



**SBS Broadcasting Networks Ltd  
Member of ProSiebenSat.1 Media Group**

**Submission to the  
Ofcom Consultation on the revision of television advertising and teleshopping regulation  
Stage Two**

**11. December 2008**

SBS Broadcasting Networks Limited operates 8 channels from the UK. The channels are broadcast throughout Scandinavia. SBS is member of the ProSiebenSat.1 Media Group. The ProSiebenSat.1 Group broadcasts 26 commercial TV stations, 24 premium Pay TV channels and 22 radio networks in 13 European countries and consequently is one of Europe's leading pan-European broadcasting groups.

As a result of our pan European broadcast experience, we support almost all of the proposals put forward by Ofcom in its review of the television advertising and teleshopping rules. Almost universally the changes suggested by Ofcom are both sensible and timely. They reflect the liberalisation and simplification of the advertising rules adopted at a European level as part of the Audiovisual Media Services Directive ("AVMS Directive"). However, we are concerned that in certain key areas (such as the revision of the break rules) Ofcom is contemplating a more restrictive approach that we consider is neither appropriate nor necessary.

As stated in the AVMS Directive as well as in the consultation document, the media landscape has considerably changed since the last revision of the rules on overall amount of advertising. With PVR, online VoD and a much greater variety of programmes to choose from, the former model of a more passive use of media is rapidly changing towards more active usage patterns and more control of the viewer/user over the content he chooses. Viewers are making use of their choice in the digital environment and their ability to use this freedom by switching channels or switching off. The success of the BBC iplayer is but one example of the phenomenon.

We therefore believe that there is less need for an external control about the amount of advertising as viewers have the increasing ability to influence how and when broadcasters use new advertising techniques. Viewers will accept those advertising measures that are suitable for specific genres and will effectively use their remote control to avoid channels which schedule too much advertising or use advertising techniques that interfere too strongly with their viewing experience.

**Question 1: Which option (or variation of an option) for regulating the overall amount of advertising permitted on television channels do you prefer, and why? Do you agree that any rule changes that might result in a significant change to the number of commercial impacts should not come into force before 1 January 2010?**

Due to the above mentioned changes in the media landscape and the enlarged choice of consumers, we would suggest allowing non-psb channels to broadcast up to the maximum permitted by the AVMS Directive (i.e. 12 Min/h) (Variation of both Option 1 and 2). While national regulators can choose to restrict advertising on psb channels to offer viewers the possibility to choose for an area with less or no

advertising, we don't believe that it is still necessary to restrict the overall amount of advertising on non-psb channels more than in the AVMS Directive.

In an increasingly competitive and crowded television market, the adoption of such a measure may only achieve in forcing certain channels off the air and serve only to restrict viewer choice.

**Question 4: Which option (or variation of an option) for regulating the number of advertising breaks do you favour, and why? Do you agree that any changes should come into effect shortly after Ofcom publishes its conclusions?**

In our view, the existing and ever increasing competition amongst broadcasters (especially from the powerful public service broadcasters and their satellite channels) alone means that there is unlikely to be an abuse of the scheduling of advertising breaks as trailed by Ofcom in its consultation document. Ofcom's fear that broadcasters would revert to American-type scheduling of advertising, we still believe is unjustified. In our view, the adoption of such scheduling would have an immediate and deleterious effect on the audience shares that are critical for our revenues. Advertising is still the primary source of revenues for our channels. The adoption of any break pattern that would harm our audience share is simply not in our commercial interest where advertising revenues still amount to over 80 % of our total revenues.

The reach of advertising spots or breaks depends on how satisfied the viewers are both with the program and the spots themselves and with the break pattern. We are constantly looking at our scheduling to find the best way to optimise break patterns so that we minimise to the greatest extent viewers switching channels during a break. Our in-house research departments analyse in great detail how the audience share changes during a break. This information is complemented by studies on the viewer's reaction to specific break patterns or advertisements. The dynamic of audience shares is one of the key elements for TV broadcasters to evaluate where an ad break can best be placed. The aim is to find the delicate balance between the interests of the viewers and those of the advertisers. A good viewing experience is of major importance for the success of our programs and the effectiveness of the advertising that is shown on our channels.

As stated above, the viewer uses its enlarged choice in the digital environment and the remote control is a strong regulator of all television services. Therefore we do not believe that other than certain channels which attract large audiences (the UK psbs and in the multi-platform environment, ITV 2, 3, and 4 and Sky One, etc) non-psb channels will have the ability to schedule advertising breaks to the detriment of the viewers without harming themselves.

We would like to underline again that even copyright holders (the programme distributors and producers) may well impose restrictions when advertising breaks can be scheduled. Such programme copyright holders aim to ensure that the integrity of their programmes is not distorted; for example, all the Hollywood studios are very keen to protect the integrity of their programmes when they are licensed to third parties and insert appropriate contractual protections.

Whilst Ofcom takes the view that Internet and television are currently separate advertising markets, we assume that the rules that are being promulgated will be in force for a significant period of time. Markets change, as do viewers' viewing habits. Even since the adoption of the AVMS last year, the shift of investments from television to online advertising has become more important, confronting broadcasters with an ever increasing competition for advertising revenues. Whilst the interest of broadcasters to sustain the attractiveness of television advertising in order to secure the commercial impacts. For these reasons we believe that it is of major importance that the rules should be as flexible as possible so as to meet the challenges of the future as well as the present. We do not agree with the estimated benefits to broadcasters as calculated by Ofcom but would expect a more flexible break pattern to allow broadcasters to use that flexibility with a great deal of care in those genres that viewers would accept more frequent breaks in but not in others. It is the flexibility that is key in this respect. The abolishment of the 20 min rule in the AVMS is meant to provide broadcasters with that greater flexibility both in terms of placement of the advertising during a programme and the amount of breaks.

As many other Member States that are currently implementing the AVMS have simply abolished the 20 min rule without any restriction to the number of breaks, all UK licensed programs will be suffering from a competitive disadvantage. Such action should only be taken by Ofcom cautiously and where the perceived consumer benefit is overwhelming. This is especially important for broadcasting services that are distributed into other markets.

We would therefore favour Option 2 of the Ofcom proposal leading to more breaks in programmes of 60 min or more. We would also favour an immediate implementation of these new rules after the publication of Ofcom's statement.

**Question 5: Do you support or oppose the idea of allowing more frequent breaks in programmes of autonomous parts? Please explain your reasons. Do you agree that any changes should come into effect shortly after Ofcom publishes its conclusions?**

For the reasons already explained under question 4, we would clearly support the idea of allowing more frequent breaks in programmes of autonomous parts. It specifically favours special interest channels such as music channels but would also help the financing of magazine-type programmes on larger channels. We do not believe that introducing this flexibility will automatically increase the amount of breaks scheduled in longer programmes. In our view, there would not be enough incentive for broadcasters to change programmes which have attracted a loyal audience in order only to artificially create autonomous parts and so take the advantage of the option for more frequent breaks. As the overall amount of advertising that can be used will continue to be limited, broadcasters will only be able to use this element of greater flexibility in certain genres but not across the whole schedule.

We would also favour a immediate implementation of these new rules after the publication of Ofcom's statement.

**Question 7: Which option or options for regulating teleshopping do you favour, and why? Do you agree that any changes should come into effect shortly after Ofcom publishes its conclusions?**

We strongly support the adoption of Option 3. As stated by Ofcom, Option 3 would make it easier for non-PSB channels to contribute to a wide range of high quality television services by allowing them to generate additional income from periods in the schedule when spot advertising is not commercially valuable. This is ever more important considering that certain transactional services that have been broadcast as the editorial programming alongside the 3 hours of teleshopping windows may be re-classified as teleshopping, thereby diminishing the opportunities to broadcast teleshopping windows. We consider that Option 3 avoids both the maintenance of unnecessary regulation and will promote competition in the broadcasting market.

As Ofcom is aware, the European legislators agreed to a full liberalisation of the daily restriction for teleshopping windows as part of the AVMS Directive in order to provide specifically non-psb broadcasters with important additional revenues that are needed to sustain high quality television services through income that is not derived from advertising. It is now so axiomatic that broadcasters have to diversify their revenues to supplement the declining advertising spot market.

The fact that the adoption of this policy may be potentially harmful to dedicated teleshopping channels if non-public service broadcasters develop their own home shopping services is not, in our view, a valid or compelling reason not to implement Option 3.

In addition to the benefits identified by Ofcom, we consider that the adoption of Option 3 for non-public service broadcasting channels will give those channels the opportunity to raise additional revenues during the day parts of the broadcasting day which attract light viewing (traditionally mornings and late night). For smaller multi-platform channels, the broadcast of spot advertising at these times is likely only to deliver marginal revenues. Therefore, the ability to broadcast home shopping and transactional services may be vital to non-psb channels that are mostly depending on the declining classical advertising. The additional

revenues are likely to assist the ability of non-psb channels to invest further in prime time editorial content which appeals to the channel's core audience and can be scheduled at a more appropriate part of the broadcast day.

In the increasingly competitive television environment that we all now inhabit and with consumers having such a wide choice of platforms upon which to access audio-visual content of their choosing, we believe that regulators such as Ofcom should not unnecessarily constrain broadcasters in the adoption of commercial strategies which may be in their best interest.

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