

Participation TV

Rules on the promotion of premium rate services

An Ofcom Statement and Consultation

MX Telecom Response

Introduction

MX Telecom has almost ten years experience in what has been classified in section 6.42 of the Consultation Document as the provision of transaction network and PRS facilities. These services are utilised by a wide variety of businesses, including, significantly, to facilitate Participation TV services. MX Telecom has provided responses to the first two Consultations on Participation TV and welcomes this opportunity from Ofcom to provide our insights on how best to incorporate proportionate consumer protection mechanisms into The Advertising Code, where certain Participation TV services have been deemed to constitute advertising rather than editorial.

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?***

MX Telecom agrees with the listing provided at section 6.67 of those likely to be affected by changes to the regulatory framework for Adult Chat and Psychic PTV services.

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

In line with the response to 1a), we agree with Ofcom's understanding of the component parts of this industry. Whilst this commonality exists in terms of general headings, there is a significant difference between Adult Chat and Psychic PTV services in respect of the importance of each constituent of the value chain.

This is not a distinction which is drawn out by the question, or made clear elsewhere in the Consultation. In particular, Psychic TV Broadcasters are heavily reliant on having simulcast arrangements in place with other non-dedicated channels in the general entertainment section of the EPG. This is of relevance for determining the proportionality of the proposal to limit Psychic TV teleshopping services to the Specialist section of the EPG, as it would have an extremely damaging effect on the

revenue that such services could generate. This implication was not put to the discussion groups in order for them to arrive at a proportionate view of whether the possibility of making the provision of Psychic TV channels economically unviable was justified when balanced against the need to restrict the provision of all psychic services to the Specialist section of the EPG.

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 5.30pm and requirements for labeling and EPG position under option 4 offer appropriate protection for viewers?***

We agree that a change to the existing rules is merited and that Option 4 achieves the best balance between meeting regulatory duties and having least potential impact on stakeholders. The scheduling and labeling requirements are also reasonable, however the requirement for such services to be restricted to the adult range of the EPG, thereby barring the provision of such services on Freeview, is not technologically neutral, nor is it necessary to achieve the stated aim of ensuring exposure to such programming is appropriate. Research undertaken by the Association for Interactive Media and Entertainment (AIME) demonstrates that access controls are in place for the majority of Freeview boxes (90% in the AIME research). Given the scheduling and labeling requirements, the widespread availability of parental control and the lack of technological neutrality this would foster, we would argue that the requirement for a determined EPG position represents a disproportionate and unjustified requirement.

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?***
- b) of the options presented, Option 4 meets the regulatory duties and suggests least potential impact on stakeholders?***
- c) that the restriction of promotion to specific live personal psychic services and the requirements for labeling and EPG position provide appropriate protection for consumers?***

We also agree that a change to the existing rules for live personal psychic services is merited and are in favour of a less restrictive version of Option 4.

Whilst the changes to the Broadcast Code and Advertising Code will have significance, we should bear in mind that these services are operating today and have been in existence for a number of years. As a result, Ofcom should have significant complaint information to call upon in respect of viewer attitudes to appropriateness and exposure, should these views have been expressed. The feedback from consumers and others that has been received by Ofcom over the last several years must therefore be given valid weight, versus the views of a consumer group, of which approximately only 22 people were aware of what constituted Psychic PRS.

More so than sexual entertainment services, the labeling requirements constitute a measure sufficient to ensure consumers are aware of the nature of the service and the fact that such services are for entertainment purposes only, as the risks associated with exposure to Psychic Entertainment services are much lower. The prevalence of Psychic entertainment services in non-restricted forms of media such as daily national newspapers indicate a general acceptance of this form of entertainment and the concomitant lack of associated risk. A proportionate response must therefore be adopted, which does not unduly restrict access to Psychic entertainment services by placing them on the Specialist range of the EPG only, and which does not therefore expose broadcasters to the likely conclusion of having to cease such operations. Similar arguments relating to the availability of access controls on Freeview apply equally here as in Answer 3.

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)?***

To the extent that rule 15.5 precludes Psychic entertainment services via simulcast and Freeview due to being outside of the Specialist range, whilst not meeting the requirements of being targeted and proportionate as detailed in Answer 3, we strongly disagree with the principles identified.

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

Rule 15.5.2 should be modified as follows:

Advertisements for personalised and live services that rely on belief in astrology, horoscopes, tarot and derivative practices are acceptable only on channels and between programming that is contextually consistent and similar and where clearly and appropriately labeled. Both the advertisement and the product or service itself must state the product or service is for entertainment purposes only.

Summary

Whilst this Consultation is specifically interested in how to implement conclusions that have already been reached, two key factors need further consideration and assessment prior to the new Advertising Code requirements being arrived at and to ensure regulation proportionate to risk:

1. The need for Technological Neutrality

By stipulating Sky versus Freeview and Premium SMS rather than any other payment mechanism for participation in editorial, the principle of technological neutrality is being undermined. In neither case is there a compelling justification overriding the need to adhere to this principle.

2. Consumer attitudes to Psychic TV Services and Proportionality

It is suggested that the consumer research undertaken was not extensive enough to arrive at meaningful conclusions about general, contemporary consumer views regarding mainstream Psychic TV Services. The current proposals would have the effect of making the continued provision of Psychic services untenable by virtue of access being overly restricted and inconsistent with the associated risks and consumer attitudes toward such form of entertainment.