

Additional Comments

Majestic Tv is licensed by Ofcom and operates the television channel Psychic Tv which is channel number 886 on Sky television and is a dedicated PTV channel.

Psychic TV is a 24-hour a day Live Psychic programme in the specialist section of the Sky EPG but is also rebroadcast extensively on other channels including those within the Lifestyle, Movie and Teleshopping sections of the Sky EPG.

We believe Ofcom's impact assessment has failed to understand the critically important relationship in terms of service profitability and therefore continued viability, that exists between the dedicated Psychic PTV broadcasts and other broadcasters who simulcast the shows. The non-dedicated PTV broadcasters are for the best part dependent upon advertising revenues, and therefore not wholly reliant on the income they derive from simulcasts. The reverse is not true. The continued operation of the dedicated Psychic PTV broadcasters is dependent on the ability to work with other non-PTV broadcasters.

It seems clear that Ofcom have not appreciated this issue. There is no evidence in the impact assessment to suggest that Ofcom have carried out a sufficiently detailed analysis of the impact that restricting the distribution and promotion of Psychic content would have on the non-PTV broadcasters and more particularly the dedicated Psychic PTV broadcasters.

The reorganisation of the Sky EPG (some 4 years ago) and its current structure is based purely on a commercial decision by Sky. It was not an Ofcom or legal requirement. Beyond granting an EPG license to Sky there is no history of Ofcom being responsible for mandating the generic organization of channels in the Sky EPG or any other platform including Virgin and more significantly Freeview.

We believe Ofcom should limit their regulatory activity to the requirements set down in The Audiovisual Media Services Directive (89/552/EEC amended by 97/36/EC and 2007/65/EC). Article 19 makes clear that the requirement for television advertising and teleshopping to be kept quite distinct from other parts of the programme is to be "without prejudice" to the use of "new advertising techniques". Participation Television is innovatory and given its reclassification as teleshopping, clearly falls to be seen as a pioneering example of a new advertising technique. We believe that in their current form, Ofcom's proposals are prejudicial to the overwhelming majority of stakeholders. We expand further on our reasoning below.

Ofcom invites responses from stakeholders, particularly on the following questions:

Question 1:

a) Do you agree with Ofcom's assessment of those stakeholders likely to be affected by changes to the regulatory framework for Adult Chat and Psychic PTV services?

We consider the Summary of relevant stakeholders set out in paragraph 6.67 of the consultation to be reasonably accurate.

However, we would make the following additional comments:

1. We agree that there are a limited number of Psychic PTV broadcasters. Whilst there may, as at September 2009, have been only two dedicated Psychic PTV channels, this substantially understates the number of broadcasters and other “relevant stakeholders” (as referred to in paragraph 6.67 of the consultation) who will be majorly affected since the reference to only two dedicated Psychic PTV channels excludes other channels in the general entertainment section of the EPG with whom there are simulcast arrangements in place.

The consultation document explains at paragraph 6.39 that Ofcom’s overview has “also been informed by information provided by the industry to Ofcom in response to information requests conducted in the course of the project”. What Ofcom did not investigate was the extent to which the profitability and therefore continued existence of the dedicated Psychic TV channels is critically reliant on the ability to have broadcasters in the general entertainment section of the EPG simulcast PTV. For this reason the overview is fundamentally flawed.

If the dedicated Psychic PTV broadcasters are unable to simulcast with other non dedicated Psychic PTV channels it is our view that they will no longer be financially viable and therefore have to cease broadcasting. Both the primary broadcaster, the channel carrying the simulcast and other dependent stakeholders, will suffer significant revenue loss. The value chain is reliant on valuable and important fee based /revenue share based commercial arrangements between the dedicated Psychic PTV broadcasters **and non-PTV broadcasters.**

2. Ofcom have a statutory duty to ensure that in performing its duties it does so in a manner that is proportionate and targeted only at cases in which action is needed. We would submit that the wording of the proposed additional rule on psychic practices in the Advertising Code (to be added to rule 15.5), is unnecessarily restrictive and disproportionate. We expand further on this observation below.

b) Do you agree with our understanding of the industry and operators?

Please see our response to Question 1a).

Question 2:

Do you agree with our analysis of the options available for regulation of the promotion of premium rate services of a sexual nature, and

a) that on the basis of options, a change to the existing rules appears merited?

b) of the options presented, Option 4 meets the regulatory duties and suggests least potential impact on stakeholders?

c) that the scheduling restrictions of 9pm to 5.30am and requirements for labelling and EPG position under option 4 offer appropriate protection for viewers?

Question 3:

Do you agree with our analysis of the options available for regulation of the promotion of live personal psychic services, and

a) on the basis of the options, that a change to the existing rules appears merited?

[We agree that a change to the existing rules is merited.](#)

b) of the options presented, Option 4 meets the regulatory duties and suggests least potential impact on stakeholders?

[Whilst of the Options presented, we are broadly supportive of Option 4, we believe that the proposed labeling and positioning rules are incompatible with Ofcom's regulatory duties, summarized at paragraph 7.29 to be:](#)

- [1. Consumer and viewer protection;](#)
- [2. Ensuring the freedom, availability and competition of different audio-visual services;](#)
- [3. Regulation should be appropriate and proportionate to these objectives.](#)

[As indicated in our response to Question 1a\), we believe Ofcom have failed to understand the critically important relationship in terms of service profitability and therefore continued viability, that exists between the dedicated Psychic PTV broadcasters and other broadcasters who simulcast. The non-dedicated PTV broadcasters being for the best part dependent upon advertising revenues, and therefore are not wholly reliant on the income they derive from simulcasts. The reverse is not true. The continued operation of the dedicated Psychic PTV broadcasters is dependent on the ability to work with other non-PTV broadcasters.](#)

c) that the restriction of promotion to specific live personal psychic services and the requirements for labelling and EPG position provide appropriate protection for viewers?

We support measures which afford viewers appropriate protection. It is noteworthy that the BCAP Code in its existing form contains numerous protections for children and the more vulnerable members of our society.

We do not feel that it is appropriate to introduce changes the effect of which will be to close down dedicated Psychic PTV as a broadcast genre on UK television. This will deprive viewers and consumers of choice and is a wholly disproportionate measure. **Nor do we believe this is the intention of Ofcom or those participating in the Essential Research.**

We have explained in our response to Questions 1a) and 3b) that we believe Ofcom have failed to appreciate the significance to the Psychic PTV broadcasters of being able to simulcast with Non-PTV broadcasters.

It is similarly not apparent that Essential understood this significance since if they did it ought surely to have been pointed out to the participants in their research.

The Essential Research findings explain “most did not object per se to the promotion of psychic premium rate telephone services: in the right place and at the right time, promotion on television could be considered acceptable”.

The principles underpinning this view are expressed to be:

- a. Control - over choice of exposure to the product for self and others (in particular children)
- b. Containment – keeping such promotions away from mainstream audiences.

The over-arching conclusion was that “Despite negative views towards the product, most participants supported a continuation of long form promotion of this product on television”.

It would not have been apparent to the participants that the continued existence of the dedicated Psychic PTV broadcasters was dependent on their ability to have Non-PTV broadcasters simulcast their output.

Since participants lacked this critical awareness it follows that the same did not feature in their consideration of possible restrictions which restrictions, in isolation, would tend to support Ofcom’s current proposal regarding Option 4.

In determining the appropriate protection for viewers, we believe it is relevant to consider how representative the participants in the Essential Research were of the UK adult population as a whole. We feel it is incumbent on Ofcom to have regard to the very small number of participants and their apparent lack of interest in Psychic premium rate telephone services when considering how best to discharge Ofcom’s regulatory duties, summarized at paragraph 7.29 to be:

1. Consumer and viewer protection;
2. Ensuring the freedom, availability and competition of different audio-visual services;
3. Regulation should be appropriate and proportionate to these objectives.

The Essential Research findings in respect to Psychic services are based on a very small sample group (113 participants). Whilst around two thirds were aware of psychic TV channels only one in five participants claimed to have viewed a psychic channel and a far smaller proportion still (around one in fifty) claimed to have ever called or texted a Psychic TV premium rate service.

Whether the small sample group can be regarded as representative of UK viewers must be questionable. The sample group appears to have been far too small and by their own admission, either not interested in or not familiar with Psychic PTV.

The fact that UK viewers are far more familiar with Psychic PTV than the Essential Research would suggest is evident at paragraph 6.61 of the consultation document which explains that:

“The online quantitative research commissioned by Ofcom for the 2007 consultation suggested that Psychic TV was regularly viewed by 3% of all television viewers, and 1% of all television viewers had called a Psychic PTV channel”

It is clear that since the number of respondents, their awareness, interest in and experience of, Psychic services/Psychic premium rate services was so small and sparse, it would be inappropriate were Ofcom to introduce, without qualification, a rule change based on the responses given by a partially informed, non-representative, sample group.

We believe the proposed addition to rule 15.5 goes beyond that which is necessary in order to protect viewers.

Viewers want clear labeling and control. That can be readily achieved by the existing platforms and technology. They also want choice and that will be removed if the current wording is implemented without change.

The proposed addition to rule 15.5 will not only remove choice. It will reflect a failure to balance the interests of viewers with the legitimate interests of the other four stakeholder categories identified by Ofcom at paragraph 6.67 of the consultation. Ofcom should balance the interests of all stakeholders and we do not feel this is achieved by the proposed addition to rule 15.5.

In our response to Question 4 (b) we comment on the proposed wording to be added to Rule 15.5 of the Advertising Code.

Question 4:

- a) Do you agree with the principles identified for changes to the Advertising Code

rules on promotion of PRS of a sexual nature (rule 11.1.2) and psychic practices (rule 15.5)?

We are supportive of changes which are proportionate and appropriate.

We would observe that throughout the consultation there appears to be an over-emphasis on reference to PRS as a payment mechanism for Psychic PTV products and services (see for example paragraph 7.37 of the consultation document. Payment mechanisms should be driven by market forces and available technologies. Subject to appropriate safeguards, we do not favour any regulatory restrictions regarding the manner in which consumers can pay for products and services. However, we note that in paragraph 3.23 Ofcom make clear that channels broadcasting as teleshopping, because they are subject to the Advertising Code, will not be subject to any constraints regarding the method payment. On this basis we would not propose to make any specific amendment to enshrine this very important point.

We believe however that in relation to rule 15.5.2 the proposed scheduling restrictions are excessive.

We believe that there is a possible conflict between Rule 15.5 and the proposed addition to rule 15.5. The former permits television advertisements which promote services that “would obviously be applicable to *a large section* of the population”. Rule 15.5.2 focuses on advertisements that represent a more niche form of entertainment appealing to a more limited but nevertheless significant, section of the population.

We believe that the scope for conflict between provisions of the Code can be avoided if a new provision is included whereby in the event of a conflict between Rule 15.5.2 and any other Rule of the Code, the provisions of Rule 15.5.2 shall apply.

We believe the use of the word “derivative” in Rule 15.5.2 requires clarification since the objective of good drafting must be to avoid future scope for uncertainty. We would ask that Ofcom clarify their intentions in this respect and permit further comment on the same before any final decision is taken on the wording.

We agree that clear labeling is desirable to ensure transparency and to avoid causing offence.

We believe this can be achieved using the existing platforms and technologies coupled with an amendment to the proposed addition to rule 15.5 (see below). In particular, we cannot see that it is appropriate to introduce a rule change which would disproportionately and negatively affect the majority of stakeholders. There is no reasonable justification for prohibiting broadcasters from simulcasting Psychic PTV or promoting such services on Freeview. Such prohibitions would, in our view, bring an end to Psychic PTV as a broadcast genre for UK viewers and consumers.

We believe that the appropriate way forward is that channels carrying long form promotion of Psychic PTV services should be clearly labeled. This would conform with

the requirement of Article 19 of the The Audiovisual Media Services Directive (89/552/EEC amended by 97/36/EC and 2007/65/EC provides that “television advertising and teleshopping shall be readily recognizable and distinguishable from editorial content. That Article does not require that “new advertising techniques” – which we believe participation PTV to be – should be prejudiced by this requirement. It merely requires that “television advertising and teleshopping shall be kept quite distinct from other parts of the programme by optical and/or acoustic and/or spatial means”.

Ofcom acknowledge in paragraph 3.49 page 20 that “on the risk of harm, there is no evidence that would suggest widespread harm to legitimate consumers from the use of PRS of a sexual nature or most types of psychic PRS. Consumers of these services are self-selecting and able to exercise their choice, with existing rules in place operated by PhonepayPlus to control the risk of harm from use of the products”.

Given the foregoing factors, we feel that the addition to rule 15.5 should be one which:

- a. protects viewers from offence by requiring clear labelling;
- b. permits freedom of choice for viewers and consumers;
- c. promotes enterprise and innovative technologies as well as the legitimate business interests of affected stakeholders;
- d. does not seek to introduce requirements over and above those required by law.

b) Do you agree with the wording of the proposed rules? If not, please suggest alternative wording.

Having regard to our comments, we would suggest the following alternative wording:

“Proposal for addition to rule on psychic practices in the Advertising Code (to be added to rule 15.5)

Rule 15.4

Television advertisements must not promote psychic practices or practices related to the occult, except those permitted by rule 15.5. Radio advertisements may promote psychic and occult practices but must not make efficacy claims.

Psychic and occult-related practices include ouija, satanism, casting of spells, palmistry, attempts to contact the dead, divination, clairvoyance, clairaudience, the invocation of spirits or demons and exorcism.

Rule 15.5 – Television only

Television advertisements may promote services that the audience is likely to regard merely as entertainment and that offer generalised advice that would obviously be applicable to a large section of the population, for example, typical newspaper horoscopes.

Rule 15.5.1

Advertisements may promote a pre-recorded tarot-based prediction service if:

15.5.1.a the service includes no content that respondents might feel to be threatening and

15.5.1.b both the advertisement and the service state clearly that the service is pre-recorded and qualify references to “tarot” to make clear that the predictions are not based on live readings.

15.5.2

Advertisements for personalised and live services that rely on belief in astrology, horoscopes, tarot and [derivative] practices are acceptable only on channels that are appropriately positioned and labeled in a manner that enables viewers and consumers to readily recognize the nature of the product or service. Both the advertisement and the product or service itself must state that the product or service is for entertainment purposes only. In the event of there being a conflict between the provisions of this Rule 15.5.2 and any other Rule of this Code the provisions of this Rule 15.5.2 shall apply.

15.5.3

Advertising permitted under rule 15.5 may not:

- Make claims for efficacy or accuracy;
- Predict negative experiences or specific events;
- Offer life-changing advice directed at individuals – including advice related to health (including pregnancy) or financial situation;
- Appeal particularly to children;
- Encourage excessive use.”