A VOICE FOR COMMERCIAL BROADCASTERS IN THE UK

Competition issues in the UK TV advertising trading mechanism

A response to Ofcom's 10 June 2011 consultation from the Commercial Broadcasters Association

22 July 2011

Introduction

1 COBA (the Commercial Broadcasters Association) is the industry body for commercial broadcasters that invest in the UK without receiving any public funding or incentives. Its members are Bloomberg Television, BSkyB, Chinese Channel, Discovery Networks, Fox International Channels, Viacom International Media Networks, NBCUniversal, QVC, SBS Broadcasting Network, Turner Broadcasting System, UKTV and the Walt Disney Company. COBA members are significant investors in the UK: they operate nearly 300 UK-regulated television channels, employ 22,000 people and invested £432 million in UK original content in 2009, an increase of 7.5% from £402 million in 2008[1]. Until March 2011, COBA was known as the Satellite and Cable Broadcasters' Group (SCBG).

2 COBA very much welcomes the opportunity to submit a response to Ofcom's consultation on whether to refer the TV advertising trading mechanism to the Competition Commission (CC), and thanks Ofcom for its willingness to engage with COBA members in the run up to and during the course of consultation.

3 A number of COBA's members will be submitting their own responses, which will likely go into more detail about their own experiences of the trading mechanism. The objective of this short collective submission, however, is to make the overarching point that COBA does not believe that features of the market prevent, restrict or distort competition such that a referral to the CC would be justified or proportionate at this time.

[1] See COBA's website for more details: www.coba.org.uk

Do the market features inhibit competition?

4 In the consultation document and in verbal briefings to COBA, Ofcom has said that there are three areas where it has indentified potential concerns: transparency of pricing signals, bundling of airtime and the limited evolution of the trading model. We believe that these concerns are largely unfounded.

5 Our members believe that sufficient transparency exists in the market to enable advertisers and media buyers (in conjunction with media auditors) to understand the cost of advertising with particular broadcasters, as well as the value of this advertising, and to use this information to determine a cost-effective and efficient outcome for their businesses.

6 As Ofcom recognises, bundling of advertising across schedules or between different channels is an important and necessary feature of the market, given the huge number of minutes traded each year across several hundred channels. However, while bundling is not in itself a negative feature of the market, competition rules must continue to be used to ensure that no seller of TV advertising with significant market power is able to exercise its market power to extract disproportionate advertising revenues.

7 COBA agrees that the market functions in a unique and – to outsiders – complex manner, as the House of Lords Communications Committee report outlined, but this does not in and of itself mean that it is not working efficiently. The ongoing evolution of technology, media consumption and wider economic developments do present challenges to the market, but we believe that the market is adapting to these challenges and that its structure is not preventing it from doing so.

8 On this basis we do not believe that consumers – either advertisers or TV viewers – are experiencing any harm as a result of the current trading model. Rather, the model is working well and delivers good outcomes for advertisers, broadcasters and viewers alike. Advertisers are able to purchase across the broadcaster's schedule to reach the target audiences they seek and at reasonable prices. Broadcasters, with the benefit of advertising revenues, are able to invest in programming, including much UK-originated content, contributing to the range, quality and diversity of programming that viewers enjoy. Given these benefits, COBA's members do not consider that a reference to the CC would be merited.

Would referral to the Competition Commission be proportionate?

9 We understand that in deciding whether to refer the mechanism to the CC that Ofcom must also consider what impact a referral would have on the market and the extent to which the CC could remedy the concerns identified. As above, we do not believe that sufficient concerns exist, but we also strongly caution Ofcom against setting in train a lengthy process, with uncertain outcomes, that might risk doing more damage than good. A CC review would create two or more years of significant regulatory uncertainty for the industry at a time when it needs to focus on driving growth in the sector – something we know is a high policy priority for the Government and the Secretary of State, as expressed in his recent letter to industry about a new Communications Bill.

10 In the longer term, there is a significant risk that a reference could lead to changes that would result in a much less efficient and competitive market. For example, as the CC concluded in May 2010, ITV's market power is enduring, meaning that the CRR mechanism continues to be necessary to prevent it from exerting its unrivalled leverage with advertisers and agencies and distorting the market. Were the constraint on ITV to be materially weakened, this would likely result in a much less competitive market, where significant losses would be experienced by non-ITV broadcasters, with the attendant impact on consumers' ability to choose from a wide-range of high quality and diverse programming from different broadcasters.

11 We do not therefore believe that the potential benefits of a reference are likely to outweigh the risks of substantial uncertainty and upheaval that the market would undoubtedly experience in the short term or the longer-term risk that changes could result in a less competitive market and consumer detriment, for example through an inferior range and quality of programming.

Under what circumstances would a wider review be justified?

12 Ofcom is currently conducting an internal review on the COSTA rules governing minutage, in particular looking at the principles of regulation and the way in which public interest objectives need to be balanced. We understand that this is a separate work-stream from this consultation on the trading mechanism. COBA has extensively argued, however, both in dialogue with Ofcom about the COSTA rules[2] and in its submission to the House of Lords inquiry into TV advertising regulation[3] that the various regulations and merger remedies governing the market – for example the COSTA minutage rules and the CRR mechanism – are inextricably linked, meaning that changes to one mechanism should not be contemplated without understanding the significant onward impact on other regulations/merger remedies and therefore also the whole balance of the market.

13 COBA believes that so long as the COSTA minutage rules, and CRR, remain unchanged – as we strongly believe they should be – Ofcom has no need to refer the market to the CC, as it is working efficiently and consumers are well served. However, if Ofcom were to conclude through the separate review that the minutage rules should be changed, COBA would at that point likely call for a wider review of the functioning of the market as it is essential that these issues are reviewed in the round to avoid significantly benefitting some broadcasters over others, and negatively impacting competition in the market. It is vital that Ofcom bears this inter-connection in mind as it conducts and reaches conclusions in these separate reviews.

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[2] David Lynn letter to Ed Richards, 9 April 2010, David Lynn letter to Ed Richards, 28 April 2010, Victoria Read letter to Siobhan Walsh, 4 June 2010, SCBG response to ASR consultation, 21 June 2010, Victoria Read letter to John Furlong, 15 July 2010

[3] http://coba.org.uk/positions-and-reports/item/76-the-house-of-lords-communication-committee-inquiry-on-television-advertising-scbg-submission