons set out in the paragraphs 5.39 and 5.40) and that, consequently, it would reduce their incentives to invest in programmes.
- 5.8 These children’s broadcasters have proposed that Ofcom adopts a different enforcement methodology, one based on information derived from transmission data – this is explained in greater detail below.
- 5.9 Given the ambiguity surrounding the AVMS Directive’s use of the term ‘scheduled duration’, and particularly in light of the potentially detrimental effects highlighted by the children’s broadcasters of the EPG approach, we consider there is merit in examining alternative enforcement approaches.
- 5.10 In this consultation, therefore, we are seeking views from stakeholders on the potential alternatives we have identified.

## Summary of the available enforcement approaches

- 5.11 We consider there are a number of options open to Ofcom in order to calculate the scheduled duration of a programme for the purpose of enforcing the rules set out in COSTA. These options are summarised below.

### Summary of the EPG Approach

- 5.12 One way to determine a programme’s scheduled duration is to use information from published programme guides. In this consultation we refer to this method as “the EPG approach”.
- 5.13 Using the EPG approach, the ‘scheduled duration’ of a programme equates to the slot in which it is scheduled, i.e. from the scheduled start time of one programme until the scheduled start time of the next. For example, a programme listed in a programme guide as starting at 18:30 and which is followed by another programme starting at 19:00 would have a scheduled duration of 30 minutes.
- 5.14 Measuring a programme’s scheduled duration in this way means including both the duration of the programme’s editorial content *and* the duration of any material (e.g. advertising, programme trails) broadcast during breaks in and around the

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<sup>23</sup> For the reasons set out in paragraph 2.12

programme. A programme scheduled in a 30 minute EPG slot on a commercial service generally equates to approximately 22–25 minutes of actual programme content, with the rest of the slot made up of other material including advertising. Under this approach, a children's programme with an EPG slot of 30 minutes would not be permitted to have an internal break.

## Summary of the TX Approach

- 5.15 An alternative approach is to measure a programme's scheduled duration on the basis of information obtained from broadcasters' transmission ("TX") logs. Transmission data provides detailed information about the timings of programmes and advertisements and is used by broadcasters for a range of purposes, including audience measurement and schedule planning. We refer to this method as "the TX approach".
- 5.16 Unlike the EPG approach, the TX approach offers three possible ways of calculating a programme's scheduled duration for the purpose of enforcing compliance with the rules in COSTA. These are:
- 5.16.1 *Programme Slot* – interpreted in this way, a programme's scheduled duration is equivalent to the slot in which it is broadcast (i.e. it includes all programme, advertising and promotional material transmitted between the start of one programme until the start of the next); or
  - 5.16.2 *Editorial Content Plus Internal Breaks* – interpreted in this way, a programme's scheduled duration is inclusive of editorial content *and* all material shown during internal breaks (i.e. from the start of the programme to the end of the programme); or
  - 5.16.3 *Editorial Content Alone* – interpreted in this way, a programme's scheduled duration includes editorial content exclusively (i.e. from the start of the programme to the end of the programme excluding advertising and promotional material broadcast in internal breaks).

## Framework for assessing suitability of enforcement approaches

### Ofcom's duties

- 5.17 In considering our approach to enforcement – specifically which enforcement methodology we should use to measure a programme's scheduled duration – we have been guided by our statutory duties. In particular, the principal duty of Ofcom to further the interests of citizens in relation to communications matters and to further the interests of consumers in relevant markets, where appropriate by promoting competition.
- 5.18 Ofcom has several specific duties which flow from this principal duty. They include duties to secure a wide range of high quality television and radio services calculated to appeal to a variety of tastes and interests and to maintain a sufficient plurality of providers of different television and radio services.
- 5.19 In carrying out our duties, we must have regard to a number of factors, to the extent we consider them to be relevant, including the desirability of promoting the fulfilment of the purposes of public service broadcasting, and the desirability of encouraging investment and innovation.

- 5.20 These interests can potentially act in tension, and it is the duty of Ofcom to assess the likely impact of regulation on a range of stakeholders such as consumers, citizens, broadcasters and advertisers and, where appropriate, on others likely to be affected by regulation.
- 5.21 In this case, Ofcom's approach to determining a programme's scheduled duration has particular implications for certain stakeholders. Specifically, as set out below and in Annex 5, because of the prohibition on internal breaks in children's programmes unless they are greater than 30 minutes, certain options which may have little or no effect on other broadcasters, may have a significant negative impact on the revenues of children's broadcasters. In turn, this may affect viewers insofar as children's broadcasters could have reduced incentives to invest in high quality programmes. As this issue is specific to children's broadcasters, we have sought to clarify the impact on a group of children's broadcasters, where it differs to that on other broadcasters, in assessing the impact of the proposals. Our assessment has been informed by pre-consultation submissions and responses to requests for information from children's broadcasters, among others, about these effects.
- 5.22 Finally, it is important to emphasise that the approach taken must also serve to provide a framework for practical enforcement by Ofcom to ensure that we give effect to the AVMS Directive. The AVMS Directive establishes the need to protect the interests of consumers as television viewers, especially in relation to some categories of programming (including children's programming) that need special protection. An enforcement methodology therefore needs to provide a means of delivering this objective.

### **Criteria for assessing advantages and disadvantages of enforcement options**

- 5.23 In light of our duties, we have developed a set of criteria to help us to assess the advantages and disadvantages of the alternative enforcement options open to Ofcom. These are summarised in the following table.

**Table 1: Assessment criteria**

|                                    |   |
|------------------------------------|---|
| <p>Consumer interests</p>          | <p>Relevant factors include the extent to which an option has an impact on:</p> <ul style="list-style-type: none"> <li>• the level of viewer exposure to advertising during programming;</li> <li>• in particular, the frequency of advertising interruptions in children’s programmes; and</li> <li>• advertising revenues resulting in reduced incentives for investment in a wide range of good quality programmes.</li> </ul> |
| <p>Practicality of enforcement</p> | <p>Relevant factors include the extent to which information used for enforcement purposes:</p> <ul style="list-style-type: none"> <li>• is consistent and sufficiently robust;</li> <li>• is transparent;</li> <li>• does not impose an unnecessary burden on industry; and</li> <li>• can be readily accessed by Ofcom.</li> </ul>   |
| <p>Regulatory certainty</p>        | <p>Relevant factors include the extent to which an option:</p> <ul style="list-style-type: none"> <li>• clearly secures statutory objectives; and</li> <li>• is supported by relevant case law.</li> </ul>  |

## Assessment of potential options

5.24 Taking account of our duties, we have used these criteria to assess the advantages and disadvantages of the following approaches to determining a programme’s scheduled duration:

5.24.1 the EPG approach;

5.24.2 the TX approach equating ‘scheduled duration’ to a programme’s slot;

5.24.3 the TX approach equating ‘scheduled duration’ to a programme’s editorial content plus internal breaks; and

5.24.4 the TX approach equating ‘scheduled duration’ to a programme’s editorial content alone.

5.25 In making our assessment, we have noted that Ofcom has traditionally used the EPG approach to determine a programme’s scheduled duration for enforcement purposes, and that this is the basis on which most broadcasters currently determine the scheduled duration of their programmes to ensure compliance with COSTA. Accordingly, we have assessed the impact of alternative options relative to the EPG approach.

- 5.26 However, we have also noted that a number of children’s broadcasters have used a different approach, equating scheduled duration to a programme’s slot as determined by reference to their own transmission logs. It is important to note that, given only children’s programmes with a scheduled duration greater than 30 minutes may include an internal break, it could be argued that under this method a children’s programme with a duration of 30 minutes and one second could be permitted to include an interrupting break.
- 5.27 Accordingly, where it was relevant to do so, we have distinguished the specific impacts of the options on these children’s broadcasters from those on other broadcasters. In order to place these impacts in perspective, it should be noted that audiences of the children’s services provided by the group of children’s broadcasters currently account for 3% of all UK viewing.

## **The EPG approach**

- 5.28 As stated above, this approach involves Ofcom using EPG slots as a proxy for a programme’s scheduled duration when considering a broadcaster’s compliance with COSTA.

### Advantages

- 5.29 Pre-consultation discussions with broadcasters indicated that, with the exception of some children’s broadcasters, there is a strong preference for enforcement on this basis. This is for a range of reasons. A number of broadcasters have told us that EPG slots are the basis on which their scheduling and advertising systems are designed and that the approach helps facilitate smooth and effective planning of their broadcast schedules. Broadcasters have also indicated that EPG slots provide fixed boundaries in a broadcaster’s schedule, representing the intended duration of each programme and accompanying advertising. As such, enforcement based on EPGs provides broadcasters with clarity when determining how many internal breaks they are permitted to schedule in a particular programme in advance of its transmission.
- 5.30 The approach also provides broadcasters with flexibility to accommodate changes to a programme’s duration (e.g. because of an unexpected over or under run in a live programme) without having to alter the number of internal breaks scheduled. This is because an EPG slot includes material broadcast during and around a programme (e.g. spot advertising, self-promotions, continuity announcements). Such material can be extended or reduced to allow for unscheduled changes without requiring the broadcaster to alter its published schedule or, as a consequence, the number of internal breaks scheduled.
- 5.31 From an enforcement perspective, the EPG approach offers Ofcom a transparent basis on which to make enforcement decisions. This is because the information is publicly available and reflects the scheduling times that broadcasters have provided to publishers ahead of transmission to show the intended duration of a programme. Information is displayed in an established and unambiguous format so providing a clear basis for determining a programme’s scheduled duration.
- 5.32 Further, Ofcom is required to ensure that its enforcement approach is effective in meeting the purpose of the AVMS Directive. Although there is no case law addressing the use of EPG information to determine a programme’s scheduled duration, previous communication with the European Commission on the UK’s compliance with the TVWF Directive (which preceded the AVMS Directive) and on

the UK's transposition of the AVMS Directive, would suggest that published programme slots provide an acceptable means of doing so.

- 5.33 As the EPG approach reflects the approach which most broadcasters currently use to organise their advertising schedules, we consider that the vast majority of broadcasters would be unaffected by enforcement on this basis. Accordingly, the amount and frequency of advertising which viewers are exposed to during programmes and the choice of content available to view would be likely to remain broadly unchanged.

### Disadvantages

- 5.34 We have identified no general disadvantages to viewers of enforcement based on the EPG approach. This is because the approach reflects the status quo for most broadcasters and therefore will not affect to a significant extent the viewing experience, advertising revenues or broadcaster approaches to compliance.
- 5.35 However, the approach may have specific implications for viewers of children's programmes. This is because a number of broadcasters of children's programmes have argued that enforcement based on the EPG approach will lead to a substantial decline in advertising revenue, reducing their incentives and ability to invest in programming. We address these implications in further detail from paragraph 5.38 below.
- 5.36 From an enforcement perspective, Ofcom has no control over the information displayed on EPGs. The approach is reliant on information supplied by broadcasters to third parties, who will make their own assessment as to how to display that information on-screen. In the absence of a standardised method of display, and because no single EPG displays programme information for all the channels licensed by Ofcom, it is possible that different EPGs could use different approaches to indicate a programme's scheduled length.
- 5.37 Further, EPG schedules may not always be up to date. Ofcom understands that EPGs reflect broadcasters' planned schedules and are based on data that may have been submitted to EPG providers two weeks before transmission. Although in most cases it is possible for broadcasters to update EPG information to reflect schedule changes, EPGs may not always reflect the material actually transmitted.

### Additional considerations to the application of the EPG approach on children's programming

- 5.38 As discussed above, there are particular considerations regarding the application of the EPG approach for children's broadcasters. This is because of the specific requirement in the AVMS Directive, enforced via COSTA, that children's programmes must have a scheduled duration which is greater than 30 minutes before including interrupting advertising.<sup>24</sup> Although obligations about interrupting advertising do apply to programmes in certain other genres, for enforcement purposes, the duration of such programming entitled to contain advertising material can be readily identified –

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<sup>24</sup> As well as children's programmes, COSTA requires the transmission of live Parliamentary proceedings to have a scheduled duration that is greater than 30 minutes before containing an internal break. Because Ofcom has not identified a compliance problem with the scheduling of advertising in such programming, this section of the consultation focuses on how children's programmes are impacted by adopting different enforcement options

e.g. news programmes may contain one advertising break for each scheduled period of at least 30 minutes.

- 5.39 Currently a number of children’s broadcasters are transmitting internal breaks in children’s programmes scheduled in 30 minute EPG slots on the grounds that the programme slot is greater than 30 minutes if it is measured using transmission data. Such programmes would not be permitted to include interrupting advertising if their scheduled duration was measured using the EPG approach.
- 5.40 Some of these broadcasters have argued that the loss of advertising revenue derived from these breaks, resulting from the application by Ofcom of the EPG approach, would be substantial. This would affect their ability to invest in UK produced content. As a consequence, the broadcasters have suggested that viewers would face less programme choice (e.g. as a result of increasing repeats).
- 5.41 In view of these concerns, we analysed how the revenues of a group of children’s broadcasters could be affected by enforcement using the EPG approach.<sup>25</sup>
- 5.42 We first looked at the potential impact on these broadcasters’ revenues if we assumed that their programme schedules remained unchanged, but that the children’s programmes scheduled in 30 minute EPG slots no longer contained internal breaks. We considered this would be an overestimation of the actual impact on the children’s broadcasters in light of their existing practices.
- 5.43 We then considered what a compliant position under the EPG approach would be. As previously stated, EPGs usually display programme start times to the nearest five minute junction. If broadcasters continued to schedule programmes to fit traditional EPG structures, a children’s programme would therefore need to be scheduled in a 35 minute EPG slot before interrupting advertising is permitted.
- 5.44 However, Ofcom understands that, should broadcasters choose to do so, programmes can be shown to the nearest one minute junction on the majority of EPGs currently in use. This leads to the possibility that an internal break in a children’s programme scheduled in a 31 minute EPG slot could be considered to be compliant with the rules.
- 5.45 Accordingly, we calculated what revenue loss these broadcasters might face if, to secure compliance with COSTA, they only included internal breaks in programmes scheduled in:
- 5.45.1 31 minute (or longer) EPG slots; or
  - 5.45.2 35 minute (or longer) EPG slots.
- 5.46 We then considered the effectiveness of a range of strategies (both individually and in combination) that these broadcasters could seek to apply to mitigate the potential revenue impact of adopting EPG slots longer than 30 minutes. In our analysis we examined the following strategies, assessing 31 minute slots and 35 minute slots separately:
- 5.46.1 *Moving programmes into longer EPG slots* – children’s broadcasters could choose to move programmes which have traditionally occupied 30 minute

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<sup>25</sup> Full details of our analysis are set out in Annex 5.

EPG slots into slots that are longer than 30 minutes. To do this they could add advertising and/or self-promotions to the breaks during and around the programme to extend the slot. Although this strategy could be applied by broadcasters seeking to use 31 minute EPG slots, it may not be effective if they adopted 35 minute EPG slots, because of the amount of additional material they would be required to add to existing programme stock. Further, because broadcasters are subject to an overall limit on the amount of advertising they can transmit within each one hour period, the extent to which they can extend programme slots with advertising will be limited;

- 5.46.2 *Splitting programmes into two*: for some programmes only, children’s broadcasters could split a programme that had previously been scheduled in a single 30 minute EPG slot into two. Hence, rather than having one programme with an internal break, there would be two programmes, each with an end break. We considered this strategy only to be possible for programmes made up of multiple clearly-distinct narratives within a single programme;
- 5.46.3 *Bundling two programmes into one*: alternatively, broadcasters could combine two programmes into a longer programme that would be entitled to contain an internal break. As a consequence, the broadcaster could lose an end break but be able to retain two internal breaks (provided the resulting programme was scheduled in at least a 60 minute EPG slot). We considered this strategy to be possible only for clearly-connected programmes adjacent in the schedule, for example two episodes of a single programme shown one after the other; and
- 5.46.4 *Moving advertisements from internal breaks to end breaks*: children’s broadcasters could continue to schedule affected programmes in 30 minute EPG slots and remove their internal breaks. Advertising from the lost internal breaks could be redistributed to the breaks at the end of the programme.
- 5.47 On the basis of our analysis, and taking account of the mitigation strategies identified above, we estimate that the advertising revenues of children’s broadcasters could be affected by – 13% on average if they were prepared to schedule programmes in 31 minute EPG slots. As advertising income is only a proportion of overall channel revenues, we estimate that these could be affected by -5% on average, although it is important to emphasise that the impact will vary between the broadcasters.
- 5.48 If enforcement led to broadcasters transmitting internal breaks only in children’s programmes scheduled in 35 minute or longer EPG slots, this would have only a slightly greater impact, affecting advertising revenue by -14% and overall channel revenues by -6% on average.
- 5.49 In making this assessment, we are aware that the way in which the EPG approach is applied in practice may modify its advantages and disadvantages as an enforcement mechanism (as set below and in greater detail in Annex 5).
- 5.50 For example, if the approach leads to children’s broadcasters scheduling programmes in 31 minute EPG slots, this could lead to programme start times overlapping across channels. This could create audience confusion and/or irritation, and impact on the options for viewers trying to align viewing choices on different channels. Broadcasters (both children’s broadcasters and others) are unlikely to

welcome the disruption of uniform programme start times, particularly if this leads to audiences changing their viewing patterns and to consumer dissatisfaction.

- 5.51 Further, we are mindful that in certain circumstances, broadcasters could choose to schedule additional advertising and promotional content in and around programmes in order to enable them to occupy a 31 minute EPG slot. This could have the paradoxical effect of reducing the amount of programming shown in an hour in order to ensure compliance with a rule designed to limit children's exposure to advertising.
- 5.52 Finally, we are also conscious that a position that could have an effect of requiring children's programmes to have a scheduled duration of 35 minutes before they can contain an internal break could be viewed as placing a regulatory requirement on broadcasters that is not explicitly required under European law. As set out in Section 3, a proposal to introduce a requirement for children's programmes to have a minimum scheduled duration of 35 minutes before containing advertising was rejected when the AVMS Directive was agreed.

### **The TX approach**

- 5.53 As stated, another way to measure a programme's scheduled duration could be to use data from broadcasters' transmission (TX) reports e.g. data supplied by broadcasters to the Broadcasters' Audience Research Board (BARB).<sup>26</sup>
- 5.54 The TX approach provides scope for Ofcom to equate a programme's 'scheduled duration' to a range of different broadcasting time periods, as identified in paragraph 5.16. Therefore the extent to which the advantages and disadvantages of the TX approach satisfy the criteria set out above is dependent on what broadcasting time period is considered to form a part of a programme's scheduled duration. We have therefore assessed these separately.
- 5.55 For each option under the TX approach we have assessed its impact relative to the EPG approach set out above.

### **Applying the TX approach by equating 'scheduled duration' to a programme slot**

- 5.56 Under this approach, the scheduled duration of a programme would equate to the period between the start of a programme and the start of the next programme, including all advertising and self-promotional content broadcast during this time. We refer to this as the programme slot.
- 5.57 The programme slot is the period reflected when scheduled duration is calculated using EPG information. However, the key difference between an EPG measurement and a TX measurement is that transmission data can provide a more granular measurement – showing programme timings to the nearest second rather than the nearest minute. As a result, it provides scope for Ofcom to accept that a children's programme that has a scheduled duration of 30 minutes and one or more seconds is entitled to an internal break. This is the method currently adopted by some children's broadcasters.
- 5.58 In the paragraphs that follow, we consider the general advantages and disadvantages associated with adoption of this approach. We also consider the

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<sup>26</sup> <http://www.barb.co.uk/>

particular implications of adopting a position in which a children's programme that has a scheduled duration of 30 minutes and one second would be treated as being greater than 30 minutes for COSTA compliance purposes.

### Advantages

- 5.59 This approach is the one that some children's broadcasters argue they are currently applying when determining the number of internal breaks that they can schedule in children's programmes. This option would therefore enable these broadcasters to retain, to an extent,<sup>27</sup> advertising revenues that would otherwise be lost if enforcement was based on the EPG approach (or indeed either of the other alternative versions of TX approach considered below). As a consequence, the approach may deliver potential benefits to viewers by helping to sustain the current supply, quality and range of children's programmes and channels.
- 5.60 Unlike the EPG approach, the TX approach is not dependent on timing structures determined by third parties. It therefore provides Ofcom with scope to measure a programme's scheduled duration on a more granular basis e.g. measuring duration to the nearest second rather than to the nearest 5 minute juncture.

### Disadvantages

- 5.61 The TX approach does not compare favourably with the EPG approach in terms of its practicality as an enforcement tool. Firstly, it does not provide Ofcom with visibility across all channels. Data is consistently available only for services which supply their transmission information to BARB. However, approximately two thirds (around 700) of Ofcom's licensed television services are not BARB registered. Therefore, to ensure consistency in our regulatory approach, Ofcom would need to seek an alternative method of determining the scheduled duration of programmes broadcast on non-BARB registered services, potentially by requiring these broadcasters (which are generally the smaller operators) to submit such information either to Ofcom or to a third party operating on our behalf. The regulatory costs of doing this would have to be taken into account when considering whether this option represents the most appropriate approach to enforcement.
- 5.62 Further, the robustness of the data may be questionable. Although transmission data should enable different content (e.g. editorial, advertising) to be identified clearly, our experience shows that, in practice, it can be difficult to isolate specific broadcasting time periods. As part of this consultation, we looked at the data supplied to BARB<sup>28</sup> by a number of children's broadcasters. In doing so, we found that some had not adopted a consistent approach to recording the timings of programmes and commercial breaks, or the type of break transmitted (e.g. whether the break was during or around programming). A detailed explanation of these issues is set out in Annex 6.
- 5.63 Enforcement using the TX approach would also require many broadcasters to change the way they plan advertising schedules. During the pre-consultation process, many broadcasters expressed strong opposition to the measurement of a

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<sup>27</sup> Ofcom has identified a number of instances where children's broadcasters have scheduled internal breaks in children's programmes in a way that would not be compliant with the COSTA rule, regardless of the enforcement methodology adopted. Further details can be found in Annex 5.

<sup>28</sup> It should be noted that transmission data supplied to BARB is prepared for commercial not regulatory purposes.

programme's scheduled duration by reference to transmission logs. These broadcasters said that a move to the TX approach would require disruptive and potentially far reaching changes to their internal planning and scheduling systems, where schedules are created far in advance based on the anticipated duration of programmes rather than the 'as run' data reflected in transmission logs.

- 5.64 In addition, it is unclear whether this approach – equating a programme's scheduled duration to a programme slot while measuring it by reference to transmission data – could provide regulatory certainty. Although it is the case that existing case law in this area supports a measurement that includes interrupting advertising (see paragraph 5.70), we are mindful that there is no case law to support a measurement which includes material broadcast *after* the end of a programme in that programme's scheduled duration when greater granularity is available. On the basis that the use of transmission data potentially provides scope for a more granular measurement than the EPG approach, it is unclear why it would continue to be appropriate to consider advertising shown around a programme as part of that programme's scheduled duration.
- 5.65 Finally, we have taken into account that, where a provision of the AVMS Directive is ambiguous, it is necessary to consider the context and the objective of the rules in question.<sup>29</sup> The purpose of the advertising scheduling provisions is to limit advertising interruptions in programmes, particularly those that are deemed to require special protection, such as children's programmes. We have also had regard to the established principle of EU law that where a provision imposes a restriction on an activity involving the exercise of a fundamental freedom, such as the freedom to provide television broadcasting services, that restriction must be expressed in clear terms. If it is not drafted in clear and unequivocal terms, the provision must be given a restrictive interpretation. In other words, the restriction should be interpreted in a manner that is more permissive, rather than less permissive in terms of the broadcaster's exercise of its fundamental freedom to provide broadcasting services, consistent with the context and purpose of the Directive.
- 5.66 This is a particularly important concern because the AVMS Directive identifies children's programmes as requiring specific protection from advertising interruptions.<sup>30</sup> Permitting advertising in children's programmes that occupy a programme slot lasting 30 minutes and 1 second – and where the duration of the actual programme content is likely to be between 22-25 minutes – may be seen as counter to the intention of the Directive to limit children's exposure to commercial material. This is especially relevant in this case where, relative to the other options set out in this document, this approach would lead to the highest number of internal breaks in children's programming.

### **Applying the TX approach by equating 'scheduled duration' to a programme's editorial content plus internal breaks**

- 5.67 Using this approach, the scheduled duration of a programme would equate to the period containing the programme's editorial content *plus* all content contained in internal breaks.

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<sup>29</sup> See Case 11/76 Netherlands vs. Commission 1979 ECR 245 paragraph 6

<sup>30</sup> Recital 86 and Article 20(2) of AVMS Directive

## Advantages

- 5.68 With very limited exceptions, all programmes are subject to restrictions on the number of internal breaks they can contain. The restrictions are linked to a programme's scheduled duration (see Annex 7 for details of the relevant rules). A programme's scheduled duration measured under this option is likely to be significantly shorter than if measured using the EPG approach. This is because this measurement does not include content which constitutes an element of the programme slot but which is broadcast outside programming.
- 5.69 As the scheduled duration of the majority of programmes under this option would be shorter than under either of the approaches already assessed, many would qualify for fewer internal breaks or, in some cases, none at all. Consequently, viewers' exposure to advertising interruptions across all programme genres could be reduced, potentially helping to protect viewers from excessive advertising interruptions in programmes. However, broadcasters may attempt to mitigate some of the effects of this approach, by shifting the advertising from end breaks to internal breaks.
- 5.70 Adopting an enforcement mechanism based on this measurement provides a degree of certainty that Ofcom would be fulfilling its statutory duty to ensure compliance with the obligations specified in the AVMS Directive. This is because this measurement is consistent with a judgment of the European Court of Justice which established that, in order to fulfil the purpose of determining the number of advertising interruptions allowed in a programme, the duration of the advertising which interrupts a programme should be included in this period.<sup>31</sup>

## Disadvantages

- 5.71 Equating a programme's scheduled duration to the period between the start and end of the programme (including internal breaks) has the potential to reduce significantly the number of internal breaks that broadcasters would be entitled to schedule during the majority of programmes. This is because a programme's scheduled duration measured in this way is likely to be shorter than when measured using the EPG approach. Loss of these valuable internal breaks would be likely to have a negative economic impact on broadcasters' advertising revenues. This could lead to reduced investment in content and potentially even lead to some channels no longer being viable. Accordingly, negative consequences for viewers in terms of their viewing experience (e.g. quality, range and diversity of programming and channels) may result. We have not conducted a detailed analysis of the potential implications for broadcasters' revenues of adopting this enforcement mechanism option. However, we invite stakeholders to provide their views on this matter and, if appropriate, submit information that will assist Ofcom's consideration.
- 5.72 However, as with the EPG approach, this option could lead broadcasters to adopt strategies that would enable them to retain internal breaks in programmes (See paragraph 5.46 for a list of possible mitigation strategies). For example, some broadcasters may seek to extend the scheduled duration of a programme by moving

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<sup>31</sup> Case C-6/98, Arbeitsgemeinschaft Deutscher Rundfunkanstalten (ARD) v PRO Sieben Media AG (known as "PRO Sieben"). See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61998CJ0006:EN:PDF>

advertising from end breaks to internal breaks<sup>32</sup> – this could impair the viewing experience and potentially the integrity of programmes.

- 5.73 The accuracy, transparency and accessibility issues identified above when applying the TX slot approach also apply in this case. Arguably, it may be even more difficult for Ofcom to measure accurately a programme's scheduled duration (equating to *editorial content plus internal breaks*) if broadcasters did not correctly identify internal breaks and end breaks.
- 5.74 Although a programme's scheduled duration measured under this option appears to accord with established European case law, it may be questionable if the intention of the AVMS Directive – to safeguard the specific character of European television, where advertising is preferably scheduled between programmes rather than during them<sup>33</sup> – would be met if the enforcement methodology led to an increase in the amount of advertising scheduled in internal breaks.

### **Applying the TX approach by equating 'scheduled duration' to a programme's editorial content alone**

- 5.75 Using this approach, the scheduled duration of a programme would equate to the duration of its editorial content alone.

#### Advantages

- 5.76 The scheduled duration of a programme using this approach is likely to be significantly shorter than when measured using the EPG approach (for example, the duration of the editorial content of a programme scheduled in a 30 minutes EPG slot is likely to be between 22-25 minutes). Adoption of this option therefore has the potential to reduce significantly (compared to the EPG approach) the number of internal breaks that broadcasters would be entitled to schedule during the majority of programmes. As a result, viewers would be exposed to substantially fewer interruptions.
- 5.77 Enforcement on this basis would also provide Ofcom with a strong degree of confidence that the UK would be meeting its obligations under the AVMS Directive. Equating the scheduled duration of a programme to the duration of editorial material, exclusive of any advertising content, could deliver outcomes consistent with the purpose of the scheduling restrictions set out in the AVMS Directive.

#### Disadvantages

- 5.78 For the reasons set out in paragraph 5.76, adoption of this option may have a substantial negative impact, compared to the EPG approach, on investment in programming. This could result in potentially significant negative consequences for viewers in terms of the quality, range and diversity of programmes available to view. These impacts are likely to be more marked than when compared to the TX option that includes internal breaks, even considering that broadcasters could shift in part some advertising from internal breaks to end breaks. Again, we have not conducted

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<sup>32</sup> It should however be noted that this mitigation strategy would not be available to the commercial PSBs, which are prevented by other regulatory requirements from extending the duration of internal breaks beyond three minutes and 50 seconds. The approach may therefore have a disproportionate impact on PSBs.

<sup>33</sup> Recital 86, AVMS Directive

a detailed analysis of the potential implications for broadcasters' revenues of adopting this enforcement mechanism option but invite stakeholders to provide their views on this matter and, if appropriate, submit information that will assist Ofcom's consideration.

- 5.79 Equating the scheduled duration of a programme to its editorial content alone would enable the UK to meet its obligations under the AVMS Directive. However, according to European case law – as set out previously – it would not be necessary to adopt such a restrictive approach to meet those obligations. Although Member States are entitled to apply more detailed or stricter rules than required by the Directive,<sup>34</sup> our preliminary view is that this option – which would increase the regulatory burdens placed on broadcasters – is arguably overly restrictive.

## Questions

### For all stakeholders

**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.*

### For broadcasters that transmit children's programmes:

**Question 4:** *If enforcement is based on the EPG approach, what EPG slots (that are greater than 30 minutes) are you likely to use when scheduling internal breaks in children's programmes (e.g. slots that show timing to the nearest one minute junction or those displayed to the nearest five minutes)?*

*For each answer, please give your reasons and identify any potential impacts that you consider should be taken into account.*

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<sup>34</sup> Article 4, AVMS Directive

## Section 6

# Revisions to the Code on the Scheduling of Television Advertising

- 6.1 This section sets out proposed revisions to COSTA that reflect policy changes made since the Code was last updated in 2010 and other revisions that we consider aid clarity or help ensure regulatory certainty.
- 6.2 These changes relate to:
- 6.2.1 the definition of television advertising;
  - 6.2.2 the definition of a clock hour;
  - 6.2.3 the definition of television films;
  - 6.2.4 the definition of teleshopping;
  - 6.2.5 the waiver of advertising minutage rules for local services;
  - 6.2.6 the waiver of break restrictions for films on Public Service Broadcasters (PSBs); and
  - 6.2.7 the layout of COSTA.
- 6.3 Stakeholders are invited to submit views on these proposals.

## Definition of television advertising

- 6.4 COSTA currently states that:

*‘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.*

- 6.5 A footnote to this definition states that it “*is derived from Article 1(i) of the AVMS Directive. In accordance with Article 23(2) of the Directive, it does not include announcements made by a broadcaster in connection with its own programmes and ancillary products directly derived from those programmes...*”
- 6.6 The wording of the footnote could erroneously suggest that such announcements can never fall within the definition of advertising (as set out in paragraph 6.4) and are therefore not subject to any of the rules set out in COSTA. This is not the case.
- 6.7 Rather, Article 23(2) of the Directive mentioned in the footnote allows broadcasters, when calculating the hourly amount of television advertising they are permitted to transmit, to exempt the time taken to broadcast announcements in connection with

their own programmes and ancillary products directly derived from those programmes.

- 6.8 Although Article 23(2) of the Directive does not require such announcements to be included when calculating the amount of advertising transmitted, it does not exempt such material – where it falls within the definition of ‘advertising’ – from the requirement to comply with the other provisions relating to television advertising.
- 6.9 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.
- 6.10 The proposed revisions can be viewed in the table at the end of this Section and in Annex 8 (see text box above Rule 2).

**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.*

## Definition of a clock hour

- 6.11 Rule 4 of COSTA states that the “time devoted to television advertising and teleshopping spots on any channel in any one hour must not exceed 12 minutes”.
- 6.12 This rule is derived from Article 23 of the AVMS Directive, which states that “the proportion of television advertising spots and teleshopping spots within a given clock hour shall not exceed 20%”.
- 6.13 When assessing compliance with Rule 4, Ofcom calculates the amount of advertising transmitted in a given clock hour e.g. a period commencing at 00:00:00 of an hour and ending at 00:59:59 of that hour.
- 6.14 However, we are aware that a small number of broadcasters are choosing to measure their clock hours starting at varying irregular times (e.g. a 60 minute period starting at 00:20:00 of an hour). This practice makes consistent enforcement difficult for Ofcom to achieve.
- 6.15 For clarity and transparency of enforcement, we propose to:
- 6.15.1 clarify that time devoted to television advertising and teleshopping spots on any channel in any **clock** hour must not exceed 12 minutes; and
- 6.15.2 add the following definition of a clock hour:

*a ‘clock hour’ means a period of sixty minutes commencing from 00:00:00 of an hour and ending at 00:59:59 of that hour (e.g. 14:00:00 to 14:59:59 hours).*

**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.*

## Definition of television films

6.16 Rule 16(a) of COSTA restricts advertising breaks in films and news programmes to one break for each scheduled period of at least 30 minutes.

6.17 Paragraph 3(f) of COSTA states:

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

6.18 A footnote accompanying this definition states that it "is derived from Article 20(2) of the AVMS Directive". Article 20(2) of the Directive states that the "transmission of films made for television (excluding series, serials and documentaries), cinematographic works and news programmes may be interrupted by television advertising and/or teleshopping once for each scheduled period of at least 30 minutes".

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

6.20 To ensure COSTA transposes appropriately the requirements of the Directive, we propose to revise the definition to make clear that it is only films made for television that are series, serials and documentaries that are not subject to Rule 16(a). The proposed new definition is:

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

**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.*

## Definition of teleshopping

6.21 Paragraph 3(h) of COSTA states:

*'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.*

- 6.22 A footnote to this definition states that it is derived from Article 1(l) of the AVMS Directive.
- 6.23 Article 1(l) of the Directive states that teleshopping “means direct offers broadcast to the public with a view to the supply of goods or services, including immovable property, rights and obligations, in return for payment”.
- 6.24 The difference between the AVMS and COSTA definitions is that COSTA states that teleshopping is a form of advertising, “*which includes*” direct offers whereas the Directive states that teleshopping “*means direct offers*”.
- 6.25 Although the difference in the wording is subtle, there is a risk that broadcasters may misinterpret what content can be treated as teleshopping when scheduling teleshopping windows<sup>35</sup> on their channels. This is important as teleshopping windows are distinct pieces of content that are exempt from the hourly limits on the amount of advertising that broadcasters are permitted to transmit, as set out in Rule 4 of COSTA.<sup>36</sup> If broadcasters transmit advertising during teleshopping windows that does not meet the definition of teleshopping, they risk breaching Rule 4.
- 6.26 Accordingly, to meet the definition of teleshopping, Ofcom expects the direct offer (e.g. on-screen display giving product, price and ordering details) in teleshopping material will be constant or nearly constant. If the offer is broadcast only occasionally, or forms only a subordinate part of the content on screen, the material is unlikely to satisfy the definition of teleshopping. Ofcom has made this position clear in published Findings.<sup>37</sup> However, to aid clarity, we propose to amend the definition as follows:

*‘teleshopping’ means direct offers broadcast to the public with a view to the supply of goods or services, including immovable property, rights and obligations, in return for payment.*

**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.*

## Waiver of advertising minutage rules for local services

- 6.27 Following consultation in December 2011 on the licensing of local digital television programme services (“L-DTPS”), Ofcom confirmed that, consistent with Article 18 of the AVMS Directive, such services that are not receivable outside the UK would be exempt from the restrictions set out in COSTA that limit the amount of advertising a broadcaster can transmit.<sup>38</sup>
- 6.28 To reflect this position, we intend to include a statement in the revised Code that makes clear that L-DTPS not receivable outside the UK are exempt from the rules

<sup>35</sup> A teleshopping window is content exclusively comprised of teleshopping that has a minimum duration of 15 minutes.

<sup>36</sup> Based on the requirements of the AVMS Directive, COSTA limits the amount of spot advertising a broadcaster may transmit to 12 minutes for each clock hour.

<sup>37</sup> See SCXtra finding in Ofcom Bulletin no. 193 -

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb193/obb193.pdf>

<sup>38</sup> See <http://stakeholders.ofcom.org.uk/binaries/consultations/localtv/statement/local-tv-statement.pdf>

that: limit the amount of advertising a broadcaster can transmit in a clock hour; limit the average hourly amount of advertising broadcasters can transmit; and limit the duration of internal breaks on public service broadcasters.

- 6.29 The exemption and relevant rules can be viewed in the table included at the end of this Section and in Annex 8 (see text box above Rule 2).

**Question 10:** *Do you have any comments on the how the exemption for L-DTPS is reflected in the draft Code?*

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

## Waiver of break restrictions for films on Public Service Broadcasters (PSBs)<sup>39</sup>

- 6.30 In 2010 Ofcom's consulted on revisions to the Broadcasting Code, including the introduction of new rules permitting product placement in programmes. The resulting rules made it possible for broadcasters to place – in certain programme genres – references to products in return for payment. These programme genres include films, TV series, sports programmes and light entertainment programmes.
- 6.31 The consultation led to clarification that COSTA's definition of films includes single dramas.<sup>40</sup>
- 6.32 One of the effects of the clarification was that the tighter restrictions that apply to advertising interruptions in films would apply to single dramas. Rule 16(a) of COSTA permits only one advertising or teleshopping break in films for each scheduled period of at least 30 minutes.
- 6.33 To help mitigate the impact of this clarification, in February 2011<sup>41</sup> a trial waiver of the restriction on the duration of internal breaks for PSB channels was introduced in respect of films. PSB channels are restricted to having internal breaks that are no longer than 3 minutes and 50 seconds, of which no more than 3 minutes and 30 seconds may be spot advertising.<sup>42</sup>
- 6.34 Ofcom is not aware of any negative impact resulting from the trial waiver and we therefore propose including a formal exemption in the Code.
- 6.35 The exemption and relevant rule can be viewed in the table included at the end of this Section and in Annex 8 (see text box under Rule 5).

**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?*

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

<sup>39</sup> For COSTA purposes, PSBs are Channel 3 services, Channel 4, Channel 5, and S4C.

<sup>40</sup> See <http://stakeholders.ofcom.org.uk/binaries/consultations/724242/statement/statement.pdf>

<sup>41</sup> <http://stakeholders.ofcom.org.uk/consultations/bcrtv2010/costa-trial-waiver/>

<sup>42</sup> Rule 14 of COSTA

## Other revisions/clarifications

- 6.36 We are proposing to revise the layout of the Code and make other minor changes to the wording of some rules.
- 6.37 Currently COSTA takes the form of numbered paragraphs, which consist of a combination of explanatory text, definitions and rules. We intend to revise the layout so that it reflects that of Ofcom’s Broadcasting Code: only enforceable rules will be numbered, all other explanatory information will be included in text boxes. We also propose simplifying language where we consider this will aid stakeholders’ understanding of COSTA requirements.
- 6.38 The following table sets out the proposed new rules/text, the current layout/wording, and the reasons for the proposed revisions. None of the proposed revisions set out below are intended to change Ofcom’s interpretation or application of the rules.

| Proposed Text  | Existing text   | Reason for proposed change  |
|--|---|---|
| <p>This Code sets out the rules with which television broadcasters licensed by Ofcom<sup>1</sup> ('broadcasters') must comply when carrying advertising. These rules give effect to relevant provisions of the Communications Act, Audiovisual Media Services (AVMS) Directive and those policies determined by Ofcom following consultation.</p> <p><small>1 For the purpose of this Code, this includes S4C, which is authorised by the Broadcasting Act 1990.</small></p> | <p>Paragraph 1</p> <p>This Code sets out the rules with which television broadcasters licensed by Ofcom<sup>1</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.</p> <p><small>1 For the purpose of this Code, this includes S4C, which is authorised by the Broadcasting Act 1990.</small></p> | <p>Layout change and reference to the Communications Act added.</p> <p>Reference to services receivable only in the UK has been removed and replaced with an exemption for specified services from advertising minutage rules (see text box before new Rule 2).</p> |
|  | <p>Paragraph 2</p>  |   |

| Proposed Text  | Existing text   | Reason for proposed change  |
|--|---|---|
| <p>Broadcasters must also comply with the UK Code of Broadcast Advertising (the BCAP Code) issued by the Broadcast Committee of Advertising Practice.</p>  | <p>Broadcasters must also comply with the Television Advertising Standards Code issued by the Broadcast Committee of Advertising Practice.</p>  | <p>Layout change and updated reference to BCAP Code name.</p>   |
| <p>Definitions</p> <p>In this Code:</p> <p>‘television advertising’ means any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes by a public or private undertaking or natural person in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property rights and obligations, in return for payment.</p> | <p>Paragraph 3(a)</p> <p>In this Code:</p> <p>‘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>2</sup>;</p> <p>2. This definition is derived from Article 1(i) of the AVMS Directive. In accordance with Article 23(2) of the Directive, it does not include announcements made by a broadcaster in connection with its own programmes and ancillary products directly derived from those programmes, sponsorship announcements and product placements.</p> | <p>Minor wording and layout change.</p> <p>Footnote removed. For explanation, see paragraphs 6.4 to 6.10.</p> |
| <p>‘<b>broadcasting day</b>’ is deemed to start at 06:00 and run for the following 24 hours.</p>   | <p>Paragraph 3(b)</p> <p>the ‘broadcasting day’ for the purposes of this Code is deemed to start at 6am and run for the following 24 hours;</p>   | <p>Minor wording and layout change.</p>   |

| Proposed Text   | Existing text   | Reason for proposed change   |
|---|---|--|
| <p><b>'clock hour'</b> means a period of sixty minutes starting from 00:00:00 of an hour and ending at 00:59:59 of that hour (e.g. 14:00:00 to 14:59:59 hours).</p>   |   | <p>New definition - see paragraph 6.11 to 6.15 for explanation.</p>  |
| <p><b>'Parliamentary proceedings'</b> includes proceedings on the floor of either House and Parliamentary Committees.</p>   | <p>Paragraph 3(c)</p> <p>'Parliamentary proceedings' includes proceedings on the floor of either House and Parliamentary Committees;</p>  | <p>Layout change.</p>  |
| <p><b>'public service channels'</b> are Channel 3 services, Channel 4, Channel 5 and S4C.</p>   | <p>Paragraph 3(d)</p> <p>'public service channels' means those television services designated in accordance with section 310 of the Communications Act 2003 other than the BBC services<sup>3</sup>;</p> <p><small>3. Designated channels currently include any Channel 3 service, Channel 4, Channel 5, and S4C.</small></p> | <p>Minor wording and layout change.</p>  |
| <p><b>'formal Royal ceremony'</b> 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.</p> | <p><u>Paragraph 3(e)</u></p> <p>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;</p>                 | <p>Layout change.</p>  |
| <p><b>'films'</b> means films made for television (including single dramas but excluding series, serials and documentaries) and cinematographic works.</p>  | <p>Paragraph 3(f)</p> <p>'films' means cinematographic works and films made for television (including single dramas), but excludes series, serials and</p>  | <p>Layout change and footnote removed. Definition amended - see paragraphs 6.16 to 6.20 for explanation.</p> |

| Proposed Text   | Existing text   | Reason for proposed change  |
|---|---|---|
|   | <p>documentaries<sup>4</sup>;</p> <p>4. This definition is derived from Article 20(2) of the AVMS Directive.</p>  |   |
|   | <p><u>Paragraph 3(g)</u></p> <p>'self promotion' means advertising for the broadcaster's own products and services<sup>5</sup>; and</p> <p>5. This definition is derived from Article 1(i) of the AVMS Directive.</p>   | <p>Definition removed as the term is not used in Code. Link to definition of self-promotional services included in text box under Rule 3.</p> |
| <p><b>'teleshopping'</b> 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.</p>   | <p><u>Paragraph 3(h)</u></p> <p>'teleshopping' means television advertising which includes direct offers to the public with a view to the 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>6</sup>.</p> <p>6. This definition is derived from Article 1(l) of the AVMS Directive.</p> | <p>Definition amended for accuracy and footnote removed. See paragraphs 6.21 to 6.26 for explanation of change.</p>                           |
| <p><b>'teleshopping windows'</b> are extended teleshopping features with a minimum uninterrupted duration of 15 minutes.</p>  |   | <p>New definition added for clarity.</p>  |
| <p><b>Identification of advertising</b></p> <p><u>Rule 1</u></p> <p>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.</p> | <p><u>Paragraph 11</u></p> <p>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.</p>   | <p>Layout and minor wording change.</p>   |

| Proposed Text  | Existing text   | Reason for proposed change  |
|--|---|---|
| <p><b>Time devoted to advertising</b></p> <p><u>Text box above Rule 2</u></p> <p>Rules 2 to 5 do not apply to:</p> <ul style="list-style-type: none"> <li>• advertising by the broadcaster in connection with its own programmes and ancillary products directly derived from those programmes;</li> <li>• Local digital television programme services (“L-DTPS”) not receivable outside the UK (e.g. a DTT service not receivable outside the UK, or an encrypted satellite service); and</li> <li>• teleshopping windows (see Rules 6 and 7).</li> </ul> | <p><u>Paragraph 9</u></p> <p>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.</p> | <p>Exemptions from advertising minutage clarified.</p> <p>See paragraphs 6.4 to 6.10 for explanation of repositioning of reference to advertising by broadcasters in connection with their own programmes.</p> <p>Paragraph 9 replaced with specific exemptions for Local TV services from advertising minutage – see paragraphs 6.27 to 6.29 for explanation.</p> <p>Position of teleshopping windows in relation to advertising minutage rules clarified.</p> |
| <p><u>Rule 2</u></p> <p>Time devoted to television advertising and teleshopping spots on any channel in any clock hour must not exceed 12 minutes.</p>   | <p><u>Paragraph 4</u></p> <p>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. In addition:</p>  | <p>Minor wording and layout change.</p>   |

| Proposed Text   | Existing text  | Reason for proposed change   |
|---|--|--|
| <p><b>Further to Rule 2:</b><br/><u>Rule 3</u></p> <p>Non public service channels must show no more than an average of 9 minutes of television advertising for every hour of transmission across the broadcasting day.</p>  | <p>Paragraph 4(b)</p> <p>on other channels 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.</p>  | <p>Minor wording and layout change only.</p>   |
| <p><u>Text box under Rule 3</u></p> <p>Broadcasters are not required to include teleshopping spots when applying Rule 3.</p> <p>Teleshopping and self-promotional services are exempt from Rule 3 (for explanation of these types of services see <a href="http://licensing.ofcom.org.uk/binaries/tv/tlcs_guidance.pdf">http://licensing.ofcom.org.uk/binaries/tv/tlcs_guidance.pdf</a>).</p> | <p>Paragraph 6</p> <p>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.</p> <p>Paragraph 7</p> <p>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).</p> | <p>Simplification to clarify that teleshopping spots, teleshopping and self-promotional services are not subject to limits on advertising minutage averages applicable to non public service channels. Link to TLCS application guidance notes for definition of teleshopping and self-promotional services added.</p> |
| <p><u>Rule 4</u></p> <p>On public service channels, time</p>  | <p>Paragraph 4(a)</p>  |  |

| Proposed Text   | Existing text   | Reason for proposed change  |
|---|---|---|
| <p>devoted to television advertising and teleshopping spots must not exceed:</p> <p>i. an average of 7 minutes per hour for every hour of transmission time across the broadcasting day; and</p> <p>ii. an average of 8 minutes per hour between 18:00 and 23:00.</p>   | <p>on public service channels time devoted to television advertising and teleshopping spots must not exceed:</p> <p>(i) an average of 7 minutes per hour for every hour of transmission time across the broadcasting day; and</p> <p>(ii) subject to (i) above, an average of 8 minutes an hour between 6pm and 11pm</p>  | <p>Minor wording and layout change.</p>   |
| <p><u>Text box under Rule 4</u></p> <p>During programmes broadcast by the national Channel 3 breakfast licensee, the amount of time permitted for television advertising and teleshopping spots between 06:00 to 09:25 may be averaged across the week.</p> <p>There may be occasions when a broadcaster transmits less advertising than it scheduled. If this happens for reasons of good programme presentation, or because of unforeseen technical or human errors, Ofcom may grant the broadcaster a limited exemption from Rule 3 or 4 to enable it to transfer unused minutage to other parts of its schedule. In such circumstances, the broadcaster must contact Ofcom, in writing, to seek permission to transfer unused minutage. The request must set out:</p> <p>i. the reason for the proposed transfer; and</p> <p>ii. the date(s) and time(s) of the proposed recoupment, which must be within 7 days of the lost minutage.</p> <p>In no circumstances can the transfer result in any clock hour containing more than 12 minutes of advertising.</p> | <p><u>Paragraph 5</u></p> <p>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.</p> <p><u>Paragraph 10</u></p> <p>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. Transfers that would result in more than 12 minutes of advertising and teleshopping spots in any one hour are not permissible.</p> | <p>Layout change.</p> <p>Wording amended to provide broadcasters with greater clarity of actions they need to take should they wish to recoup advertising minutage.</p> |

| Proposed Text   | Existing text   | Reason for proposed change   |
|---|---|--|
| <p><u>Rule 5</u></p> <p>Advertising breaks during programmes on public service channels may not exceed 3 minutes 50 seconds, of which advertising and teleshopping spots may not exceed 3 minutes 30 seconds.</p> <p><u>Text box under Rule 5</u></p> <p>Advertising breaks in films are not subject to Rule 5.</p> | <p><u>Paragraph 14</u></p> <p>Breaks during programmes on public service channels may not exceed 3 minutes 50 seconds, of which advertisements may not exceed 3 minutes 30 seconds.</p>                                       | <p>Layout change and exemption for films added (see paragraphs 6.30 to 6.35 for explanation).</p>  |
| <p><u>Rule 6</u></p> <p>Teleshopping windows must be at least 15 minutes long.</p>  | <p><u>Paragraph 8</u></p> <p>Teleshopping windows must be at least 15 minutes long:</p>   | <p>Layout change.</p>  |
| <p><u>Rule 7</u></p> <p>On public service channels, teleshopping windows may be scheduled only between 00:00 and 06:00.</p>   | <p><u>Paragraph 8(a)</u></p> <p>on public service channels, teleshopping windows may be scheduled only between midnight and 6am; and</p>  | <p>Minor wording and layout change.</p>  |
|   | <p><u>Paragraph 8(b)</u></p> <p>on other channels, there are no limits on the number or scheduling of teleshopping windows</p>  | <p>Paragraph removed as superfluous – there is no restrictions on the time of day teleshopping windows can be scheduled on non-PSB channels.</p> |
| <p><b>Placement of advertising</b></p> <p><u>Rule 8</u></p> <p>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</p>                               | <p><u>Paragraph 12</u></p> <p>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</p> | <p>Layout change.</p>  |

| Proposed Text  | Existing text  | Reason for proposed change   |
|--|--|--|
| the programme, and where natural breaks occur.   | nature and duration of the programme, and where natural breaks occur.  |  |
| <p><u>Rule 9</u></p> <p>Isolated television advertising and teleshopping spots, other than in the transmission of sports events, shall remain the exception.</p>   | <p><u>Paragraph 15</u></p> <p>Isolated television advertising and teleshopping spots, other than in the transmission of sports events, shall remain the exception.</p>   | Layout change.   |
|  | <p><u>Paragraph 16</u></p> <p>Restrictions apply when inserting advertising breaks during the following programmes<sup>8</sup>.</p> <p><small>8 In the case of news programmes, and programmes made 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 RAD will apply. RADA can be found at <a href="http://www.ofcom.org.uk/tv/ifi/codes/advertising/rules/">http://www.ofcom.org.uk/tv/ifi/codes/advertising/rules/</a>.</small></p> | <p>The requirements set out in this paragraph are now included as individual rules – see below.</p> <p>Footnote removed as no longer required.</p> |
| <p><u>Rule 10</u></p> <p>The transmission of films and news programmes may be interrupted by advertising or teleshopping once for each scheduled period of at least 30 minutes.</p>  | <p><u>Paragraph 16(a)</u></p> <p>films and news programmes may only include one advertising or teleshopping break for each scheduled period of at least 30 minutes;</p>  | Layout change. Also, minor wording change to reflect more closely the wording of the AVMS Directive.   |
| <p><u>Rule 11</u></p> <p>Breaks are not permitted within schools programmes.</p>   | <p><u>Paragraph 16(b) (continued)</u></p> <p>Breaks are not permitted within schools programmes, but may be scheduled between programmes;</p>  | Minor wording and layout change.   |
| <p><u>Rule 12</u></p> <p>Children’s programmes (other than schools programmes) with a scheduled duration of 30 minutes or less may not be interrupted by advertising. The transmission of children’s programmes with a scheduled duration of longer than 30 minutes may be interrupted by advertising or teleshopping once for each scheduled period of at least 30 minutes.</p> | <p><u>Paragraph 16(b)</u></p> <p>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.</p>  | Layout change. Also, minor wording change to reflect more closely the wording of the AVMS Directive.   |

| Proposed Text   | Existing text   | Reason for proposed change                                |
|---|---|---|
| <p><u>Rule 13</u></p> <p>Programmes including a religious service may not include advertising or teleshopping breaks during the service.</p>  | <p><u>Paragraph 16(c)</u></p> <p>programmes including a religious service may not include advertising or teleshopping breaks during the service;</p>  | <p>Layout change.</p>                                     |
| <p><u>Rule 14</u></p> <p>Broadcasts of a formal Royal ceremony may not include advertising or teleshopping breaks during the ceremony.</p>  | <p><u>Paragraph 16(d)</u></p> <p>broadcasts of a formal Royal ceremony may not include advertising or teleshopping breaks during the ceremony;</p>  | <p>Layout change.</p>                                     |
| <p><u>Rule 15</u></p> <p>Broadcasts of live Parliamentary proceedings:</p> <ol style="list-style-type: none"> <li>i. may not include advertising and teleshopping breaks in programmes of a scheduled duration of 30 minutes or less;</li> <li>ii. in programmes that have a scheduled duration that is greater than 30 minutes, the transition between live coverage of Parliamentary proceedings and advertising should take place where natural breaks occur via a programme presenter in sound or vision. Programme directors / editors must have the discretion to reschedule or cancel breaks to avoid artificial interruptions in live proceedings. Breaks should be dropped altogether where this would be incompatible with editorial responsibility, for example in coverage of matters of great gravity or emotional sensitivity.</li> </ol> | <p><u>Paragraph 16(e)</u></p> <p>broadcasts of live Parliamentary proceedings may not include advertising and teleshopping breaks in programmes of a scheduled duration of 30 minutes or less;</p> <p><u>Paragraph 13</u></p> <p>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.</p> | <p>Rules merged plus minor wording and layout change.</p> |
| <p><u>Rule 16</u></p> <p>For programmes other than those set out in Rules 10 to 15 above, the number of internal breaks permitted is set out in the tables that follow. For every additional 20-minute period beyond that set out in the</p>  | <p><u>Paragraph 17</u></p> <p>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</p>  | <p>Minor wording and layout change.</p>                   |

| Proposed Text   | Existing text   | Reason for proposed change              |
|---|---|---|
| <p>tables, a further break is permitted.</p> <p>[followed by tables as they currently appear in COSTA]</p>  | <p>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.</p> <p>[tables as they currently appear in COSTA]</p>  |   |
| <p><u>Text box under Rule 16</u></p> <p>The following programmes are exempt from Rule 16</p> <ul style="list-style-type: none"> <li>• Live events – these may take more breaks than are indicated in Tables 1 and 2, provided that: <ul style="list-style-type: none"> <li>i. the timing of the event and its constituent parts are outside the control of the programme provider; and</li> <li>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.</li> </ul> </li> <li>• Live programme feeds from an overseas broadcaster - these may take the break pattern of the originating broadcaster. The broadcaster retransmitting the feed from the UK remains responsible for ensuring compliance with other relevant parts of this Code and the UK Code of Broadcast Advertising.</li> </ul> | <p><u>Paragraph 16(f)</u></p> <p>in programmes of live events, more breaks may be taken than are indicated in Tables 1 and 2 below, provided that:</p> <ul style="list-style-type: none"> <li>i) the timing of the event and its constituent parts are outside the control of the programme provider; and</li> <li>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.</li> </ul> <p><u>Paragraph 16(g)</u></p> <p>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.</p> | <p>Minor wording and layout change.</p> |

6.39 None of the proposed amendments set out in this section of the consultation are intended to change the way in which Ofcom interprets or enforces COSTA. We have therefore identified no significant impacts likely to result from the amendments. However, we welcome views from stakeholders on whether there are impacts that Ofcom has not identified and details of what these are.

**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.

## Annex 1

# Responding to this consultation

## How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 10 October 2014**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <http://stakeholders.ofcom.org.uk/consultations/scheduling-adverts/howtorespond/form>, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email [costareview@ofcom.org.uk](mailto:costareview@ofcom.org.uk) attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted to the address below, marked with the title of the consultation.
- Daniel Maher  
Content Standards, Licensing & Enforcement Operations Manager  
Ofcom  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA
- A1.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A1.6 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 4. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

## Further information

- A1.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Steven Turner on 020 7783 4416.

## Confidentiality

- A1.8 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk), ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether

all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

- A1.9 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.10 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/about/accoun/disclaimer/>.

## Next steps

- A1.11 Following the end of the consultation period, Ofcom intends to publish a statement in early 2015.
- A1.12 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: [http://www.ofcom.org.uk/static/subscribe/select\\_list.htm](http://www.ofcom.org.uk/static/subscribe/select_list.htm).

## Ofcom's consultation processes

- A1.13 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.
- A1.14 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at [consult@ofcom.org.uk](mailto:consult@ofcom.org.uk). We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.15 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Graham Howell, Secretary to the Corporation, who is Ofcom's consultation champion:

Graham Howell  
Ofcom  
Riverside House  
2a Southwark Bridge Road  
London SE1 9HA

Tel: 020 7981 3601

Email [Graham.Howell@ofcom.org.uk](mailto:Graham.Howell@ofcom.org.uk)

## Annex 2

# Ofcom's consultation principles

A2.1 Ofcom has published the following seven principles that we will follow for each public written consultation:

### Before the consultation

A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

### During the consultation

A2.3 We will be clear about who we are consulting, why, on what questions and for how long.

A2.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will consult for up to 10 weeks depending on the potential impact of our proposals.

A2.6 A person within Ofcom will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.

A2.7 If we are not able to follow one of these principles, we will explain why.

### After the consultation

A2.8 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

## Annex 3

# Consultation response cover sheet

- A3.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk).
- A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the ‘Consultations’ section of our website at [www.ofcom.org.uk/consult/](http://www.ofcom.org.uk/consult/).
- A3.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don’t have to edit your response.

**Cover sheet for response to an Ofcom consultation**

**BASIC DETAILS**

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

**CONFIDENTIALITY**

Please tick below what part of your response you consider is confidential, giving your reasons why

|                      |                          |   |                          |
|----------------------|--------------------------|---|--------------------------|
| Nothing              | <input type="checkbox"/> | Name/contact details/job title              | <input type="checkbox"/> |
| Whole response       | <input type="checkbox"/> | Organisation                                | <input type="checkbox"/> |
| Part of the response | <input type="checkbox"/> | If there is no separate annex, which parts? |                          |

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

**DECLARATION**

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

## Annex 4

# Consultation questions

A4.1 This annex provides a list of the questions we are asking in Sections 5 and 6 and Annex 5 of this document.

### Questions from Section 5

**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.*

*For broadcasters that transmit children’s programmes:*

**Question 4** *If enforcement is based on the EPG approach, what EPG slots (that are greater than 30 minutes) are you likely to use when scheduling internal breaks in children’s programmes (e.g. slots that show timing to the nearest one minute junction or those displayed to the nearest five minutes)?*

*For each answer, please give your reasons and identify any potential impacts that you consider should be taken into account.*

### Questions from Section 6

**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 that you consider Ofcom should issue guidance on.*

**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 you consider Ofcom should issue guidance on.*

**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.

**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.

**Question 10:** Do you have any comments on the how the exemption for L-DTPS is reflected in the draft Code?

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

**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?

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

## Questions from Annex 5

**Question A1:** Do you agree with our approach to mitigation strategy 1? If not, please explain any objections fully and please provide supporting evidence.

**Question A2:** Do you agree with our approach to mitigation strategy 2? If not, please explain any objections fully and please provide supporting evidence.

**Question A3:** Do you agree with our approach to mitigation strategy 3? If not, please explain any objections fully and please provide supporting evidence.

**Question A4:** Do you agree with our approach to mitigation strategy 4? If not, please explain any objections fully and please provide supporting evidence.

## Annex 5

# Revenue Assessment

## Background

- A5.1 The AVMS Directive establishes that only children’s programmes with a scheduled duration that is “greater than 30 minutes” can include an Internal Break (IB). As explained in Section 5 of this consultation, to enforce this requirement, and other rules set out in the Code on the Scheduling of Television Advertising that limit IBs in programmes, it is necessary for Ofcom to adopt an appropriate enforcement methodology for determining a programme’s ‘scheduled duration’.
- A5.2 Section 5 of this consultation explains the different enforcement options available. It also sets out an overview of the potential impacts that adoption of the different options may have on broadcasters.
- A5.3 As explained in Section 5, Ofcom has traditionally used the EPG approach to enforce the COSTA rules and determine the scheduled duration of a programme. Some children’s broadcasters have claimed that this approach has significant negative implications for their revenues. These children’s broadcasters favour an enforcement approach based on the use of transmission (TX) data (“TX approach”).
- A5.4 If the rules were enforced on the basis of a TX approach, we consider this would be likely to have a significant impact on the majority of other broadcasters, and ultimately viewers.<sup>43</sup> For the purpose of this consultation document, we consider it impractical to consider the revenue implications for all broadcasters of the different permutations associated with adopting an enforcement mechanism based on the TX approach.<sup>44</sup> However, in this Annex we have focused on the impact of the EPG approach on a smaller group of broadcasters, consisting of children’s broadcasters who appear to be already adopting a TX approach to scheduling IBs within programmes.<sup>45</sup> We term these “the children’s broadcasters”.
- A5.5 In this Annex we describe our approach to assessing the revenue impact on the children’s broadcasters of enforcing the rules using :
- 5.5.1 the EPG approach option; relative to
  - 5.5.2 a TX approach equating scheduled duration to a programme slot (referred to henceforth as “the TX approach option”).
- A5.6 We also report the results of our analysis.

## Introduction

- A5.7 For the purpose of the analysis in this Annex, we have taken as our starting point that a programme’s scheduled duration is defined by reference to the start time

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<sup>43</sup> See Section 5 for explanation

<sup>44</sup> In Section 5 we ask all stakeholders to submit views on the potential impact of each option on them and provide evidence where possible, for us to consider, before a decision is made.

<sup>45</sup> The children’s broadcasters in question are Turner, Disney, CSC Media and Nickelodeon

of the programme until the start time of the next programme. This is referred to as the 'programme slot'.

- A5.8 This is not to say, however - and should not be read as meaning - that a programme's slot time should always be used as a proxy for its 'scheduled duration'. Different enforcement mechanisms are capable of measuring 'scheduled duration' in different ways. It is therefore important to note that the question 'what is the appropriate basis for measuring the 'scheduled duration' of a programme if the TX approach was adopted as an enforcement mechanism?' is one of the issues we are now consulting on (see Section 5 for more detail).
- A5.9 We have estimated the duration of programme slots to the nearest second using transmission logs from BARB data (as amended by TRP, see Annex 6 for further details) for sample periods. The periods chosen for the analysis were May 2012 and May 2013 (we report only the results for the latter in this Annex). Use of BARB data has allowed us to measure the ratecard-weighted impacts within each programme slot, which is central to our analysis.
- A5.10 Since some children's broadcasters claim to be already adopting the TX approach option to scheduling IBs within programmes, we have taken the current situation as the starting point for our analysis. We have assumed that if Ofcom chose the TX approach option, a children's programme that occupied a programme slot lasting exactly 30 minutes could not include an IB. However, the data for the relevant period examined appeared to show IBs in a substantial proportion of children's programme in slots of 30 minutes or less. We therefore considered it appropriate to assume that our starting point should be that of the enforced TX approach option. We have therefore suitably modified and qualified the current situation for the relevant period to account for this (as explained in paragraph A5.41).
- A5.11 We have estimated the impact of applying the EPG approach option to the starting point described in the above paragraph. When enforcing the EPG approach option, the children's broadcasters may react in different ways. We have, therefore, compared two possible scenarios under the EPG approach option:
- 5.11.1 one in which an IB is included in a children's programme scheduled in a 31 minute EPG slot (henceforth 'EPG at 31'); and
  - 5.11.2 another where an IB is included in a programme scheduled in a 35 minute slot (henceforth 'EPG at 35').
- A5.12 For practical purposes in this Annex we have taken the TX approach option as the base case against which we compared the EPG approach option (under both scenarios). We note that in Section 5 of this consultation document, we take the EPG approach option as the base option. As we are only comparing two options, this has no practical implication – i.e. the estimated impact is the difference between the two options.
- A5.13 We have focused on the impact on revenues rather than profitability. This is purely for a practical reason as some of the children's broadcasters for which we estimated the impact have international operations and, therefore, assessing the impact on their profitability in the UK would have been difficult. As a result, this Annex refers to the revenue impacts of adopting the alternative options and scenarios.

A5.14 In this Annex we:

- 5.14.1 discuss in more detail the options and scenarios for measuring the programme slot duration;
- 5.14.2 describe the data used for our assessment;
- 5.14.3 report and assess the pre-consultation submissions by some of the children’s broadcasters on the overall impact of a specified enforcement methodology;
- 5.14.4 describe our suggested approach to assessing the revenue impacts of adopting the two scenarios under the EPG approach option (‘EPG at 31’ and ‘EPG at 35’) relative to the TX approach option highlighted above. In particular, we consider:
  - the maximum revenue impact assuming that the children’s broadcasters lost all the IBs and associated revenues for the programmes that could no longer have an IB under the EPG approach option; and
  - the revenue impact if the children’s broadcasters were to undertake a number of different mitigation actions under the EPG approach option;
- 5.14.5 report the results of this analysis. While we have undertaken the assessment for each of the children’s broadcasters, for confidentiality reasons we report only industry average results.<sup>46</sup>

## Options considered

A5.15 As stated at the outset, for the purpose of this revenue impact assessment, we have treated a programme’s scheduled duration as being the period of time between the beginning of a programme and the beginning of the next programme (“the programme slot”). This includes not only programme time but also any IBs within the programme, the end breaks (EBs) at the end of the programme and any programme promotion time.

A5.16 We have not taken the current situation as a starting position for the chosen period of analysis (which includes some noncompliance under the TX approach option which some children’s broadcasters claim to have adopted); rather, we have assumed that the TX approach option was enforced (as discussed in paragraph A5.42). The options compared are:

- 5.16.1 **TX approach option** – this option is available only if a programme slot is measured using the broadcasters’ transmission data (TX). Some children’s broadcasters have argued that a programme whose scheduled duration (according to the TX approach) is at least 30 minutes and one second long should be allowed to have an IB. We have used this interpretation for this option;

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<sup>46</sup> Confidential information relating to individual broadcasters has been redacted from this Annex but is available to the relevant broadcaster on request.

5.16.2 **EPG approach option** – under this option we considered two possible scenarios:

- **EPG at 31** – a children’s programme would need to be scheduled in an EPG slot that is at least 31 minutes in duration in order to be allowed an IB; and
- **EPG at 35** – as above but only children’s programmes that are scheduled in EPG slots of 35 minutes (or more) contain an IB.

A5.17 The analysis in this Annex estimates the difference in revenues between the enforced TX approach option and, separately, the two scenarios considered under the (equally enforced) EPG approach option. The results of our analysis are expressed in terms of loss of revenue under the EPG approach option (separately under each of the EPG at 31 and the EPG at 35 scenarios) relative to the TX approach option.

## Data

A5.18 For our analysis we used a sample of UK BARB data, obtained via BARB registered bureaux, and UK revenue information provided by the children’s broadcasters.

A5.19 We examined the BARB data for the children’s broadcasters’ channels for the months of May 2013 and May 2012.<sup>47</sup> For each channel the BARB data set contained programme, EB and IB durations, content information and commercial impacts (both unweighted and ratecard weighted<sup>48</sup>). As we aimed to estimate the revenue impact, we relied on ratecard weighted impacts as these closely reflect the revenues associated with impacts. As explained in Annex 6, these data had to be corrected and rectified in order for us to be able to carry out our assessment. In particular, for practical purposes we had to estimate the programme slot duration as the time between the end of an EB to the end of the next EB and not as the period of time between the beginning of a programme and the beginning of the next programme. Our analysis relied on this amended data set.

A5.20 The children’s broadcasters also provided us with their total broadcasting revenues split by type (e.g. subscriptions, advertising and promotions) for each of their channels over the same periods. We have assumed that all advertising revenues within the period are generated by the ratecard-weighted impacts within the same period. Thus, we have derived revenue-per-impact data by dividing all revenues across all impacts on a channel-by-channel basis.

<sup>47</sup> We had to limit the analysis to relatively short time periods because the data had to be amended to rectify inconsistencies and incorrect entries and this was time consuming process (See Annex 6).

<sup>48</sup> Ratecard weighted impacts is the metric used by broadcasters to sell advertising spots. They apply different weights to the unweighted impacts to account for differences in cost by spot length contained within that minute. Ordinarily, 1 impact refers to 1 viewer watching one 30-second advertising spot, but as a pair of 15-second spots may be of higher value to an advertiser than a single 30-second spot, unweighted impacts would be insufficient to accurately account for the value of an advertising break. Ratecard weighted impacts account for these differences and allow comparisons to be made in terms of advertising revenue – e.g. one spot generating 50 ratecard weighted impacts can be said to generate half as much revenue as another spot generating 100 ratecard weighted impacts.

Effectively, this assumption is that for a specific reduction in ratecard-weighted impacts we would expect a proportionate reduction in advertising revenues.

- A5.21 Although we have undertaken the analysis for both May 2012 and May 2013, in this Annex we have reported only the May 2013 data as they are the most recent data and results using May 2012 are similar.<sup>49</sup>

## Revenue impact

### The children’s broadcasters’ initial views

- A5.22 In advance of this consultation, some of the children’s broadcasters argued that the impact of not allowing IBs in children’s programmes which sit in 30 minute EPG slots but that have a slot duration of 30 minutes and one second according to their transmission logs would be substantial.
- A5.23  $\mathcal{B}$  argued that the removal of IBs in such programmes would lead to a  $\mathcal{B}$  loss in the share of commercial impacts and revenues.<sup>50</sup>  $\mathcal{B}$  argued that based on 2012 figures  $\mathcal{B}$  this could lead to a  $\mathcal{B}$  decline in advertising revenues.  $\mathcal{B}$  argued that this would be equivalent to a  $\mathcal{B}$  reduction  $\mathcal{B}$ .  $\mathcal{B}$  later clarified that its estimate assumed all IBs in  $\mathcal{B}$  were eliminated and that they did not mitigate the loss of IB advertising revenues.<sup>51</sup>  $\mathcal{B}$  also provided the 2012 revenue figures for each of its  $\mathcal{B}$ .<sup>52</sup> This indicated that the loss of all existing IB revenues would be  $\mathcal{B}$  of all advertising revenues of  $\mathcal{B}$ ;  $\mathcal{B}$ .<sup>53</sup>
- A5.24  $\mathcal{B}$  argued in October 2011 that for the period January - August 2011 the loss of IB advertising could “reduce [its] advertising impacts by  $\mathcal{B}$ , equating to about  $\mathcal{B}$  in revenues”.<sup>54</sup> This estimate excluded any mitigation strategies.  $\mathcal{B}$  also argued that the removal of IBs only from shows affected (i.e. those scheduled in 30 minute EPG slots) by the change in measurement would lead to a loss of  $\mathcal{B}$  of impacts (about  $\mathcal{B}$  of advertising revenues) over the period April 2012 to March 2013. This latter estimate included mitigation by breaking up episodes of one particular programme into two separate programmes (hence replacing an IB with an EB).
- A5.25  $\mathcal{B}$  estimated that for 2012,  $\mathcal{B}$  of its advertising revenues came from IBs. As a result of  $\mathcal{B}$ ,  $\mathcal{B}$  forecast IBs to represent about  $\mathcal{B}$  of all advertising revenues.<sup>55</sup> This estimate was based on all IBs being eliminated and no mitigation strategies.  $\mathcal{B}$  subsequently provided new analysis based on 2013 forecasted revenues.<sup>56</sup> It argued that its total advertising revenues for 2013 were expected to be  $\mathcal{B}$ . It argued that it would recommend extending the duration of EBs to partially compensate the loss of IBs.<sup>57</sup> It estimated that taking this action would lead to a loss of  $\mathcal{B}$  advertising revenues. It also argued that because EBs will become

<sup>49</sup> Note that the May 2012 results are included in the underlying model which is published together with this consultation.

<sup>50</sup>  $\mathcal{B}$ .  
<sup>51</sup>  $\mathcal{B}$ .  
<sup>52</sup>  $\mathcal{B}$ .  
<sup>53</sup>  $\mathcal{B}$ .  
<sup>54</sup>  $\mathcal{B}$ .  
<sup>55</sup>  $\mathcal{B}$ .  
<sup>56</sup>  $\mathcal{B}$ .  
<sup>57</sup>  $\mathcal{B}$ .

longer this would lead to a loss of 3% of impacts overall in the EB total impacts.<sup>58</sup>  
As a result the revenue loss would stand at 3%.

### Ofcom's views on the children's broadcaster's initial response

- A5.26 We consider that the analysis put forward by 3% does not capture well the impact of adopting the EPG approach option. We consider that to different degrees the analysis and approaches suggested by these children's broadcasters tend to overestimate this impact. We recognise that at the time some of the children's broadcasters provided their views, we had not fully developed alternative options and consequently they would not have been able to make a detailed assessment of the alternatives under consideration in this consultation document. Nonetheless, it may be useful to highlight what we consider to be the more important limitations of the analysis put forward by some of the children's broadcasters before discussing our own approach to this estimation.
- A5.27 3% approach leads to an overestimation of the impact (even assuming that 3% does not adopt any mitigation strategies in response). This is because 3% assumes that all IBs would be eliminated. In reality only a proportion (although large) of IBs would be affected as programmes of longer scheduled durations have IBs, but they would be unaffected by alternative enforcement approaches. 3%
- A5.28 Unlike 3%, 3% estimate does take into account that only a proportion of IBs would no longer be allowed under the EPG approach option and included some limited mitigation by splitting one specific programme into two shorter ones.
- A5.29 Like 3%, 3% approach is based on the assumption that all IBs will be eliminated (hence it overestimates the maximum impact), but like 3% it also considered mitigating the effect by increasing the duration of its EBs to compensate, if only very partially, the loss of IBs.
- A5.30 As we discuss further below, we consider that the children's broadcasters:
- 5.30.1 could adopt a number of additional mitigation strategies if we adopted the EPG approach option under either the EPG at 31 or EPG at 35 scenario; and
  - 5.30.2 would be likely to apply a mix of mitigation strategies on each channel (i.e. on a programme by programme basis) depending on considerations related to the specific features of each programme.

### Our approach to the revenue assessment

- A5.31 The purpose of this assessment is to estimate the revenue impact of the EPG approach option on the basis of either the EPG at 31 or EPG at 35 scenario, relative to the TX approach option.
- A5.32 For the period examined we undertook the analysis on a channel-by-channel basis and then aggregated results for each children's broadcaster group. We consider the impact at the group level to be the most relevant initial indicator of whether the EPG approach option (as described at paragraph A5.16) could

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<sup>58</sup> 3%

reduce the children's broadcaster's incentives to invest in programme content. If this led to a reduction in the quality of the children's broadcasters' programmes, viewers may be worse off.

- A5.33 However, to the extent that some channels in the current portfolio held by some of the children's broadcasters are particularly impacted, we also considered whether some options may render some channels no longer viable, even if the overall impact on a children's broadcaster group was limited. If those non-viable channels were then withdrawn, the concern would not be a risk of reduced incentives to invest in programmes, but, instead one of reduced supply of children's programme services.
- A5.34 The assessment involved a number of methodological steps:
- 5.34.1 we first estimated the distribution of programmes according to their scheduled duration. This allowed us to build a picture of the situation in May 2013 (and 2012);
  - 5.34.2 we assessed the maximum proportion of revenues at risk. This was estimated by assuming that all programmes that would no longer be allowed to have an IB under each option (and scenario) would lose all the associated advertising revenues. In other words, we assumed that the children's broadcasters would not adopt any of the mitigation strategies discussed below. The EPG approach option (under both scenarios) is then compared to the TX approach option in order to assess the difference in maximum impact between the options and scenarios. We believe this to be a significant overestimation of the impact of the options, as we expect the children's broadcasters to attempt to mitigate the impact; and
  - 5.34.3 the children's broadcasters could react in a number of ways to avoid the full impact (described in the above paragraph) under the EPG approach option (under both scenarios). We have assumed that they would not invest in new, longer or shorter, programmes, but, taking the existing schedule as given<sup>59</sup>, we have assumed they would adopt a number of mitigation strategies that would minimise the impact on existing revenues. We have considered a number of mitigation strategies and estimated their impact.
- A5.35 Our results show the revenue impact under the EPG approach option, under either the EPG at 31 or EPG at 35 scenario, relative to the TX approach option as a proportion of: i) all advertising revenues; and ii) all broadcasting revenues (i.e. including all other broadcasting revenue sources such as subscription revenues).

### Step 1: Mapping the current situation

- A5.36 BARB data, amended and prepared on our behalf by TRP Research Ltd (see paragraphs A5.18 to A5.21) was used to estimate programme slots for each programme.
- A5.37 Programmes were classified as falling into the following programme slots:

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<sup>59</sup> The only changes in schedule may come about if the children's broadcasters adopted mitigation strategies that involved aggregating or splitting existing programmes.

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

A5.38 Table A5.1 shows the distribution of the children's broadcasters' programmes (expressed in terms of rate weighted impacts separately for EBs and IBs) according to their programme slot length. It shows that many (over 41%) of the IBs' rate weighted impacts are in programmes that fall into the 30-31 minute range which would be the one most at risk if the EPG approach option was chosen.

A5.39 Table A5.1 also shows that according to the May 2013 data and the way we measure the programme slot length (see Annex 6), a very sizeable amount of IBs (almost 43%) for the children's broadcasters appeared to be shown in programme slots whose duration was 30 minutes or less (almost entirely in the 29-30 minutes range). This would suggest that while we have been reviewing our approach, broadcasters may have interpreted the rules in a way that would not be permissible under any of the options considered in this consultation.<sup>60</sup> This also applies in particular to the TX approach option.

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<sup>60</sup> It is possible that some or most of these impacts fall in programme slots that would be greater than 30 minutes following different methods of measuring slot duration. As explained in detail in Annex 6, due to errors in the data we found it impossible to be confident in measuring slot duration from the start of one programme to the start of the next, and so we have measured slot duration from the end of one programme to the end of the next. In any case, these impacts are assumed to be able to be mitigated in the 'properly enforced TX approach option' (see paragraphs A5.99 to A5.101).

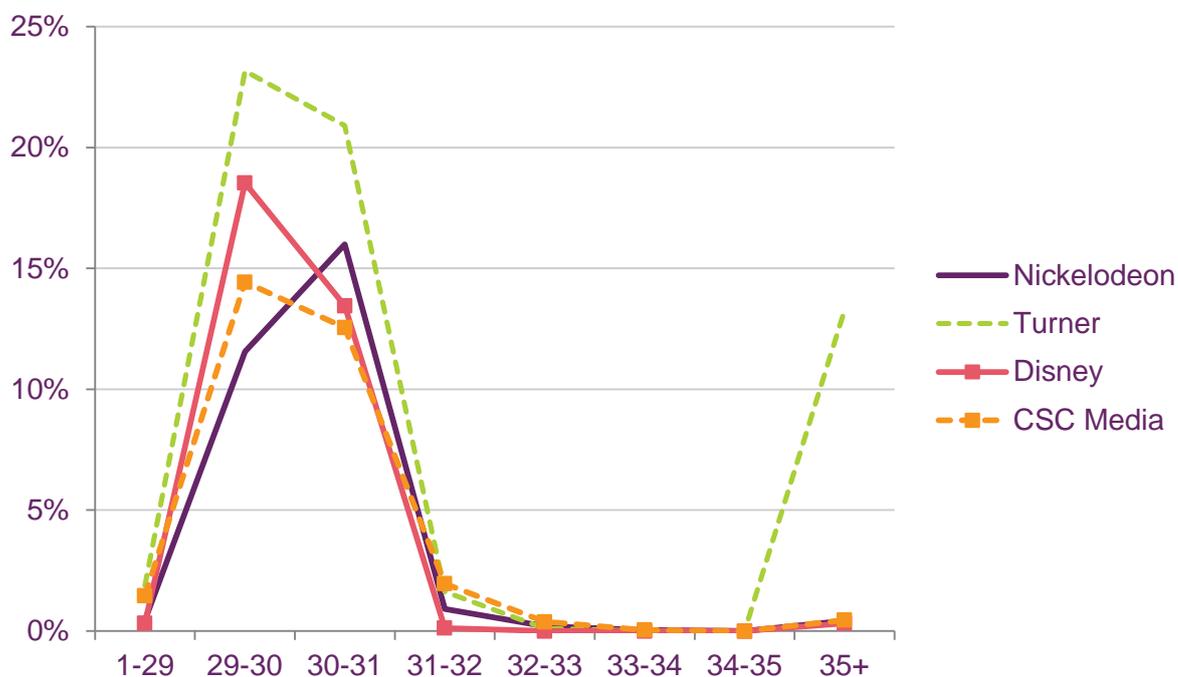
**Table A5.1: Ratecard weighted impacts in EB and IB across the children’s broadcasters by programme slot (May 2013)**

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

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

A5.40 Figure A5.1 shows the same distribution but broken down by between the children’s broadcasters. It shows that the picture is similar across them. Table A5.2 shows that overall IBs are a substantial proportion of advertising revenues for all children’s broadcasters but a much smaller proportion of all broadcasting revenues (with the exception of 3<).

**Figure A5.1: Proportion of all ratecard-weighted impacts in IB by the children’s broadcaster and programme slot (May 2013)**



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

**Table 5.2: IB revenues as a proportion of advertising and total broadcasting revenues, by children’s broadcaster (May 2013)**

|   | % of advertising revenue | % of all revenue |
|---|--------------------------|------------------|
| ✂ | ✂                        | ✂                |
| ✂ | ✂                        | ✂                |
| ✂ | ✂                        | ✂                |
| ✂ | ✂                        | ✂                |

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

A5.41 Tables A5.1 and A5.2 and Figure A5.1 depict the situation as of May 2013. When comparing the revenue impact of adopting any of the enforcement options set out in paragraph A5.16 it may be helpful to consider that:

- 5.41.1 the children’s broadcasters would no longer be able to schedule IBs in programmes of 30 minutes or less. It is likely that they would attempt to mitigate these in a number of ways - e.g. by aggregating or splitting existing programmes, making programme slots longer or shifting advertising time from IBs to EBs; and
- 5.41.2 under either the EPG at 31 or EPG at 35 scenario, the children’s broadcasters would also no longer be able to have IBs in programme slots whose duration is 30-31 minutes or 30-34 minutes, respectively. They would be likely to attempt to mitigate this effect in similar ways.

A5.42 In this consultation, we estimated the impact on the children’s broadcasters’ revenue, assuming that the starting point was that of the enforced TX approach option. Therefore, any effect derived from potential infringements during the period of assessment would not be relevant. In other words, the relevant comparison would be between the enforced TX approach option (where only those programmes with a slot duration of 30 minutes and one second or longer could include an IB) and the enforced EPG approach (where only those programmes with a slot duration of 31+ or 35+ minutes could include an IB). For the avoidance of doubt, we consider that any revenue loss due to non-compliance under either option should not be accounted for in assessing the impact of any change in the way scheduled duration is measured.

A5.43 It is, however, possible that the children’s broadcasters may mitigate the impact of whichever option is selected in ways that modify the situation shown in Table A5.1 and Figure A5.1 and that this also affects the subsequent revenue assessment. This would be the case, for example, if the children’s broadcasters could not fully mitigate the impact of enforcement on the revenues from the 29-30 minutes range. This would mean that in considering, for example, the EPG at 31 scenario relative to the TX approach option, the advertising revenues base under the TX approach option would be lower than under the situation described in Table A5.1. The revenue impact of not adopting the TX approach option could, therefore, be more marked.<sup>61</sup> We discuss how we have dealt with this issue and its potential impact at paragraphs A5.99 to A5.101.

<sup>61</sup> This is the case if not all the additional impacts caused by enforcement could not be fully mitigated.

*Step 2: Maximum revenue impact of broadcasters moving away from the TX approach option without mitigation*

A5.44 We estimated the maximum possible revenue impact if, instead of the TX approach option, either the EPG at 31 or EPG at 35 scenario under the EPG approach was used. This assumes that the children's broadcasters would not seek to mitigate the impact of the enforcement methodology. They would react to the change by simply not including IBs in any programme that fell short of the minimum duration requirement.

A5.45 In particular:

5.45.1 under the EPG at 31 scenario, we assumed that all current advertising revenues derived from IBs from programme slots with a duration of 30-31 minutes would be potentially lost<sup>62</sup> without the adoption of mitigation strategies. In other words, a children's broadcaster would only be able to insert an IB into a children's programme if the transmission log was at least 31 minutes and 1 second; and

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

A5.46 We consider that this approach significantly overestimates the impact on the children's broadcasters of the revenue difference between the TX and EPG approach options, as it explicitly assumes they cannot mitigate any loss of IBs. As such we consider this highly unrealistic.

*Step 3: Revenue impact of the EPG approach option (relative to the TX approach option) when applying mitigation strategies*

A5.47 As the revenue impact of each option would be overestimated under Step 2, we considered a number of mitigation strategies such as:

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

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

5.47.3 **Strategy 3 – Bundling two programmes into a longer one:** by bundling up two programmes, that otherwise may not be allowed to have a IB, into a longer programme children's broadcasters may lose one EB but be able to retain two IBs as long as the programme's scheduled duration becomes at

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<sup>62</sup> Impacts in the 30-31 minutes range would be lost under the EPG approach option but would be eligible for an IB under the TX option, as the minimum slot duration required under the TX approach option could be 30 minutes and 1 second.

least 60 minutes long (given the rules allow children's programmes to be interrupted once for each scheduled period of at least 30 minutes); and

5.47.4 **Strategy 4 - Removing IBs but making EBs longer:** children's broadcasters could mitigate the impact by accepting the loss of IB advertising but increase the duration of existing EBs. Unlike under mitigation strategies 1-3, this would not require increasing the scheduled duration of the programme.<sup>63</sup>

A5.48 In pre-consultation responses, some of the children's broadcasters agreed that they could mitigate some of the impact by adopting mitigation strategies 2 and 4.<sup>64</sup>

A5.49 For each of the mitigation strategies 1-4 we:

5.49.1 describe the strategy;

5.49.2 consider the views expressed by some of the children's broadcasters;

5.49.3 explain the method used to estimate its impact, including the base assumption and any sensitivity assessment; and

5.49.4 discuss any limitations (i.e. unaccounted factors leading to over and/or under estimation).

A5.50 Some of these mitigation strategies may carry some costs – e.g. cost in re-editing programmes to split them into two or to bundle two programmes into one. Although, for practical reasons we focused on the revenue impact (see paragraph A5.13), the decision of these broadcasters would be based on the impact that the options considered have on profits. Therefore, we have also considered instances where the impact on cost would also be relevant. Failing to include these costs may lead to an under-estimation of the overall impact on profitability between the two options considered for the children's broadcasters. However:

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

5.50.2 as discussed at paragraph A5.13, we consider that for most children's broadcasters a UK profitability impact would be impractical. This is why we have focused on the revenue impact.

A5.51 We also note that we have adopted a conservative approach in estimating the revenue loss under each mitigation strategy, which is likely to lead to an overestimation of the revenue impact.

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<sup>63</sup> There are also two other possible strategies we considered but did not investigate further. First that the children's broadcasters could increase the programme slot duration by scheduling additional advertising to make IBs and/or EBs longer. If some channels did not make full use of their 12 minutes of advertising in an hour allowance, they could do so and increase the scheduled programme duration. However, we consider this to be unlikely. Second, they could increase their reliance on other revenue sources. However, if this was a profitable strategy we would expect the children's broadcasters to have adopted it already.

<sup>64</sup> 3<

- A5.52 We consider that each children’s broadcaster is likely to adopt a number of mitigation strategies depending on the programme and channel concerned. In order to make the analysis tractable we have proceeded as follows:
- 5.52.1 We first considered each mitigation strategy in isolation and assessed the revenue impact of the EPG approach option (relative to the TX approach option) under either the EPG at 31 or EPG at 35 scenario – e.g. we applied mitigation strategy 1 to all channels. This is likely to underestimate the ability to mitigate the loss of IBs’ revenues (and overestimate the overall revenue loss).
- 5.52.2 Therefore, we refined the analysis at paragraph 5.52.1 by assuming that each children’s broadcaster would choose the strategy that it considered best mitigated the impact at the channel level – e.g. a children’s broadcaster could choose strategy 1 for channel A because that is the best of the 4 strategies available, but could instead adopt strategy 4 for channel B if this was better at mitigating the revenue impact. This is still likely to under-estimate the children’s broadcasters’ ability to mitigate the adoption of either of the options (and overestimate the overall revenue loss) as it is likely to be optimal to adopt more than one strategy for each channel.
- 5.52.3 If the result of the above analysis for a particular children’s broadcaster was judged to be sufficiently clear – i.e. it suggested that the impact seemed not to be substantial, we relied on this estimate to draw our conclusions. However, if this was not the case – i.e. this estimation indicated that the impact was not insignificant – we also undertook a more detailed estimate of how the children’s broadcasters could apply more than one mitigating strategy to each channel.<sup>65</sup> We consider that this was a proportional approach.

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

#### *The concept*

- A5.53 Children’s programmes scheduled in programme slots that, according to the transmission log, are in the 30 minutes and 1 second to 31 minutes range could be scheduled in 31 minutes EPG slots by increasing the duration of IBs and EBs. If necessary, this could be achieved by broadcasting additional advertising and self-promotional content (e.g. programme trails) in these breaks. The extent to which the children’s broadcasters could schedule additional spot advertising for the purpose of extending a programme slot duration will be limited by other COSTA rules which limit the amount of advertising broadcasters can transmit.<sup>66</sup> Therefore, we consider only the addition of self-promotional content under this mitigation strategy (as such content is exempt from the limits on the amount of advertising that can be shown). Figure A5.2 illustrates the case of adding one minute of promotional content (the EPG at 35 scenario would be similar).

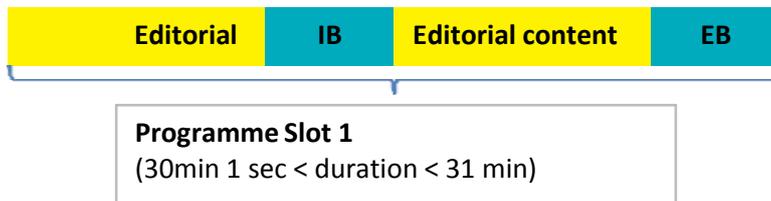
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<sup>65</sup> We confined this more detailed approach only to these cases because of the additional complexity in undertaking such assessment.

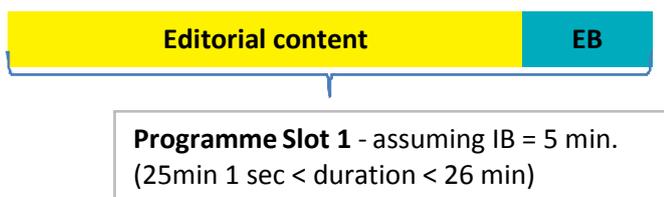
<sup>66</sup> Rule 4 of COSTA limits the number of minutes in each clock hour that broadcasters may devote to advertising.

**Figure A5.2: Mitigation Strategy 1**

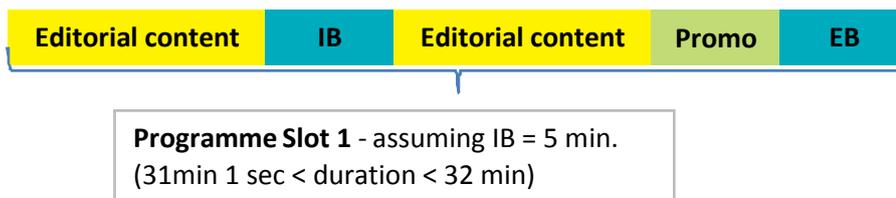
**Current programme schedule**



**Unmitigated - Under the EPG at 31 scenario**



**Mitigated by adding advertising promotional content - Under the EPG at 31 scenario**



*The children’s broadcasters’ views*

A5.54 None of the children’s broadcasters who made representation to us have referred to this as a possible mitigation strategy

*Possible limitations*

A5.55 This strategy seems a simple way for the children’s broadcasters to mitigate the revenue impact of adopting either the EPG at 31 or EPG at 35 scenario. However, there are some possible limitations. For example:

- 5.55.1 there may be a cost in making a break longer by adding self-promotional content in that it may cause a loss of impacts for the channel. A longer break may result in more viewers dropping off for the remainder of the programme and hence resulting in fewer impacts in the EB at the end of the programme. While this is a legitimate concern it is worth observing that this promotional content is aimed at promoting subsequent programmes and hence may increase audiences (and advertising revenues) in subsequent programmes and compensate for that loss. Furthermore, the effect on each individual channel will be moderated as this effect will apply to all children’s broadcasters’ channels – i.e. one channel’s loss is another channel’s gain;
- 5.55.2 this mitigation strategy may only be possible for a proportion of, but not all, programmes. It is possible that adding programme promotions to the

promotional material the children's broadcasters already have in their schedule could lead to a reduction in impacts - i.e. there could be too much promotion time and a "shunting effect" leading to programmes starting at times when fewer viewers tune in to watch programmes. We have estimated that under the EPG approach option this would account for an addition of around ten minutes of promotional material per channel per day on average under the EPG at 31 scenario, or just ten seconds per channel per day under the EPG at 35 scenario.<sup>67</sup> We consider it unlikely that the magnitude of the added promotional content minutes is such to lead to a "shunting effect";

5.55.3 the EPG approach option may lead to programmes no longer starting at familiar times (e.g. on the hour/half hour), this is likely to be a particular issue if the EPG at 31 scenario is chosen;<sup>68</sup> and

5.55.4 there may be some costs involved in creating or editing programme promotions. However, we expect the children's broadcasters to use at least a proportion of their existing promotional material - i.e. repeat promotions more often under the EPG approach option, than under the TX approach option.

A5.56 We do not consider that the impact of these factors is likely to significantly reduce the ability of this strategy to mitigate the impact on revenues, as viewers may react to promotional content in a different way (i.e. leading to a less accentuated decline in impacts) than to advertising.

### *Our approach*

A5.57 In our base scenario estimation, we assumed that under the:

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

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

A5.58 An important factor to consider is that there are many programmes with a scheduled duration currently in the 30-31 minutes range, but much fewer in the 33-35 minutes range (see Table A5.1 and Figure A5.1). Hence, despite the

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<sup>67</sup> This calculation is based on the total number of programmes of 30-31 minutes (for EPG at 31 scenario) or 33-35 minutes (for EPG at 35 minutes scenario) in the data, averaged over number of channels and days, assuming that each such programme includes the full potential necessary minute(s) of promotional material. Under the EPG at 35 minutes scenario we assumed that only programmes whose duration is 33-35 minutes are mitigatable under this strategy therefore there are considerably fewer programmes for which this is an option compared to the EPG at 31 scenario (fewer programmes in 33-35 minutes slot versus 30-31 minutes slot). This is why there will be less total additional promotional material per channel per day under the EPG at 35 minutes scenario compared to the EPG at 31 minutes scenario, despite each eligible programme being entitled to twice as many additional minutes of promotions.

<sup>68</sup> The effect would be more rapid under a EPG at 35 minutes scenario but with programmes starting at more familiar times (i.e. 9.35 or 9.40 under the 35 minutes interpretation rather than 9.01 or 9.06 under the EPG at 31 minutes scenario).

difference in the assumption, the overall increase in promotional content minutes would be more substantial under the EPG at 31 scenario than under the EPG at 35 scenario.

- A5.59 We have also performed some sensitivity analysis on this strategy, around how many minutes of promotional content could be added to a programme slot to allow a children's programme to have an IB:
- 5.59.1 we restricted the EPG at 35 scenario to having only up to 1 minute of promotions - that is, assuming only scheduled durations in the 34-35 minutes range could be mitigated; and
  - 5.59.2 we also allowed the EPG at 31 scenario to have up to 2 minutes of promotional content. There are some programmes which fall in the 29-30 minutes range, which could not ordinarily be mitigated when under the EPG at 31 scenario, but which are mitigated under the TX approach option (see paragraphs A5.99 to A5.101). Under this sensitivity assessment, these programmes will be able to be mitigated under the EPG at 31 scenario (for further detail, see paragraph A5.100).
- A5.60 The results of these sensitivities are presented in Table A5.8.

**Question A1:** *Do you agree with our approach to mitigation strategy 1? If not, please explain any objections fully and please provide supporting evidence.*

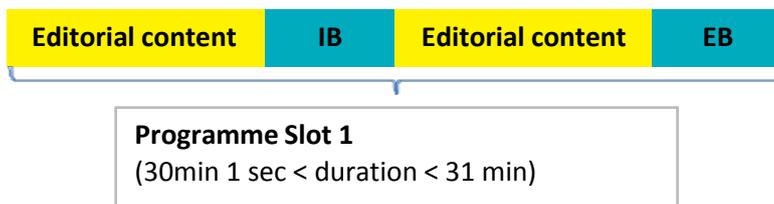
## Mitigation Strategy 2: Splitting programmes into two separate programmes

### *The concept*

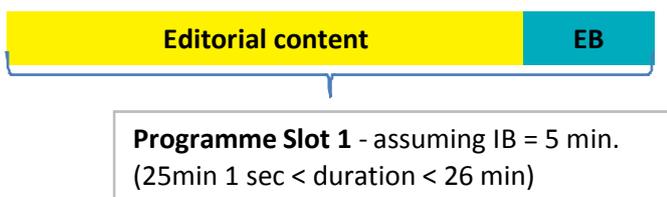
- A5.61 Some programmes that would no longer be able to carry an IB could be split into two separate shorter programmes. As illustrated in Figure A5.3 with reference to the EPG at 31 scenario, rather than having a programme with an IB there will be two programmes with an EB in between them.
- A5.62 This strategy may not be viable for all programmes. It is likely to offer a practical solution only where a single programme has a narrative that can translate into two or more separate programmes – e.g. when it has two or more storylines.

**Figure A5.3: Mitigation Strategy 2**

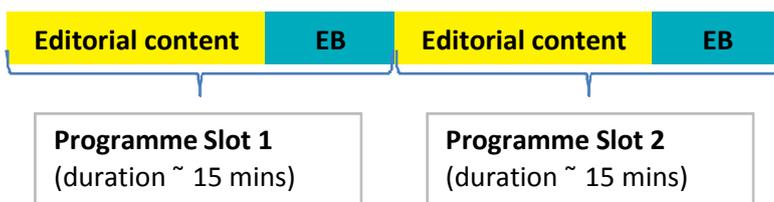
**Current programme schedule**



**Unmitigated - Under the EPG at 31 scenario**



**Mitigated by splitting programmes into two programmes - Under the EPG at 31 scenario**



*The children’s broadcasters’ views*

A5.63 3C argued that a limited amount of animated content originally produced for half hour programme slots could be split into two self-contained episodes.<sup>69</sup> 3C also argued that splitting a programme in this way will involve some cost of re-mastering the programme (e.g. inserting new credits to meet talent guild obligations).<sup>70</sup> Further, 3C argued that it could not be taken for granted that the identified programmes will remain popular. 3C also considered whether new programmes could be produced at shorter length.<sup>71</sup> 3C considered that the programmes of 30 minutes are better in order to develop and explore characters and storylines. This could not necessarily be achieved in 10-11 minutes episodes and 3C has a strong preference from not moving away from the current format.

A5.64 3C did not mention this as a possible mitigation strategy.

<sup>69</sup> 3C

<sup>70</sup> This relates to obligations imposed by talent unions for their members to be credited for their work at the beginning or end of a programme. Where a programme, which is currently broadcast as a single programme, would be split into multiple programmes as part of this strategy, there would be a need to re-master it such that each of the resulting programmes carried the required credits.

<sup>71</sup> 3C

A5.65 We consider that mitigation strategy 2 would involve splitting programmes that already have two episodes but has so far been packaged into one programme slot or programmes that could easily be split into two.

#### *Possible limitations*

A5.66 There are some possible limitations of this strategy:

- 5.66.1 as discussed at paragraph A5.62, the number of programmes suited to this strategy may be limited;
- 5.66.2 in some instances, there may be some disadvantages for viewers in having two sets of titles at the start and end of the two split programmes; and
- 5.66.3 there may be some editorial costs in editing archive material in order to adapt a programme into two. There may be some potential EPG implications if programmes are fragmented in this way, but we do not expect these to have a material impact on advertising revenues.

#### *Our approach*

A5.67 We have reviewed all programmes in our data set prepared by TRP Research to estimate which ones could be split. Where we considered programmes could be split we assumed that this is what the children's broadcasters would do and that by doing so they would not lose any revenues – i.e. the EB that replaces the IB is assumed to generate the same amount of revenues.<sup>72</sup>

A5.68 We reviewed each programme by title and identified the format which it takes, classifying each as:

- Able to be split;
- Film/long form;
- Not able to be split;
- Short;<sup>73</sup> and
- Unknown.<sup>74</sup>

A5.69 We considered that all the impacts in the IB of programmes that were classified as 'Able to be split' would be mitigated, if the programme slot was between 30 and 31 minutes or between 30 and 35 minutes depending on the EPG approach option scenario considered.

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<sup>72</sup> Essentially the position and amount of advertising does not change but the IB is now labelled as an EB.

<sup>73</sup> Programmes have been assessed based on their ordinary running time – that is, the expected scheduled duration based on the programme title. Due to the lack of alternative sources of data, this has been determined manually. There was an issue with the data in that some programmes identified as 'Short' (that is, having an ordinary running time of <15 minutes) were found in slots of 25 minutes or more. Similarly, some instances of programmes identified as 'Able to be split' were found in slots of less than 25 minutes. In these cases we have reclassified the categorisation of that instance of that programme, in the former case from 'Short' to 'Able to be split', and in the latter case vice versa. This is due to the fact that, though ordinarily 'Short' programmes are scheduled individually, they may on occasion be bundled into a longer slot – or vice versa in the former case.

<sup>74</sup> These are programmes for which it was not possible to assess their regular format from the information we had.

A5.70 We have also performed some sensitivity analysis on this strategy, allowing programmes of ‘Unknown’ format also to be split. The results under this variation could be interpreted as being an upper bound estimate. The results of this sensitivity are presented in Table A5.8.

**Question A2:** Do you agree with our approach to mitigation strategy 2? If not, please explain any objections fully and please provide supporting evidence.

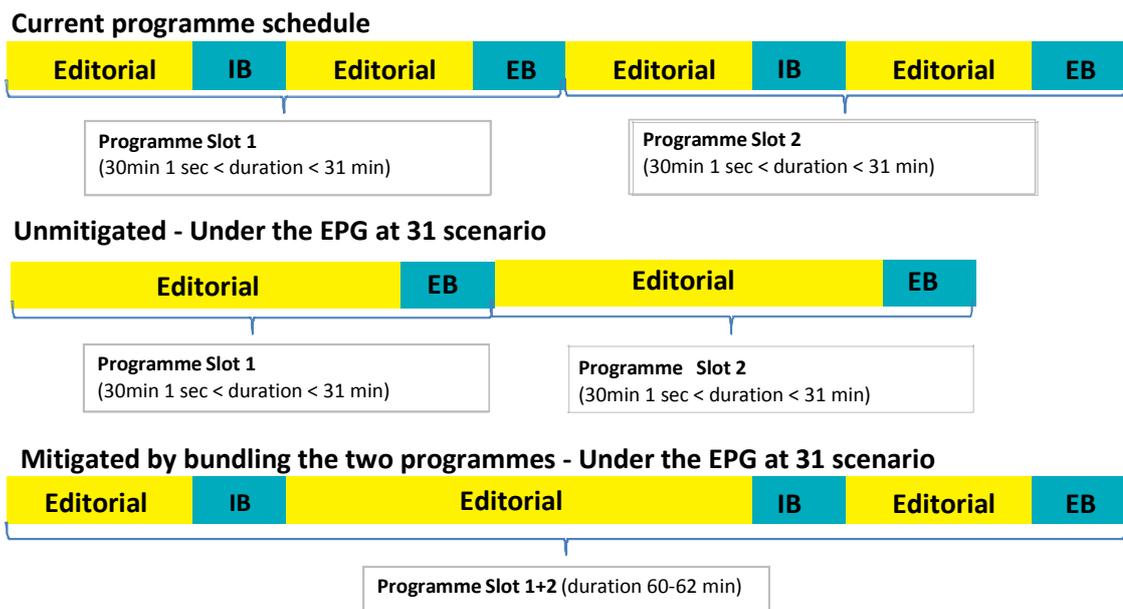
Mitigation strategy 3: Bundling two programmes into one longer programme

*The concept*

A5.71 This mitigation strategy involves bundling two programmes, that otherwise would not be allowed to have an IB, into a longer programme. By doing so the children’s broadcasters may lose one EB but be able to retain the two IBs (one per programme).

A5.72 Figure A5.4 illustrates how this strategy would work if the EPG approach option was adopted and the children’s broadcasters used the EPG at 31 scenario.

Figure A5.4: Mitigation Strategy 3



A5.73 Although under this mitigation strategy the children’s broadcasters would lose an EB, they would not necessarily lose minutes of advertising as they could increase the duration of the two IBs and the remaining EB. Although the minutes of advertising may not be affected, overall revenues may be. This is because as the duration of the break increases, the per-minute additional impacts may in theory decline. However, as discussed under the section on mitigation strategy 4, the evidence we have does not suggest that this is the case.

A5.74 This strategy is likely to be suitable where there is a clear connection between programmes (e.g. when they are part of the same series). Bundling two

unrelated programmes may be difficult to reconcile with the definition of a “programme” and, therefore, this strategy may not be suitable for all programmes.

### *The children’s broadcasters’ views*

A5.75 None of the children’s broadcasters who made representations to us have referred to this as a possible mitigation strategy.

### *Possible limitations*

A5.76 Programme integrity constrains the number of programmes that could be bundled together. Furthermore, there may also be some editorial costs in bundling programmes.

### *Our approach*

A5.77 The first step in modelling this strategy is to estimate how many programmes could be bundled together. We adopted the following approach in our base scenario:

- 5.77.1 we identified all the instances when two episodes of the same programmes are scheduled next to each other – e.g. two Scooby-Doo episodes; and
- 5.77.2 we assumed that these could be bundled into a single programme and when that is the case, that the children’s broadcasters would experience no revenue loss. This is our base scenario.

A5.78 However, we note that programmes could be bundled even if they are not contiguous in the schedule – e.g. one episode of a programme in the morning and one in the afternoon (or the next day) could be bundled and scheduled either in the morning or in the afternoon. Hence, we performed some sensitivity analysis also assuming that episodes of the same programme could be bundled even if they are not contiguous in the schedule, but were broadcast in the same day. The key concern by doing so is that there is a risk that the two episodes scheduled at different times within the same day may consist of the same material i.e. one is a repeat of the other. If this was the case<sup>75</sup> bundling would not be possible. Therefore, in some cases this would overestimate the ability of a children’s broadcaster to mitigate the impact. This means that this sensitivity assessment may overestimate the scope for mitigation under this strategy.

A5.79 We also looked at bundling programmes that occurred on consecutive days, which is subject to the same caveats as same-day bundling. The results of these sensitivities are presented in Table A5.8.

**Question A3:** *Do you agree with our approach to mitigation strategy 3? If not, please explain any objections fully and please provide supporting evidence.*

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<sup>75</sup> The data available indicates the programme name but not the episode’s title or number. It has therefore not been possible to identify whether an episode is a repeat of an earlier one.

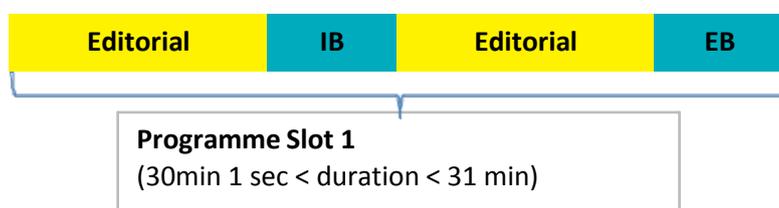
## Mitigation strategy 4: Removing IBs but making EBs longer

### The concept

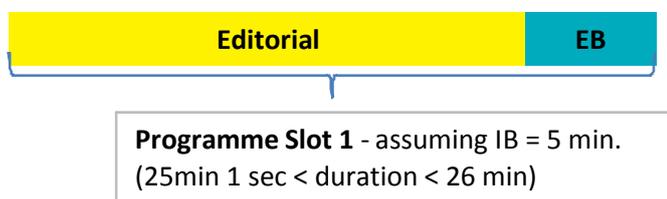
- A5.80 The children’s broadcasters could also mitigate the impact by increasing the duration of EBs but, unlike under mitigation strategies 1-3, without necessarily trying to increase the duration of the EPG slot – i.e. by not trying to retain an IB that would be lost.
- A5.81 Figure A5.5 illustrates this by showing a children’s broadcaster reacting under the EPG at 31 scenario by shifting its IB minutes into a longer EB (in this illustrative case this is graphically shown as leaving the total advertising minutes in the programme slot unchanged).

**Figure A5.5: Mitigation Strategy 4**

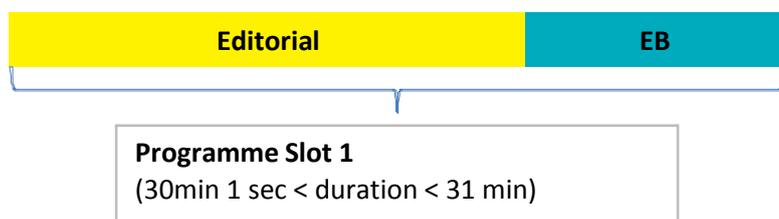
#### Current programme schedule



#### Unmitigated - Under the EPG at 31 scenario



#### Mitigated by adding time to the EB (1 additional min.) - Under the EPG at 31 scenario



- A5.82 This strategy would achieve only a partial mitigation even assuming that all the lost IB minutes were transferred into a longer EB. This is because the first minute of a lost IB before mitigation is likely to generate more impacts (and therefore more revenues) than an incremental minute of EB after mitigation (see evidence at paragraph A5.93). There may be two reasons for this:

- 5.82.1 for the same programme a minute of IB (on average across a break) may in principle generate more impacts than a minute of EB because viewers are

less likely to switch away at IBs rather than at EBs. Viewers may be more reluctant to switch channel in the middle rather than at the end of a programme. However, the data used for this assessment (a weighted average of May 2012 and May 2013 impacts data by break length) suggest that during EBs the children’s broadcasters maintain the audience as more viewers switch to the channel in an EB (earlier than the start next programme) than is the case for an IB (see paragraph A5.93); and

- 5.82.2 there is an expectation that impacts decline during a break irrespective of whether it is an IB or an EB (see evidence at paragraph A5.92). That is, the first minute of a break generates more impacts than the last. Hence, this mitigation strategy would replace the IB with minutes which are additional to the existing EB and likely to generate fewer impacts.

*The children’s broadcasters’ views*

A5.83 ☒ argued that from a business perspective there are very limited opportunities to make EBs longer.<sup>76</sup> It gave two reasons. First, longer EBs will lead to a decline in audience (and this would lead to a reduction in spot rates for EBs). Second, this would be highly undesirable from an editorial perspective.

A5.84 ☒ did not mention this as a possible mitigation strategy.<sup>77</sup>

A5.85 ☒

5.85.1 ☒

5.85.2 ☒

A5.86 ☒

A5.87 We consider that shifting all advertising to the EBs but keeping the overall minutes of advertising unchanged is likely to lead to some reduction of impacts and hence revenues. This is why we consider this mitigation as being a partial one. However, it is, at least, unclear whether the approach suggested by ☒ – i.e. increasing the duration of EBs but to compensate only in part the loss of IBs’ advertising time – reduces the revenue impact compared to maintaining the same amount of advertising minutes. We accept that making EBs longer is likely to lead to a reduction in revenues compared to having an IB. However, EBs capture impacts not only from viewers of the preceding programme but also from those who tune in to watch the subsequent programme.

*Possible limitations*

A5.88 This mitigation strategy is potentially applicable to all programmes which would otherwise lose their IBs under the EPG approach option. However, this option carries a potential cost in terms of lost impacts and revenues even if the overall (i.e. inclusive of the IBs and EBs in the programme slot) minutes of advertising remain unaffected by mitigation. Hence, this may be a second best choice that could be deployed only if other mitigation strategies are unavailable.

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<sup>76</sup> ☒  
<sup>77</sup> ☒

A5.89 We have identified no obvious editorial costs in this mitigation strategy. As discussed at paragraph 5.55.2 for mitigation strategy 1 a “shunting effect” could in theory also apply to this mitigation strategy (this strategy may reduce rather than increase the programme slot duration). We consider that this effect is likely to be immaterial, especially given the fact that mitigation strategy 4 offers only a partial mitigation and, hence, it would be applied in very few cases.

*Our approach*

A5.90 To correctly account for differences in revenues generated by EBs and IBs we first estimated the average trend in (ratecard weighted) impacts within EBs and IBs using our data sample.

A5.91 Our analysis shows that most EBs and IBs have a standard duration of either 3 or 4 minutes, with some end breaks having durations of 2 or 4.5 minutes. Breaks of other durations do exist but were used very infrequently (Figure A5.6).

**Figure A5.6: Proportion of all impacts in IBs and EBs by break duration (May 2013)**



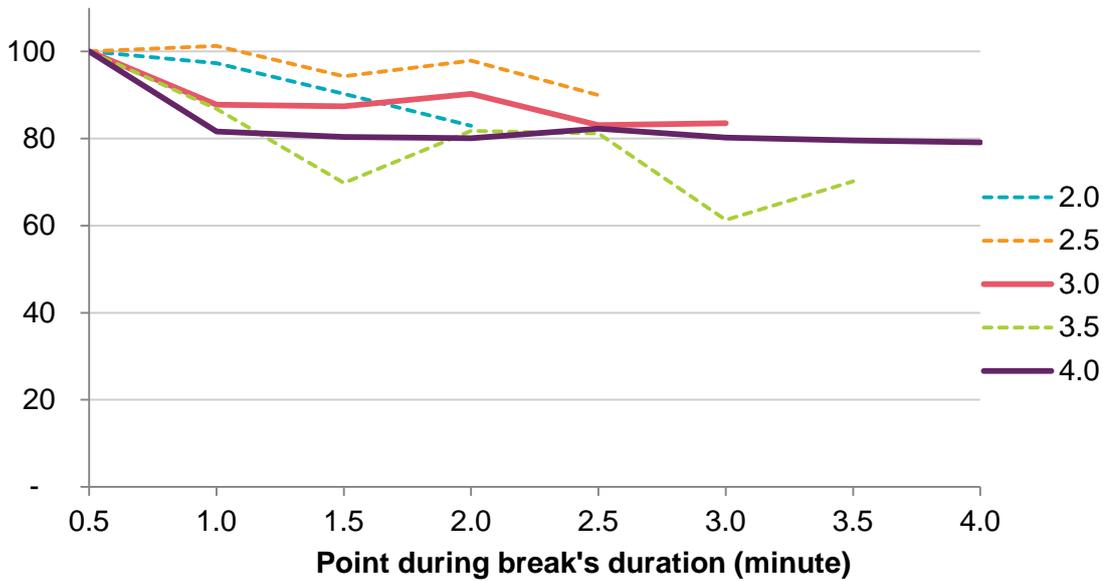
Source: Ofcom’s analysis on BARB data as amended by TRP. Individuals 4+ May 2013.

A5.92 For EBs and IBs of equal duration (and hence directly comparable) we estimated the trends in rate weighted impacts over 30 second intervals, separately for IBs and EBs. We have used data on the children’s broadcasters for May 2013. Figure A5.7 shows that over time rate weighted impacts in the IBs with the most common length (3 and 4 minutes) fall off quickly and stabilise between 80% and 90% of initial impacts, with a slight downward trend over the entire duration.<sup>78</sup> The EBs with the most common length (Figure A5.8) are slightly less likely to lose impacts over time, with a similar reaction to IBs but without the slight downward trend over time.<sup>79</sup> This is explained by the fact that some viewers may switch on to the channel to watch a programme about to start and, as a result, also watch adverts in the latter part of an EB.

<sup>78</sup> The only exception is for breaks of 3.5 minutes which, however, are very infrequent (see Figure 8).

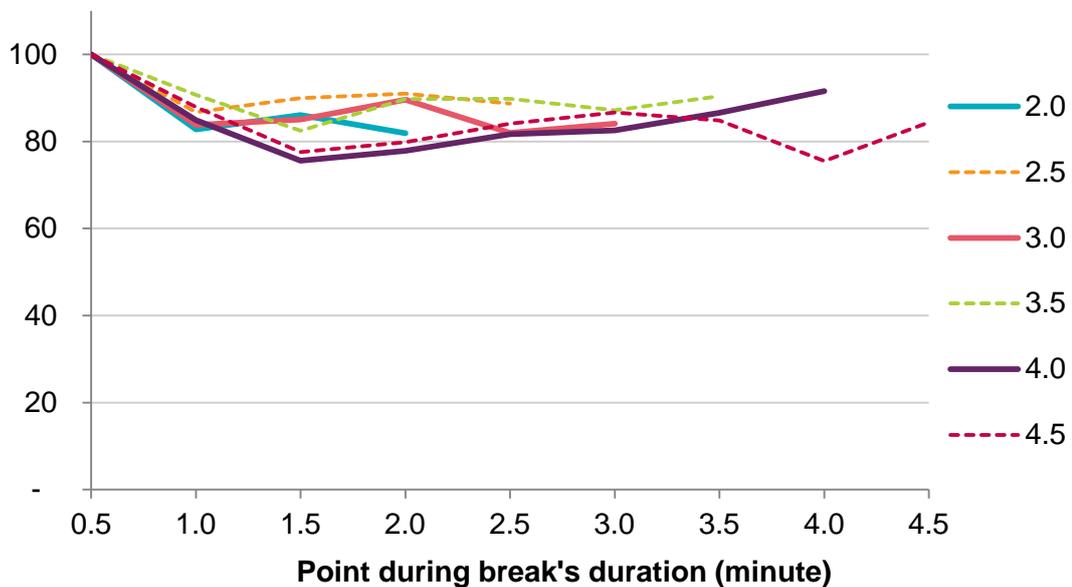
<sup>79</sup> We took total impacts in the first 30 seconds of a given break duration and indexed it at 100, with all subsequent periods being rebased accordingly.

**Figure A5.7: Index of impacts over IB duration by break duration (May 2013)**



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

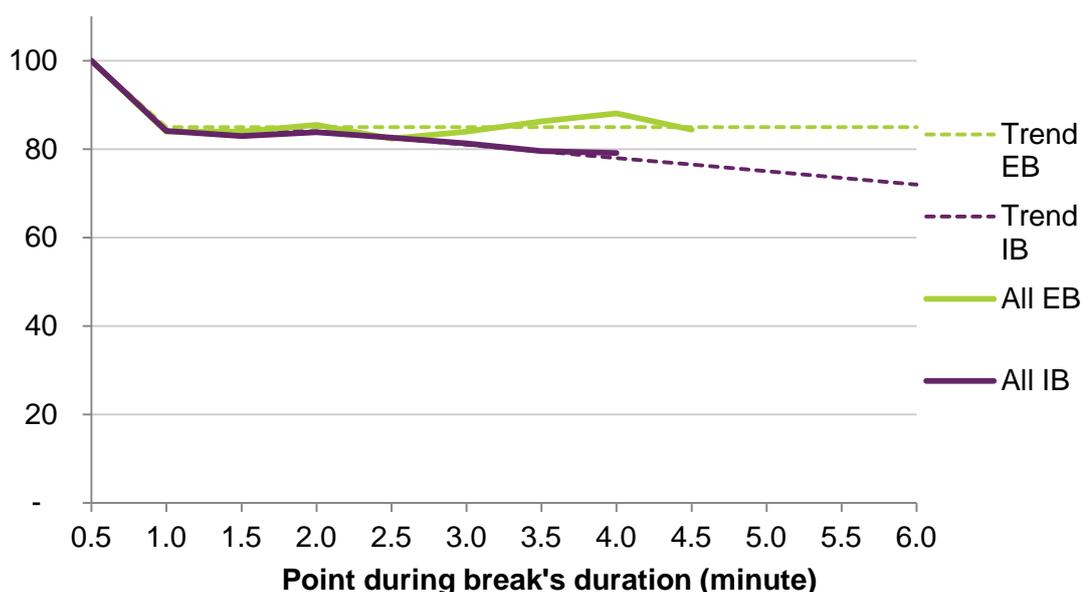
**Figure A5.8: Index of impacts over EB duration by break duration (May 2013)**



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

A5.93 On the basis of this evidence we have assumed that for EBs impacts will fall from 100% to 85% after the first 30 seconds, and remain constant thereafter. For IBs, they will fall to 84% after the first 30 seconds, and after 2 minutes from the start of the break, impacts are assumed to fall with the trend shown in Figure A5.9. This shows the weighted average of all impact profiles in IBs and EBs, along with the trend we have used for further analysis.

**Figure A5.9: Profile of impacts over duration of breaks used in further analysis (May 2013)**



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

A5.94 Second, we considered whether the children's broadcasters would react to the loss of an IB by increasing the duration of the EB by the same amount or by less. One reason why they could decide not to recover all the lost IB minutes is that the duration of some EBs could become much longer than any of the existing EBs. In this case, reliance on the relationship we identified in Figure A5.9 could underestimate the revenue loss.

A5.95 In our base scenario we estimated the impact of this mitigation strategy assuming that a children's broadcaster would increase the duration of an EB up to a maximum of 4.5 minutes, this being the longest EB among the most commonly used breaks (see Figure A5.6). Hence, we assumed that this strategy is only a partial mitigation because:

- 5.95.1 not all lost IB minutes are recovered by "extending" the EB; and
- 5.95.2 the revenues from one incremental minute of EB are assumed to be less than the revenue from an average minute of an IB it replaces.

A5.96 We have also performed the following sensitivity analysis on this strategy around our chosen maximum length of EB by considering the effect on this strategy:

- 5.96.1 if  $\leq$  3 minutes is the longest viable end break length; and
- 5.96.2 if we do not artificially limit the length of EBs and allow EBs to extend up to six minutes, following the trend shown in Figure A5.9.

A5.97 The results of these sensitivities are presented in Table A5.8.

**Question A4:** Do you agree with our approach to mitigation strategy 4? If not, please explain any objections fully and please provide supporting evidence.

## Results

A5.98 In this section we:

5.98.1 consider whether enforcement for programmes in slots of less than 30 minutes that include IBs may have an impact on our analysis; and

5.98.2 report results of our revenue impact estimation by:

- assuming that the children’s broadcasters do not engage in mitigation (maximum revenues impact); and
- assuming they do by applying mitigation strategies. There are a number of ways of estimating how mitigation strategies may be applied which we discuss at paragraphs A5.104 to A5.120.

### The impact of enforcement

A5.99 In paragraph A5.42 we discussed the possible implications for our revenue impact analysis of the presence of a substantial number of IBs’ impacts in programmes in slots whose duration is 30 minutes or less when measured using transmission data (the least restrictive approach). We considered that, in assessing the revenue impact under either the EPG at 31 or EPG at 35 scenario, we should exclude any revenue impact that would occur due to enforcement of any option, regardless of what that option is (see discussion at paragraph A5.10). However, we noted that we needed to consider whether enforcement would lead the revenue base under the enforced TX approach option to look differently – e.g. because the children’s broadcasters may lose impacts in programme slots whose duration is shorter than 30 minutes leading to the revenue base being less than what shown in Table A5.1 (see paragraph A5.43). To take into account whether this was the case we considered to what extent the children’s broadcasters could mitigate the loss of IBs in programmes in the 29-30 minutes range under the enforced TX approach option by applying the same mitigation strategies we considered for this assessment. We then used the results of this assessment to estimate the children’s broadcasters’ revenues under the enforced TX approach option (unlike the picture that emerges from Table A5.1). We then undertook the revenue impact assessment separately under both the EPG at 31 and EPG at 35 scenarios relative to the TX approach option.

A5.100 We considered that if the rules were enforced using the TX approach option,<sup>80</sup> this might lead the children’s broadcasters to apply any of the mitigation strategies discussed above for any programme slots of less than 30 minutes. In particular, we considered that:

5.100.1 they would first apply mitigation strategies 2 (splitting programmes) and 3 (bundling programmes). This is because they would not lead to a loss of revenues because of enforcement, as they involve changing the programme slot duration to either about 15 minutes (in the case of mitigation strategy 2) or 60 minutes or longer (in the case of mitigation strategy 3), which means they fall under different restrictions on advertising.

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<sup>80</sup> i.e. accepting that a children’s programme that occupies a slot of at least 30 minutes and 1 second is entitled to an IB.

All 15 minute slots would have just an EB, while 60 minute slots would retain 2 IBs and have just one EB, though could retain all of their advertising minutes in an hour: and

5.100.2 for any programmes to which they could not adopt either mitigation strategies 2 or 3, they would then consider whether to apply mitigation strategy 1 (adding promotional content to increase the programme slot duration) or 4 (shifting some IBs time into EBs with the programme slot duration being unchanged). Given that mitigation strategy 1 does not involve loss of impacts, while mitigation strategy 4 does, and that mitigation strategy 1 would be applicable to all programme slots of 29-30 minutes, we have applied this strategy to all remaining impacts.

A5.101 Having applied these mitigation strategies to programmes that in May 2013 had a slot duration of 29-30 minutes and assumed that those of less than 29 minutes could not be mitigated at all, we estimated the advertising revenues under the TX approach option to be 98% of that implied under Table A5.1. Only those revenues associated with IBs in programmes less than 29 minutes would not be able to be mitigated under the TX approach option.

Maximum revenue impact

A5.102 Table A5.3 shows the maximum impact as a proportion of advertising revenues and total broadcasting revenues for each children’s broadcaster group. This shows that Channel 5 would be the most affected in terms of impact as a percentage of total broadcasting revenues. As a percentage of all advertising revenues, Channel 5 would be the most affected children’s broadcaster.

A5.103 The differences between the EPG at 31 and EPG at 35 scenarios are minimal. This is because the majority of programmes fall in the 30-31 minute slots (Table A5.1), and so are affected regardless of interpretation used.

**Table A5.3: Maximum impact (no mitigation deployed) by children’s broadcaster (May 2013)**

**EPG at 31 scenario**

|  | Maximum impact (£000s) | as % of advertising revenue | as % of all revenues |
|--|------------------------|-----------------------------|----------------------|
| Channel 5                              | 100                    | 100                         | 100                  |
| Channel 4                              | 100                    | 100                         | 100                  |
| Channel 3                              | 100                    | 100                         | 100                  |
| Channel 2                              | 100                    | 100                         | 100                  |
| <b>Children’s broadcasters average</b> | 100                    | <b>-38%</b>                 | <b>-15%</b>          |

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

| EPG at 35                              | Maximum impact (£000s) | as % of advertising revenue | as % of all revenues |
|--|------------------------|-----------------------------|----------------------|
| ✂                                      | ✂                      | ✂                           | ✂                    |
| ✂                                      | ✂                      | ✂                           | ✂                    |
| ✂                                      | ✂                      | ✂                           | ✂                    |
| ✂                                      | ✂                      | ✂                           | ✂                    |
| <b>Children's broadcasters average</b> | ✂                      | -40%                        | -16%                 |

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

### Revenue impact with mitigation

A5.104 We expect that the mitigation strategies considered at paragraphs A5.53 to A5.96 will reduce the impact of adopting the EPG approach option whether on the basis of the EPG at 31 or EPG at 35 scenario. However, as discussed there will also be some costs involved (e.g. re-editing of existing material, the impact of additional promotions etc.) which will affect profitability and that we have not been able to estimate. If these were significant our revenue impact estimate could overestimate the impact on profitability (see discussion at paragraph A5.50). However, it is also worth noting that we consider that we have adopted conservative assumptions elsewhere in estimating the revenue impact.

A5.105 We approached this estimation as explained in paragraphs 5.52.1 to 5.52.3.

### *Each mitigation strategy applied to all channels*

A5.106 We first applied each mitigation strategy to all channels – e.g. all channels are assumed to only adopt Strategy 1 and we measured the impact, and then separately only applied Strategy 2 to all channels etc. Results are shown in Tables A5.4 and A5.5 for each children's broadcasting group. These show the loss in all channel revenues post-mitigation as a percentage of all advertising revenues and all broadcasting revenues.

**Table A5.4: Revenue effect after mitigation strategies by children's broadcaster under the EPG at 31 scenario – each strategy applied to all channels (% of revenues, May 2013)**

|  | Impact on advertising revenues |              |              |              |
|--|--------------------------------|--------------|--------------|--------------|
|  | Mitigation 1                   | Mitigation 2 | Mitigation 3 | Mitigation 4 |
| ✂                                      | ✂                              | ✂            | ✂            | ✂            |
| ✂                                      | ✂                              | ✂            | ✂            | ✂            |
| ✂                                      | ✂                              | ✂            | ✂            | ✂            |
| ✂                                      | ✂                              | ✂            | ✂            | ✂            |
| <b>Children's broadcasters average</b> | -19%                           | -27%         | -24%         | <b>-18%</b>  |

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

|  | Impact on all revenues |              |              |              |
|--|------------------------|--------------|--------------|--------------|
|  | Mitigation 1           | Mitigation 2 | Mitigation 3 | Mitigation 4 |
| ✂                                      | ✂                      | ✂            | ✂            | ✂            |
| ✂                                      | ✂                      | ✂            | ✂            | ✂            |
| ✂                                      | ✂                      | ✂            | ✂            | ✂            |
| ✂                                      | ✂                      | ✂            | ✂            | ✂            |
| <b>Children's broadcasters average</b> | -7%                    | -11%         | -9%          | -7%          |

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

**Table A5.5: Revenue effect after mitigation strategies by children's broadcaster under the EPG at 35 scenario – each strategy applied to all channels (% of revenues, May 2013)**

|  | Impact on advertising revenues |              |              |              |
|--|--------------------------------|--------------|--------------|--------------|
|  | Mitigation 1                   | Mitigation 2 | Mitigation 3 | Mitigation 4 |
| ✂                                      | ✂                              | ✂            | ✂            | ✂            |
| ✂                                      | ✂                              | ✂            | ✂            | ✂            |
| ✂                                      | ✂                              | ✂            | ✂            | ✂            |
| ✂                                      | ✂                              | ✂            | ✂            | ✂            |
| <b>Children's broadcasters average</b> | -40%                           | -27%         | -25%         | -18%         |

|  | Impact on all channel revenues |              |              |              |
|--|--------------------------------|--------------|--------------|--------------|
|  | Mitigation 1                   | Mitigation 2 | Mitigation 3 | Mitigation 4 |
| ✂                                      | ✂                              | ✂            | ✂            | ✂            |
| ✂                                      | ✂                              | ✂            | ✂            | ✂            |
| ✂                                      | ✂                              | ✂            | ✂            | ✂            |
| ✂                                      | ✂                              | ✂            | ✂            | ✂            |
| <b>Children's broadcasters average</b> | -16%                           | -11%         | -10%         | -7%          |

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

A5.107 Based on the impact expressed as percentage of channel revenues, Table A5.4 suggests that at an aggregated level the most effective strategy would be 4 followed by 1, 3 and 2 in the case of the EPG at 31 scenario. Under the EPG at 35 scenario, the order remains the same except that mitigation 1 has almost no effect and is thus the least effective strategy.

A5.108 However, although this is the easiest way to undertake this assessment, we consider that results in Tables A5.4 and A5.5 overestimate the impact of the EPG approach option relative to the TX approach option as we can expect the

children’s broadcasters to adopt a mix of strategies (and not only one strategy) to mitigate the impact.

*Best mitigation strategy applied to each channel*

A5.109 Next, we assumed that the children’s broadcasters can adopt the most successful mitigation strategy for each of their channels. Hence, while in reality each children’s broadcaster can react to an enforcement based on the EPG approach option by adopting a mix of strategies, we still assumed for our modelling purposes that it would still be constrained to one strategy per channel. Results are shown in Tables A5.6 and A5.7.

**Table A5.6: Total mitigation by children’s broadcaster under the EPG at 31 scenario – best strategy applied to each channel (% of advertising and all channel revenues, May 2013)**

|  | Impact on advertising revenues | Impact on all revenues | Notes                    |
|--|--------------------------------|------------------------|--------------------------|
| ⌘                                      | ⌘                              | ⌘                      | Uses strategies 2 & 4    |
| ⌘                                      | ⌘                              | ⌘                      | Uses strategy 4          |
| ⌘                                      | ⌘                              | ⌘                      | Uses strategies 1 & 2    |
| ⌘                                      | ⌘                              | ⌘                      | Uses strategies 1, 3 & 4 |
| <b>Children’s broadcasters average</b> | -13%                           | -5%                    |                          |

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

**Table A5.7: Total mitigation by children’s broadcaster under the EPG at 35 scenario – best strategy applied to each channel (% of advertising and all channel revenues, May 2013)**

|  | Impact on advertising revenues | Impact on all revenues | Notes                    |
|--|--------------------------------|------------------------|--------------------------|
| ⌘                                      | ⌘                              | ⌘                      | Uses strategies 2 & 4    |
| ⌘                                      | ⌘                              | ⌘                      | Uses strategy 4          |
| ⌘                                      | ⌘                              | ⌘                      | Uses strategies 2 & 4    |
| ⌘                                      | ⌘                              | ⌘                      | Uses strategies 2, 3 & 4 |
| <b>Children’s broadcasters average</b> | -14%                           | -6%                    |                          |

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

A5.110 Table A5.6 suggests that if the children’s broadcasters selected the most effective strategy at the channel level, this could further mitigate the overall industry impact. It shows that under the EPG at 31 scenario the latter would decline from a 18% of all advertising revenues,<sup>81</sup> or 7% of all broadcasting revenues, to 13% and 5%, respectively. The impact under the EPG at 35

<sup>81</sup> As shown in Table A5.4

scenario is very similar. For the children’s broadcasters, this suggests that, in terms of loss of revenues as a proportion of advertising revenues, the least affected children’s broadcasters would be 3% and the most affected, 8%. As a proportion of all broadcasting revenues, the least affected would be 3% and the most affected would be 8%.

A5.111 There are reasons to be cautious in interpreting results in Tables A5.6 and A5.7. We consider that these results may still overestimate the revenue impact as the children’s broadcasters are likely to apply a mix of mitigation strategies within each channel. This would allow them to substantially reduce the revenue loss under either of the options. We discuss how we could refine our approach in the next section.

## Sensitivity Analysis

A5.112 We have also undertaken some sensitivity assessment on each option as shown in Table A5.8.

**Table A5.8: Summary of sensitivity analyses undertaken**

| Mitigation strategy                                     | Base scenario   | Sensitivity undertaken  | Results   |
|---|---|---|---|
| Mitigation 1 – add promotions                           | Under the EPG at 35 scenario, programmes of 33 minutes or more can be mitigated   | Under the EPG at 35 scenario, only programmes of 34 minutes or more can be mitigated by adding up to 1 minute of promotions   | Very little change in final results as very few programme slots have a duration of 33-34 minutes.   |
| Mitigation 1 – add promotions                           | Under the EPG at 31 scenario, programmes of 30 minutes or more can be mitigated   | Under the EPG at 31 scenario, programmes that were mitigated from 29-30 minutes can also be mitigated by adding an additional minute of promotions  | Under the EPG at 31 scenario, Mitigation 1 becomes total mitigation relative to the TX approach option, as it can be applied to all lost impacts.   |
| Mitigation 2 – split programmes                         | Programmes with unknown format are not considered to be able to be split under both the EPG at 31 or EPG at 35 scenarios. | Under both the EPG at 31 and EPG at 35 scenarios, programmes with unknown format are considered to be able to be split (to create an upper bound on the effectiveness of this strategy)                                       | Little change in final results for Mitigation 2 as not many programmes are of unknown format. Almost no effect on final revenue loss for broadcasters.  |
| Mitigation 3 <sup>82</sup> - bundle programmes together | Adjacent programmes of the same title may be bundled together into a single programme                                     | Programmes can be moved within a day’s schedule to put different episodes of the same programme next to one another, and thus be able to mitigate them. It is assumed that these will be different episodes of the programme. | Large increase in effectiveness of Mitigation 3 causes it to become the dominant strategy for most channels. Total loss of broadcasting revenues falls to 2% or less for each children’s broadcaster. |
| Mitigation 3 – bundle programmes together               | As above  | Similar to above, but programmes can be moved within consecutive days to create programme blocks that can be bundled  | Similar to above, but final impact on broadcasting revenues is at most 1% for any broadcaster and 0.6% on average across all children’s broadcasters, as most programmes can be bundled together.     |

<sup>82</sup> For each sensitivity assessment on mitigation 3, no account has been made for any loss of revenue due to moving programmes within the schedule. We would expect there to be a loss of revenue for this reason, as full-hour blocks of programming is not the most efficient schedule. As such, these sensitivities are likely to underestimate the actual revenue impact on broadcasters.

|                          |   |   |  |
|--------------------------|---|---|--|
| Mitigation 4 – extend EB | EBs are limited to being at most 4.5 minutes long | EBs are limited to being at most 3 minutes long | Mitigation 4 is no longer an effective strategy for any channel as loss of advertising minutes is too strong an effect. Loss of broadcasting revenues increases by around 1 percentage point for each children’s broadcaster as they adopt other strategies. |
| Mitigation 4 – extend EB | As above  | EBs are limited to being at most 6 minutes long | Mitigation 4 becomes most effective strategy for almost all channels. Total loss of broadcasting revenues falls to 1% or less for each children’s broadcaster.   |

A5.113 Results appear particularly sensitive to allowing an additional minute of self-promotions for Mitigation 1 under the EPG at 31 scenario, allowing greater flexibility on bundling programmes up to 1 hour, and increasing the limit on EB duration, using Mitigation 4. In each of these cases, we should be cautious in interpreting the results as any additional cost that may arise under the sensitivity scenario which have not been factored in – e.g. increase in audience frustration at lengthy promotional material or EBs, and inefficiencies caused by heavily modifying the programme schedule are some of the factors unaccounted for in this analysis. However, if some of these sensitivities proved practicable, the impact on broadcasters’ revenues of not adopting the TX approach option could be less marked than estimated.

## Results interpretation

A5.114 We report the results by children’s broadcaster group, but we noted that some channels within each children’s broadcaster group may be impacted more than others. This raises the possibility that a children’s broadcaster may decide to withdraw those channels that are heavily impacted, even if the overall impact at a group level is modest. Tables A5.9 and A5.10 show the average impact by children’s broadcaster alongside listing the most impacted channels for each children’s broadcaster (alongside the impact on the channel).

A5.115 Therefore, the EPG approach option could have the following detrimental effects for citizens and consumers:

5.115.1 if the impact at the group level is large enough to affect the overall incentives to invest in high quality programmes (either commissioned or acquired), citizens and consumers may be negatively affected via lower programme quality; and/or

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

A5.116 On the basis of the results shown in Tables A5.9 and A5.10, we consider that overall  $\mathcal{L}$  appear unlikely to be affected under either the EPG at 31 or EPG at 35 scenario to a sufficient extent to reduce their ability to continue to invest in children’s programmes. A key factor we took into account is that  $\mathcal{L}$ . Therefore, the estimated industry impact in A5.9 and A5.10 ranging from 5% to 6% of total UK-based broadcasting revenues seems very unlikely to  $\mathcal{L}$  incentives to continue to invest in children’s programmes  $\mathcal{L}$ . However, this may not apply to

3<, which would appear to be affected much more significantly 3<. In the next section we examine further whether the impact on 3< is sufficient to potentially raise a concern about a reduction in the quality of their programmes.

A5.117 Tables A5.9 and A5.10 also show that some of the channels of 3< may suffer a substantial reduction in revenues under the EPG approach option 3<. There is therefore some risk of withdrawal for some of these channels.<sup>83</sup>

**Table A5.9: Average impact and most affected channel of each children’s broadcaster under the EPG at 31 scenario – best strategy applied to each channel (May 2013)**

|  | Impact on advertising revenues | Impact on all broadcasting revenues | Most affected channel | Impact on channel’s broadcasting revenues |
|--|--------------------------------|-------------------------------------|-----------------------|---|
| 3<                                     | 3<                             | 3<                                  | 3<                    | 3<  |
| 3<                                     | 3<                             | 3<                                  | 3<                    | 3<  |
| 3<                                     | 3<                             | 3<                                  | 3<                    | 3<  |
| 3<                                     | 3<                             | 3<                                  | 3<                    | 3<  |
| <b>Children’s broadcasters average</b> | <b>-13%</b>                    | <b>-5%</b>                          |                       |   |

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

**Table A5.10: Average impact and most affected channel of each children’s broadcaster under the EPG at 35 scenario – best strategy applied to each channel (May 2013)**

|  | Impact on advertising revenues | Impact on all revenues | Most affected channel | Impact on channel revenues |
|--|--------------------------------|------------------------|-----------------------|----------------------------|
| 3<                                     | 3<                             | 3<                     | 3<                    | 3<                         |
| 3<                                     | 3<                             | 3<                     | 3<                    | 3<                         |
| 3<                                     | 3<                             | 3<                     | 3<                    | 3<                         |
| 3<                                     | 3<                             | 3<                     | 3<                    | 3<                         |
| <b>Children’s broadcasters average</b> | <b>-14%</b>                    | <b>-6%</b>             |                       |                            |

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

A5.118 We consider that the figures in Tables A5.9 and A5.10 may still overestimate the impact on revenues under either the EPG at 31 or EPG at 35 scenario. This is

<sup>83</sup> It is possible that even if a channel’s revenues were substantially reduced, the children’s broadcasters may still have an incentive not to withdraw the channel. This is most evident for the +1 channels as there are very limited costs to broadcast a +1 version in addition to those incurred for the base version. However, the same may apply to channels that share a substantial amount of programme content with other channels which are not affected by moving away from the TX approach option.

because in practice children’s broadcasters would adopt a mix of mitigation strategies even in the same channel. In the light of the results shown in Tables A5.9 and A5.10, we believe that further consideration of the position of is unnecessary. However, given the impact estimated for we have considered further whether we could model the optimal adoption of a mix of strategies on a programme by programme basis. In the light of the results in Tables A5.9 and A5.10 we consider applying this further assessment to would be proportional.

*Mitigation strategies on a programme-by-programme basis for*

A5.119 We made the additional assumption that would employ mitigation strategies on a programme by programme basis in the following order of preference:

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

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

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

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

A5.120 The reason for this order is that strategies 1 and 2 successfully mitigate the loss of almost all impacts for those programme slots for which they are eligible strategies. Mitigation strategy 3 is less effective but still more effective than 4 on a per-programme basis. Mitigation strategy 4 is the least effective overall, but can be applied to all programmes – as such, it is applied to any programme that could not be mitigated via any other strategies.

A5.121 Results, shown in Table A5.11, show that the revenue impact on of adopting the EPG approach option on the basis of either the EPG at 31 or EPG at 35 scenario is estimated to be substantially less under this more granular approach. In particular, under the EPG at 31 scenario, the impact is estimated to be (as both a proportion of advertising and all broadcasting revenues) instead of while under the EPG at 35 scenario the estimated impact is instead of . In essence though we do not consider that the impact is significant under the EPG at 31 scenario, it may be under the EPG at 35 scenario. In the case of the latter appear particularly heavily affected.

**Table A5.11: Impact on 3 channels assuming a sequential adoption of mitigation strategies on a programme by programme basis (May 2013)**

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

3

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

3

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

## Annex 6

# Data issues

- A6.1 In Section 5 of this document we noted that the specific rule which applies to children’s programming – i.e. a prohibition on interrupting advertising in programming with a ‘scheduled duration’ that is not ‘greater than 30 minutes’ – means that children’s services are likely to be most affected by the use of EPG information to assess programme duration. In Annex 5, we set out our assessment of the revenue impact on some children’s broadcasters of using the ‘EPG’ approach’ for enforcement purposes.
- A6.2 As explained in Annex 5, if Ofcom adopted the TX approach as an enforcement mechanism and accepted that a programme’s ‘scheduled duration’ was equal to the programme slot in which it sits, a children’s programme that occupied a programme slot lasting exactly 30 minutes could not have an IB. However, it could be argued that those programmes that occupy slots of at least 30 minutes and one second should be permitted to do so. We therefore based our revenue impact assessment on the potential loss of internal breaks from children’s programmes which had a TX slot duration of under 30 minutes and one second.
- A6.3 This Annex explains:
- 6.3.1 how we have used data supplied by broadcasters to the Broadcaster Advertiser Research Board (‘BARB’) to measure programme slots;
  - 6.3.2 the difficulties we encountered analysing transmission information in BARB data; and
  - 6.3.3 the methodology we adopted to minimise these issues.

## An overview of the methodology, approach and data issues

- A6.4 We based our estimation of the scheduled duration of a programme on BARB transmission and viewing data covering two separate months – May 2012 and May 2013 (henceforth “the relevant period”) – for four UK children’s broadcasters.
- A6.5 Ofcom commissioned a BARB-registered bureau, TRP Research Ltd, to analyse raw BARB data for the relevant period and classify programmes according to their scheduled duration.<sup>84</sup>
- A6.6 The relevant BARB data contained the following information:
- 6.6.1 programme transmission times;
  - 6.6.2 commercial spot transmission times;
  - 6.6.3 commercial indicator flags that identify the type of break transmitted (whether an IB or an end break (“EB”)).

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<sup>84</sup> TRP’s role was to clean the BARB data and produce analysis based on Ofcom’s requirement. TRP were not party to Ofcom’s modelling work or any other aspects of this consultation.

- A6.7 Transmission timings and break identifiers are compiled by broadcasters for their relevant channels and are submitted to BARB. The transmission information is then married to the minute-by-minute viewing data collected by BARB in order to report viewer numbers such as commercial impacts.<sup>85</sup>
- A6.8 TRP was asked by Ofcom to:
- 6.8.1 identify a range of children's programmes based on the duration of the programme slot in which they were scheduled according to the following time categories –
    - o 1 to 29 minutes
    - o 29:01 to 30 minutes
    - o 30.01 to 31 minutes
    - o 31.01 to 32 minutes
    - o 32.01 to 33 minutes
    - o 33.01 to 34 minutes
    - o 34.01 to 35 minutes
    - o 35.01 or more minutes
  - 6.8.2 calculate the airtime minutage that each slot duration category accounted for (e.g. of total programme hours on x channel, x% were attributed to 1-29 minutes programme slots);
  - 6.8.3 identify the IBs and EBs contained within each slot duration category; and
  - 6.8.4 produce commercial impacts (unweighted<sup>86</sup> and ratecard weighted<sup>87</sup>) for each break type (IBs and EBs) for each of the slot duration categories. This was undertaken for each of the relevant commercial children's channels. Ratecard weighted impacts were used in the revenue assessment in Annex 5.

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<sup>85</sup> Impacts are a measure of viewing to commercial spots. One impact is one member of the target audience viewing one commercial. A total of 10 impacts could be achieved in a number of ways; by ten people viewing a single commercial; by one person seeing the commercial ten times; by five people seeing the commercial twice and so on. Impacts are added together to give the total impacts achieved by an advertising campaign or the total supplied by a given channel.

<sup>86</sup> Unweighted impacts means the spot audience in the minute in which the commercial aired. Commercials of different durations in the same minute will all have the same reported impacts as BARB data is reported on a minute-by-minute basis. Spots of different durations may have different costs and this will vary by broadcaster.

<sup>87</sup> The use of ratecard weighted impacts allows the spot audience in the minute in which the commercial aired to be weighted according to calculation factors supplied by broadcasters to BARB (rates factors). The rates factors are specific to each broadcaster and allow the proportional cost of commercials of a specific length e.g. a 10 second or a 40 second spot, to be calculated relative to the price of a thirty second spot.

## Issues with transmission logs

- A6.9 Before commissioning TRP, Ofcom initially commissioned RSMB Limited, also a BARB registered bureau, to assess the BARB transmission data. Like TRP, RSMB’s role was to produce outputs from raw BARB data according to Ofcom’s specification. Initially Ofcom sought to use a year of BARB data for the revenue assessment but in its analysis of a dataset covering the period from March 2012 to February 2013, RSMB identified a number of issues with the transmission logs contained in the raw data.
- A6.10 The scale of those issues precluded analysis covering an entire year’s worth of logs. As a result, we limited the analysis to two months (May 2012 and May 2013) which TRP subsequently undertook on Ofcom’s behalf. Most of the issues identified by RSMB were also encountered by TRP in their analysis. An overview of the issues identified is outlined below.
- A6.11 The BARB transmission logs used comprised three separate elements which are provided by broadcasters to BARB:
- 6.11.1 *Programme transmission log*. This identifies the period of time in hours, minutes and seconds between the start and end of a programme including any IBs. Sponsorship or promotional activity may or may not be included in the reported duration of a programme depending on how a broadcaster chooses to record it;
  - 6.11.2 *Commercial spot log*. This identifies, in hours, minutes and seconds, the start to end time of individual spot transmissions in block of advertising activity; and
  - 6.11.3 *Commercial spot indicator flags* – identifies whether a spot is an IB or an EB.
- A6.12 BARB guidelines state that the information from each of the three transmission log data sets and relevant timings should fit together sequentially, without overlapping minutes and seconds.<sup>88</sup> As example with two sequentially broadcast programmes is shown in Figure 2 below.

**Figure 2: Programme and commercial transmission log timings according to BARB guidelines**



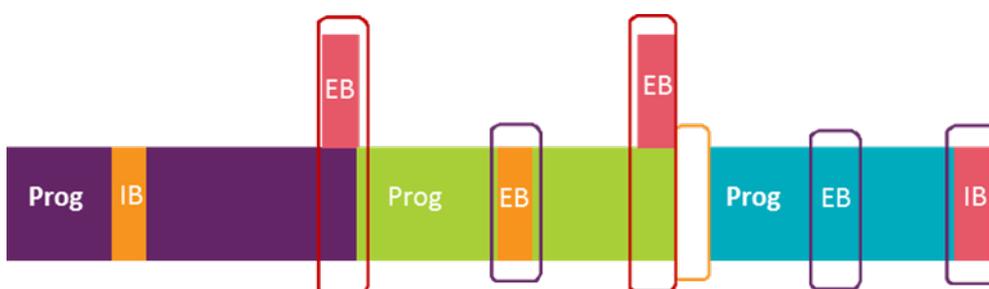
- A6.13 RSMB first identified (and later TRP confirmed) that a number of transmission logs did not conform to BARB guidelines. In summary, the following issues were encountered:

<sup>88</sup> The only exception to this are IBs, where present, which are embedded within the programme end time

- 6.13.1 In some instances programmes and EBs overlapped, so that EBs appeared to be included within programme transmission timings and programmes appeared to run back to back without the appropriate gap for an EB;
- 6.13.2 In some instances where programmes and EBs overlapped 'blank' airtime between programmes was present.
- 6.13.3 In other instances, breaks were incorrectly flagged relative to their position in or around a programme (i.e. either IBs were classified as EBs or EBs classified as IBs).

A6.14 Figure 3 is illustrative of all these issues.

**Figure 3: Illustration of mis-logging issues for programme and break transmissions**



- A6.15 To help understand the extent of this issue, RSMB manually recoded individual spots that appeared inside a programme as an IB, putting aside any broadcaster coding. They then calculated the proportion of re-coded IBs from the total spot count. This analysis indicated a notable difference between the proportion of breaks reported as IBs by broadcasters in BARB transmission data compared to the proportion of those identified as IBs by RSMB following re-coding – frequently over 4% of breaks were categorised in this way. TRP also encountered similar issues while working on data for the relevant period.
- A6.16 Ofcom sought the views of from the children’s broadcasters outlining the issues encountered at a broad level as depicted in Figure 3. They were asked to explain:
  - 6.16.1 whether there were any reasons why programme or commercial transmission time logs supplied by them to BARB may be inaccurate;
  - 6.16.2 whether – and if so how – the transmission time information which they supplied to BARB was checked for accuracy;
  - 6.16.3 whether – and if so why – either programme logs or commercial logs were more likely to reflect actual transmission times accurately; and
  - 6.16.4 whether they had other transmission information for programmes and breaks that they considered to be more accurate than those supplied to BARB. By accurate, we explained that we were looking for information that might be more precise in recording when a programme started and ended, as well as and the start and end times of internal and end breaks.

A6.17 In response, UK children's broadcasters questioned expressed confidence in the logs supplied to BARB, indicating that they were the same as those generated by their internal scheduling systems or other logging mechanisms.

### **Our approach to measuring the scheduled programme duration**

A6.18 To overcome the discrepancies and conflicts associated with overlapping programme and EB break durations, Ofcom tasked TRP with producing a clean BARB data set for the relevant period.

A6.19 As it was difficult to establish whether the programme transmission log or the break logs had been incorrectly logged, we sought to standardise the analysis approach across all programmes and channels. This was to ensure the data set upon which our assessment was based was as consistent and robust as possible. To this end we approached the analysis of this data measuring scheduled duration not as the period of time between the start of one programme to the beginning of the next programme, but to the period of time between the end of the last EB to the end of the next following EB:

A6.20 This approach relied on timings of EBs rather than of programmes on the assumption that we could be more confident about the accuracy of the reported timings of the former. This is because commercial timings underpin television advertising revenues and are used to report on the commercial health of a channel (such as its share of commercial impacts) and to evaluate advertising campaigns. Using commercial timings also avoided the inconsistency of reported programme timings which may or may not have included promotional material.

## Annex 7

# Current Code on the Scheduling of Television Advertising

## Introduction

1. This Code sets out the rules with which television broadcasters licensed by Ofcom<sup>89</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>90</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>91</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;
  - f) 'films' means cinematographic works and films made for television (including single dramas), but excludes series, serials and documentaries<sup>92</sup>;

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<sup>89</sup> For the purpose of this Code, this includes S4C, which is authorised by the Broadcasting Act 1990.

<sup>90</sup> This definition is derived from Article 1(i) of the AVMS Directive. In accordance with Article 23(2) of the Directive, it does not include announcements made by a broadcaster in connection with its own programmes and ancillary products directly derived from those programmes, sponsorship announcements and product placements.

<sup>91</sup> Designated channels currently include any Channel 3 service, Channel 4, Channel 5, and S4C.

- g) 'self promotion' means advertising for the broadcaster's own products and services<sup>93</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>94</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. In addition:
- a) on public service channels time devoted to television advertising and teleshopping spots must not exceed:
    - i) an average of 7 minutes per hour for every hour of transmission time across the broadcasting day; and
    - ii) subject to (i) above, an average of 8 minutes an hour between 6pm and 11pm;
  - b) on other channels 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.
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>92</sup> This definition is derived from Article 20(2) of the AVMS Directive.

<sup>93</sup> This definition is derived from Article 1(i) of the AVMS Directive.

<sup>94</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>95</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>95</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>96</sup>:
- b) films and news programmes may only include one advertising or teleshopping break for each scheduled period of at least 30 minutes;
  - c) 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;
  - d) programmes including a religious service may not include advertising or teleshopping breaks during the service;
  - e) broadcasts of a formal Royal ceremony may not include advertising or teleshopping breaks during the ceremony;
  - f) broadcasts of live Parliamentary proceedings may not include advertising and teleshopping breaks in programmes of a scheduled duration of 30 minutes or less;
  - g) in programmes of live events, more breaks may be taken than are indicated in Tables 1 and 2 below, provided that:
    - iii) the timing of the event and its constituent parts are outside the control of the programme provider; and
    - iv) there would not be sufficient time within the number of permitted breaks which are also natural breaks to schedule the permitted amount of advertising.
  - h) 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              |

<sup>96</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/>.

|                   |       |
|-------------------|-------|
| 45 – 54 minutes   | Two   |
| 55 – 65 minutes   | Three |
| 66 – 85 minutes   | Four  |
| 86 – 105 minutes  | Five  |
| 106 – 125 minutes | Six   |

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

| <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 8

# Draft Code on the Scheduling of Television Advertising

This Code sets out the rules with which television broadcasters licensed by Ofcom<sup>97</sup> ('broadcasters') must comply when carrying advertising. These rules give effect to relevant provisions of the Communications Act, the Audiovisual Media Services (AVMS) Directive and those policies determined by Ofcom following consultation.

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

### Definitions

In this Code:

**'television advertising'** means any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes by a public or private undertaking or natural person in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property rights and obligations, in return for payment.

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

**'clock hour'** means a period of sixty minutes starting from 00:00:00 of an hour and ending at 00:59:59 of that hour (e.g. 14:00:00 to 14:59:59 hours).

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

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

**'formal Royal ceremony'** means a formal ceremony or occasion of which the Sovereign or members of the British Royal Family enjoying the prefix 'Royal Highness' are the centre. It applies to occasions such as the State Opening of Parliament and Trooping the Colour.

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

**'teleshopping'** means direct offers broadcast to the public with a view to the supply of goods or services, including immovable property, rights and obligations, in return for payment.

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

<sup>97</sup> For the purpose of this Code, this includes S4C, which is authorised by the Broadcasting Act 1990.

## Rules

### Identification of advertising

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

### Time devoted to advertising

Rules 2 to 5 do not apply to:

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

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

Further to Rule 2:

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

Broadcasters are not required to include teleshopping spots when applying Rule 3.

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

- 4. On public service channels, time devoted to television advertising and teleshopping spots must not exceed:**
  - i. an average of 7 minutes per hour for every hour of transmission time across the broadcasting day; and**
  - ii. an average of 8 minutes per hour between 18:00 and 23:00.**

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

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

seek permission to transfer unused minutage. The request must set out:

- i. the reason for the proposed transfer; and
- ii. the date(s) and time(s) of the proposed recoupment, which must be within 7 days of the lost minutage.

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

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

Advertising breaks in films are not subject to Rule 5.

### Teleshopping windows

6. **Teleshopping windows must be at least 15 minutes long.**
7. **On public service channels, teleshopping windows may be scheduled only between 00:00 and 06:00.**

### Placement of advertising

8. **Where television advertising or teleshopping is inserted during programmes, television broadcasters must ensure that the integrity of the programme is not prejudiced, having regard to the nature and duration of the programme, and where natural breaks occur.**
9. **Isolated television advertising and teleshopping spots, other than in the transmission of sports events, shall remain the exception.**
10. **The transmission of films and news programmes may be interrupted by advertising or teleshopping only once for each scheduled period of at least 30 minutes.**
11. **Breaks are not permitted within schools programmes.**
12. **Children's programmes (other than schools programmes) with a scheduled duration of 30 minutes or less may not be interrupted by advertising. The transmission of children's programmes with a scheduled duration of longer than 30 minutes may be interrupted by advertising or teleshopping once for each scheduled period of at least 30 minutes.**
13. **Programmes including a religious service may not include advertising or teleshopping breaks during the service.**
14. **Broadcasts of a formal Royal ceremony may not include advertising or teleshopping breaks during the ceremony.**
15. **Broadcasts of live Parliamentary proceedings:**

- i. may not include advertising and teleshopping breaks in programmes of a scheduled duration of 30 minutes or less;
  - ii. in programmes that have a scheduled duration that is greater than 30 minutes, the transition between live coverage of Parliamentary proceedings and advertising should take place where natural breaks occur via a programme presenter in sound or vision. Programme directors/editors must have the discretion to reschedule or cancel breaks to avoid artificial interruptions in live proceedings. Breaks should be dropped altogether where this would be incompatible with editorial responsibility, for example in coverage of matters of great gravity or emotional sensitivity.
16. For programmes other than those set out in Rules 10 to 15 above, the number of internal breaks permitted is set out in the tables that follow. For every additional 20-minute period beyond that set out in the tables, a further break is permitted.

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

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

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

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

The following programmes are exempt from Rule 16

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

- i. the timing of the event and its constituent parts are outside the control of the programme provider; and
- ii. there would not be sufficient time within the number of permitted breaks which are also natural breaks to schedule the permitted amount of advertising.

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