Competition issues in the UK TV advertising trading mechanism:
Ofcom consultation on the potential reference to the Competition Commission

Response from Viacom, July 2011

1.1 Viacom is pleased to offer this response to the analysis and questions contained in Ofcom's consultation on competition issues in the UK TV advertising trading mechanism. On balance, for the reasons outlined below, we do not believe that there is sufficient evidence to justify a reference of the mechanism to the Competition Commission.

1.2 In particular, we do not believe that Ofcom has demonstrated any material lack of transparency in the mechanism, which appears to be functioning well. It is our belief that advertisers and their auditors have a sophisticated and transparent understanding of the process; possess the tools to determine the prices that they are paying and the value they are receiving; and have real options to take their business elsewhere should they wish to do so. A lengthy investigation at this time will be destabilising and needlessly create uncertainty in a market which, as Ofcom notes, is already facing significant economic and technological challenges.

1.3 Further, we are concerned that a reference to the Commission may reopen time-consuming and burdensome discussions on the CRR mechanism, so soon after its recent 2010 review. At that time, following an extensive investigation, the Commission established the continuing need for CRR to address ITV's market power, while at the same time agreeing several changes to the benefit of ITV which reflected certain market developments. There is in our view no obvious justification for using further public and private sector resources to reopen this issue once more.

1.4 Additionally, we are concerned that advertising minutage is not considered in this review. We believe the COSTA rules governing advertising minutage are an important feature in the functioning of the advertising market that cannot be separated from this discussion. We are aware that Ofcom is presently reviewing this issue, separate to this consultation, but we would like to state clearly that we feel this approach is flawed. It is not appropriate to consider or amend one aspect of the market in isolation.

1.5 Should Ofcom decide to refer the market to the Commission, it is important that it asks it to review all aspects of ITV's market power, including the merit of including ITV digital channels' SOCI in the CRR mechanism, and the cross-selling of advertising between ITV1 and ITV's digital channels; as well as current COSTA rules.

2 Viacom

2.1 Viacom is home to the world's premier entertainment brands. Through its BET Networks, MTV Networks and Paramount Pictures divisions, Viacom offers content across television, film, online and mobile platforms in more than 160 countries and territories. Paramount Pictures, America's oldest film studio, continues today as a major global producer and distributor of filmed entertainment. Viacom also operates a large portfolio of branded digital media experiences, including many of the world's most popular properties for entertainment, community and casual online gaming. For more information about Viacom and its businesses, visit www.viacom.com.

2.2 Viacom International Media Networks UK & Ireland (part of Viacom International Media Networks (VIMN)) currently offers 20 channels of music, comedy and kids programming to UK audiences through its MTV, Comedy Central and Nickelodeon brands. These brands have been market leaders across the three primary genre groups for more than 10 years, reaching 22.9 million homes through SKY, cable and Freeview. VIMN's channels are licensed and regulated by Ofcom.

2.3 VIMN's business in the UK is based on two main sources of revenue, subscription payments derived from distribution deals with UK pay-TV retailers including Sky and Virgin Media, and advertising. Advertising for the VIMN's channels is currently sold by Sky Media.

3 TV Sector Overview and ITV's market position

3.1 We agree that Sections 3, 4 and 5 of the consultation provide a broadly accurate summary of the structure, mechanics and features of the UK advertising market, as well as with Ofcom's market definition for the purposes of this consultation. In places, however, Ofcom appears to over-emphasise change and underplay the status quo, when in fact much of the analysis points to the long-term and on-going dominance of ITV. While Section 5 of the paper acknowledges this to some extent[1], we question the degree to which the gap between ITV and its competitors is in fact declining.

3.2 This is an important point because, as explained below, we believe that robust advertising market regulation is vital if competition and consumer benefits are to be maximised. An ITV freed to set prices at any level and to compel advertisers to buy its advertising regardless of better commercial alternatives, will lead to a further aggregation of advertising revenue with a single commercial broadcaster. While ITV might argue that this revenue would be spent on additional content for UK viewers there is, in the light of its almost non-existent public service obligations, no evidence to suggest that this is any more likely than with any other commercial broadcaster. Indeed, in the absence of strong advertising revenue streams for other commercial broadcasters, the competitive pressures on ITV are likely to reduce, in parallel with its incentives to invest in new, compelling content.

3.3 Specifically, it is important to note that while the changes in SOCI described in Chart 3.8[2] do indeed reflect a shift in the share of SOCI from PSBs to non-PSBs, this shift is relatively marginal. ITV's sales house continues to enjoy nearly 40% of SOCI, having experienced a decrease of just 5% across an 8 year period, in spite of the apparent increase in competition from non-PSB channels. As Ofcom notes, this is partly as a result of the increased market share of ITV's digital channels, which are themselves widely seen to have benefitted from ITV1's continuing dominant market power. Chart 3.11 further underscores this point, with ITV sales' share only declining marginally across a five year period.

3.4 While ITV's share of NAR may have decreased to a small degree, ITV1's power ratio has in fact increased from 123 to 137 between 2002 and 2010, while that of its digital portfolio has risen dramatically, from 21 in 2002 to 70 in 2010. This is a clear indication that ITV1 continues to retain the same premium for advertisers as it did before the introduction of CRR, and has suffered no reduction in its desirability relative to other broadcasters. Furthermore, ITV's power ratio relative to that of all other broadcasters (118 versus 89) demonstrates that ITV continues to enjoy a 32% premium over the rest of the market.

[1] Sections 5.58 – 5.63, Ofcom consultation
[2] Page 27, Ofcom consultation

3.5 We also believe that conditional selling of ITV1 and ITV digital channels' advertising (which is sold by the same individuals) has played a material part in the growth in NAR and Power Ratio of ITV's digital channels, and the much slower decline in NAR for the ITV sales house as a whole. As such, it is of concern that Ofcom appears unwilling to include in any Commission reference (which, as noted, we oppose) the question of conditional selling between ITV1 and ITV digital channels – and, indeed, has had the confidence to suggest in recent meetings that the existence of CRR removes the incentive on ITV to undertake such practices.

3.6 As noted above, the ITV digital channels' power ratio has increased significantly. While ITV may argue that this is down to an increased 'value' being placed on them by advertisers, it is hard to understand why this would the case when their schedules continue to be a mix of straightforward +1 versions of existing channels, repeated archive material, and programming extensions and follow-ons from ITV1. This point can be illustrated further by examining the amount of ITV1 programme repeats/library material which comprise each of the ITV digital channel schedules. The high levels of ITV1 programming on each channel make it hard to accept that their power ratio has increased due to ITV investing in bespoke commissions/content for their schedules.

4 Transparency

4.1 Viacom does not believe there to be an issue of price transparency in the UK TV market and, as such, does not believe this to be a relevant factor in determining a reference to the Competition Commission.

4.2 First, in relation to absolute pricing, the two factors which are required to determine this, revenue and impacts, are already widely available across the sector. Impact data is available to everyone and published daily through DDS across all channels and all relevant target audiences. Revenues are either published by the channel (e.g., ITV) or are openly shared by media owners and widely available in the industry because the key trading mechanism of Station Average Price demands that revenues be known. Therefore, the industry is able to produce a breakdown of monthly station prices by target audience by key TV media owner.

4.3 With regard to relative pricing, and specifically whether an advertiser is getting a competitive price from a particular media owner or channel, the advertiser (and/or its agency) is already in a position to compare a price offered to the SAP, and respond accordingly. Furthermore, they are also able to, and commonly do, employ the services of a third party auditor, for example Billetts. These auditors have a roster of advertisers on their books across a range of media agencies and compare the pricing that an advertiser is getting with the pricing achieved by other advertisers buying the same target audience. It is estimated that these media auditors cover 80%+ of advertisers' spend in the market.

4.4 On the question of whether an advertiser is getting a competitive price within an agency, an auditor can also provide the necessary analysis to enable it to reach a clear view. Furthermore, the advertiser always has the option to pitch its business to other media agencies, as witnessed by the continuing level of competition (20+ agencies), and the number of media pitches each year.

4.5 Finally, advertisers can, and do, opt out of an agency's umbrella deal and instead develop their own standalone deals. For example, P&G, Unilever, Reckitts and some agencies (OMD, Arena, Walker) will do advertiser by advertiser deals. This said, if advertisers believe that agency umbrella deals are against their interests, it is hard to see for example why the trading group model has evolved in the market to the extent where Group M has around a third of the market – rather than more advertisers seeking to establish their own stand-alone deals.

5 Bundling

5.1 Viacom agrees with Ofcom that the bundling of airtime *per se* doesn't present any specific issues for the advertising market, whether in the form of bundling a channel's impacts across a day, or a media owner's channels across an advertiser's campaign.

5.2 Given that the UK TV market currently transmits over 35 million spots per year across 250+ channels, the bundling of airtime is in fact an essential feature of the market, and in general an accepted and very effective means of ensuring the efficient use of airtime. It is Viacom's experience that impacts are bundled relative to the target audience that advertisers are targeting, and advertisers will not tolerate the inefficient bundling by media owners for their own benefit, unless they are subject to other business pressures. The above comments concerning transparency are clearly relevant to this point.

5.3 Bundling also allows all advertisers to access the day-parts they want, especially peak times. There is a danger of unbundling peak and off-peak times in that the price of premium peak spots may rise to an extent that not all advertisers would be able to afford access to them.

5.4 The consultation paper suggests that the bundling of airtime might inhibit an agency or advertiser from switching expenditure between broadcasters. In relation to the switching between broadcasters within a particular sales house, for example Sky Media which represents a range of broadcasters, then it would be unlikely to prevent this given that it would most likely wish to please its client by providing the most relevant target audience.

5.5 If Ofcom's concerns relate more to the switching of advertising between broadcasters represented by different sales houses, then it is not bundling *per se* that would prevent this but the scale of the sales house and the leverage that it may be able to exert over the media buyer or advertiser. In this context, therefore, CRR remains an essential intervention which reduces ITV's ability to acquire and deploy such leverage in its negotiations with advertising buyers.

6 Innovation

6.1 The consultation paper observes that the way in which TV advertising is planned and sold has not been subject to the same degree of change as the means by which content is distributed and consumed.[3] While this may well be true to a certain extent, given the widespread and rapid uptake of new digital technologies, Viacom believes that the trading model has remained relatively unchanged precisely because the majority of the money that advertisers opt to spend on TV advertising is for the traditional 30" TV advert, which is a creative decision taken by the advertiser and creative agency, not the media agency.

6.2 This is not to say, however, that there has been no change. There is innovation in trading all the time as broadcasters adapt to new media consumption patterns and expand their offerings into sponsorships, promotional advertising, online, mobile, video, product placement and '360 deals', all of which become integrated in the contracts that broadcasters sign with advertisers and agencies.

[3] Section 6.66, Ofcom consultation

6.3 Rather than inhibiting innovation, there is a strong argument to be made that the stability and efficiency of the current trading model, combined with the important protections afforded by CRR, had enabled risk taking and investment in new forms of advertising technology.

6.4 Viacom therefore believes that, rather than making a reference to address questions of transparency, Ofcom's primary concern should be to ensure that current competition controls such as CRR remain in place to allow advertisers and agencies to move revenues out of ITV when good business reasons dictate without commercial retaliation, and to ensure that the bundling of airtime only occurs in response to legitimate demand from media buyers and advertisers.

For further information regarding this submission please contact Philip Jenner, VP Government Relations Europe at Viacom.

VIACOM
UNITED KINGDOM HOUSE
180 OXFORD STREET
LONDON
W1D 1DS

T: +44 (0)20 7478 6345
M: +44 (0)7979 954 973
E: philip.jenner@viacom.com