

Response of Channel 5 Broadcasting Ltd to the Ofcom Consultation on its Proposed Code on the Prevention of Undue Discrimination between Broadcast Advertisers

Channel 5 welcomes the opportunity to comment on Ofcom's draft Code on the Prevention of Undue Discrimination between Broadcast Advertisers and proposed detailed guidance. We note in passing that, although Ofcom has been under an obligation to publish a Code on this subject for over seven years, it has not done so until now. However, we believe the principles underpinning this Code are so well understood and accepted that this has not led to any major difficulties over this period.

Channel 5 is satisfied with the wording of the Code, as this sets out clearly what we take to be the intention of the legislation, which is to prevent a broadcaster from discriminating unduly between advertisers seeking to advertise on its channel(s).

However, there may be a possible broader interpretation of the legislation, which is that it seeks to prevent not only undue discrimination *by* broadcasters but also undue discrimination *between* broadcasters – in other words the possibility that an advertisement may be acceptable to one broadcaster but not to another. We believe such a broader interpretation would create considerable problems for broadcasters, as they would not only have to make their own decisions about what advertisements to accept but also to ensure they were not discriminating unduly against advertisements accepted by one or more other broadcasters. We would like Ofcom to clarify its views on this possible wider interpretation when it issues its regulatory statement.

We are generally satisfied with the draft guidance. However, as Ofcom has decided to issue guidance, we believe that this should be expanded to include the specific question of broadcasters buying commercial airtime on other channels in order to promote their own programmes.

While we believe it is perfectly legitimate for one broadcaster to purchase another's airtime, there should be restrictions on exactly how and when this can be done. In particular, we believe it would be reasonable for a broadcaster to refuse to carry another broadcaster's advertisement if it

- included a call to immediate action (i.e. "turn over now to watch...")
- promoted a different series or episode of the programme about to begin, in progress or just ended (e.g. "the next series of xxx is on Channel Y at 10pm/tomorrow/next week")

We believe that in each of these instances it would be legitimate, and not unduly discriminate, to turn away such advertisements. However, it would be helpful if Ofcom clarified the position by making this clear in its guidance.

The Independent Television Commission had specific rules that entitled broadcasters to refuse to accept commercials which "promote particular programmes at particular times on competing services", based on section 8.2(b) of the Broadcasting Act 1990 (which broadly corresponds to section 391(2)(k) of the 2003 Act). We are not suggesting that explicit rules about television advertising on rival broadcasters should be re-introduced, nor are we suggesting that Ofcom should adopt guidance that is as far reaching as the ITC rules were. However, we believe some additional guidance by Ofcom at this stage would clarify the position and avoid potential complaints.

We hope these comments are helpful and look forward to Ofcom issuing its Code in due course.

Channel 5 Broadcasting Ltd

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