

Ofcom Review of TV Advertising and Teleshopping Regulation – Stage 2

Response from Viacom, 11th December 2008

Introduction

Viacom is pleased to submit its comments on the options outlined in Ofcom's consultation on its review of TV Advertising and Teleshopping Regulation – Stage 2.

Viacom, consisting of BET Networks, MTV Networks and Paramount Pictures, is the world's leading entertainment content company. It engages audiences on television, film and digital platforms through many of the world's best known entertainment brands, including MTV, VH1, CMT, Logo, Rock Band, Nickelodeon, Noggin, Nick at Nite, AddictingGames, Neopets, Comedy Central, Spike TV, TV Land, Atom, Gametrailers, BET, Paramount Pictures, DreamWorks Pictures and Paramount Vantage.

Viacom's global reach includes approximately 160 channels and 340 online properties in 160 countries and territories. In the UK Viacom represents 20 channels from MTV, VH1, TMF, Paramount Comedy, Nickelodeon and BET.

The PSB and CRR reviews

Viacom notes that the OFT is still considering its recommendation on the Contract Rights Renewal (CRR) mechanism, and Ofcom has yet to conclude its PSB review, which will then be considered by Government before recommendations are put to Parliament. We understand that these processes form the core of the discussion on the future funding of PSB in the UK, and will ultimately determine how much additional funding – if any – should be received by ITV, Channel 4, Five or other non-PSB broadcasters.

This consultation, however, clearly recognises that certain mooted changes to the amount of advertising that can be shown on the commercial PSB channels, or at peak time on those channels, will significantly increase their share of impacts and cause large amounts of advertising spend to move to them and away from non-PSB channels. By definition, this is a material factor to be taken into account in the wider CRR and PSB reviews, given that presumably any increase in funding for commercial PSB channels from one source should lessen the need for additional funding from another source.

Given this, it is of particular concern that Ofcom's PSB Phase 2 consultation paper¹ indicates that '*...it is unlikely that changes to advertising minutage will represent a source of further funding for public service broadcasting in the*

¹Sections 6.49 and 6.50, Ofcom's Second Public Service Broadcasting Review, Phase 2

short term...while [Ofcom] may consult on a range of limited changes to the rules on the number of advertising breaks and the distribution of advertising over some time periods, it is unlikely that these will have a significant impact on the public service or commercial broadcasters.' This suggests significant disconnect between the predictions of this consultation and those of the wider reviews, which Ofcom should take steps to address.

Furthermore, Ofcom also needs to take into account that any increase in ITV impacts is likely to neutralise any of the competitive protections so far afforded to advertisers through the CRR mechanism, given that an increase in ITV's impacts would allow it to demand increases in advertisers' Shares of Broadcast (SOB). While we recognise that CRR entitles ITV to a higher SOB on the basis of higher impacts achieved, we believe this performance should be the result of improvements in programming quality, rather than changes in regulation.

We therefore question the timing of this consultation, given the on-going reviews of CRR and PSB funding, and wonder why it could not have taken place in parallel to these. Instead, it appears that regulatory decisions may be taken which impact directly on PSB funding, without any sense of the wider funding context. Rather than setting a specific date of introduction, such as 1st January 2010, therefore, it would seem more appropriate to hold back on setting a specific date until full account has been taken of the PSB and CRR review outcomes.

For the above reasons, Viacom does not believe that it is appropriate or possible for Ofcom to weigh the 'positive' programme investment implications that changes in the advertising rules would bring for commercial PSBs, against other 'negative' implications for viewers and non-PSBs. In particular, we question how it is possible to identify the relative value of additional revenue for the commercial PSBs when it is still unclear how much revenue they may be receiving in future.

Impact on the non-PSB sector

Viacom also urges Ofcom to take careful account of the very significant impact that the predicted transfers in advertising spend to commercial PSB channels would have on the non-PSB sector, which has already had to absorb the impact of the downturn in the UK TV advertising market, HFSS food and drink advertising restrictions, and the tightening economic recession.

Just last week Viacom announced 850 job losses across its business portfolio, including at MTV. Reductions in advertising revenue is likely to lead to further job losses and reductions in programming investment in the UK.

The overall amount of advertising on TV channels

Q1 Which option (or variation of an option) for regulating the overall amount of advertising permitted on TV channels do you prefer and why? Do you agree that any changes that might result in a significant change to the number of commercial impacts should not come into force before 1 January 2010?

Viacom supports Option 1: the status quo. As noted by Ofcom, the results of its own research indicates that viewers are generally tolerant of current levels of advertising², and broadcasters and advertisers have indicated on balance that they would prefer this outcome.

Levelling up, as outlined in Option 2, would lead to a substantial increase in commercial PSBs' share of commercial impacts, and a significant transfer of revenue from non-PSB to commercial PSB channels – specifically a £69m increase in advertising revenue for the commercial PSBs, and a loss of £46m for non-PSBs. Furthermore, as Ofcom notes, the option would lead to additional levels of advertising on the commercial PSB channels late at night and in daytime. Given the large reach and viewing shares achieved by ITV and the other commercial PSBs during these times, Viacom questions Ofcom's conclusion that 'relatively few viewers would be affected'.

As noted in Viacom's letter to Kate Stross on 30th June 2008, the arguments against levelling down (Option 3, reducing non-PSBs to an average of 7 minutes per hour daily) are already widely understood. While some commercial PSBs may argue for equal treatment, advertising on their channels has historically been regulated more tightly than that on non-PSB channels given their public service obligations and viewers expectations, and while these privileges and obligations continue there continues to be a justification for the different treatment.

In addition, there is no clear policy reason for reducing the amount of advertising on non-PSB channels, given that they have run their businesses successfully on this basis for 17 years with relatively little complaint or protest from customers, and in competition with the BBC's channels which carry no advertising at all.

Viacom also believes that the levelling down option would have a far greater detrimental impact on non-PSBs than stated by Ofcom's own analysis which predicts a loss of £34m to non-PSBs and a gain of £33m to the commercial PSBs.³

² Section 3.12, p. 11, consultation paper

³ Table 1, p.17, consultation paper.

The recent report commissioned by the Satellite and Cable Broadcasters' Group (SCBG) from Oliver & Ohlbaum Associates⁴, instead predicts an £80m fall in non-PSB advertising revenues, with a £34m increase in commercial PSB advertising revenues.

This report, however, uses an economic model established prior to the introduction of CRR, and does not reflect the more mechanistic and direct link that now exists between share of commercial impacts and advertising revenue. Some provisional calculations undertaken by Viacom Brand Solutions which reflect this more direct link in fact predict a revenue transfer of £172m from non-PSBs to commercial PSBs (see Attachments 1 and 2).

Predicting the impact of such changes is clearly difficult and open to interpretation. On the available evidence, however, Viacom believes that Ofcom's predicted impact is very much a best case scenario, and we urge it to review carefully its calculations and methodology given the potentially catastrophic impact that the levelling down option would have on non-PSB advertising revenues.

It is also disappointing to note the partial and self-serving commercial PSB argument in section 3.28 of the consultation, which argues that a reduction in overall advertising airtime would stabilise the fall in the price of advertising, and help stabilise the sector as whole. The obvious point to make here is that while it might stabilise the revenues of the commercial PSBs, this would be at the cost of non-PSB broadcasters being placed in an even weaker position in relation to ITV's dominant position in the advertising market.

Peak-time minutage on commercial PSB channels

Q2 Which option (or variation of an option) for regulating peak-time minutage on public service channels do you favour, 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 1st January 2010?

Viacom supports Ofcom's status quo Option 4, with peak-time restrictions continue to limit the commercial PSB channels to 8 minutes per hour during morning and evening peaks.

Clearly, Options 5 and 6 of relaxing peak-time allowances, or allowing more advertising in 'peak peak time' (by averaging across the week rather than the day), would lead to a very significant increase in the amount of advertising that viewers would see on the commercial PSBs, and is likely to result in significant levels of viewers complaint and wider criticism.

⁴ Ofcom's Proposals on Changes to RADA – An Update, 7th May 2008

In addition, and as Ofcom notes, there would be a very significant financial impact on non-PSB channels, the consequences of which have already been detailed above.

Number and length of advertising breaks

Q4 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?

Q5 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?

It is disappointing that Option 2 (more breaks in longer programmes) puts forward only a very limited liberalisation of the break rules, allowing commercial PSBs and non-PSBs just one additional break in 1-hour programmes, and no further flexibility. Viacom continues to believe that broadcasters should have the flexibility to use their regulated allowance of advertising minutes as they see fit, and in such a competitive environment (which includes the non-commercial BBC) are likely to avoid alienating viewers and losing subscription and advertising revenue. There should, we believe, be no specific limits set on the number of breaks inside programmes on non-PSB channels.

Short of further liberalisation overall, however, Viacom supports Option 3 which would allow additional breaks between autonomous parts of a programme. In order for this approach to work in practice, Viacom agrees with Ofcom that it is important to establish a clear definition of 'autonomous parts' which is not open to interpretation, and does not provide an unduly strong incentive on broadcasters to move towards a greater level of 'autonomous part' programming.

As such, we would suggest that an additional criteria could be applied by Ofcom which requires that each autonomous part of a programme was not produced specifically for the programme in question, but rather was produced independently and at different times for a variety of different purposes.

If ultimately it proves too difficult to identify a sufficiently robust definition of 'autonomous parts', then Viacom believes that music video programming should still be given the flexibility to schedule an increased number of breaks which are more frequent but shorter in duration. These predefined 3 to 4 minute segments of programming (often linked together by short

presentations) are not commonly produced by broadcasters themselves and are created for a universal audience across a variety of media platforms.

Although Ofcom is not considering total flexibility as an option, Viacom would wish to see an allowance of as many breaks as possible scheduled in such content. We believe that this would not alienate viewers and would maintain the integrity of the viewing experience. It is relevant to note that such an exception already exists in live sport and to our knowledge is something which viewers find acceptable. Attachment 3 contains an example of the break patterns across an hour of live tennis on Sky Sports1 for the US Open tennis tournament on September 6th.

Viacom believes that any changes made should be introduced as soon as possible.

Teleshopping

Q7 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?

Viacom supports Option 3, liberalisation or deregulation for non-PSB channels. As Ofcom notes, allowing 6 instead of 3 hours is unlikely to make much difference to viewers, and a number of non-PSB channels already fail to use their current 3 hour allocation. In the absence of any sound policy reason to maintain the regulations, therefore, Ofcom should seek to deregulate.

It is also important to note that any deregulation of teleshopping rules for the commercial PSBs implies additional revenue for these channels. As noted above, such a policy should therefore be considered in the context of the wider PSB and CRR reviews before any final decision is taken. For this reason, we do not support Option 4.

Any decision on changes to the teleshopping rules should also be delayed until after the outcome of Ofcom's on-going consultations on Participation TV, Gambling and Teleshopping consultations.

Attachment 1

In the Impact Assessment on page 76, Table 2 Ofcom estimates that there would be a loss of 6.9% of impacts to the non-PSBs from a levelling down. Whilst Viacom does not have the resource to undertake an extensive modelling exercise of all non-PSB channels minutage optimisation, we have isolated two channels which we have analysed the potential effect.

We have looked at Paramount Comedy 1 (PC1), one of our own channels, and one that has a very typical output of programming and audience trends across the day, but which is Sat/Cable only. We have also selected Dave as it too has a typical output and viewing patterns but which also benefits from Freeview distribution, and is not a Viacom owned entity.

Methodology

As you will see from the Spreadsheet 1 we have undertaken the 'with benefit of hindsight' exercise of modelling a break pattern for the month of October, the most recent complete month for which viewing data exists.

Taking October's adult impacts and minutage by hour we have calculated the % impacts by hour to ascertain best performing segments. We have then adjusted minutage to allow for average of 7 mins across day, 8 mins in peak and a max of 12 mins in peak ["new mins per hour"]. From this we have recalculated impact totals and measured the difference.

PC1 impacts are estimated to be down over 17% across the month, whilst Dave suffers to the tune of 12%. The difference is mainly due to Dave having 3 huge peak hours (in terms of % impacts) which can be optimised at 12 mins per hour, minimising their peak time impact loss (-16% versus PC1's -30%).

Averaging these two results, we therefore assume a 15% loss of impacts across the multichannel sector, with a resulting drop in multichannel Share of Commercial Impacts (SOCi) from 48.5% to 41.2%. SOCi for terrestrial channels is presumed to remain the same at 51.5%. As a proportion of the reduced overall number of market impacts, therefore, the new SOCi for non-PSBs and PSBs is 44.4% and 55.6% respectively.

The commercial PSBs' share of TV advertising revenue is 65.6% of the £3300m total market, or £2165m. Assuming that commercial PSB revenue would rise in direct proportion to impact share, then their new revenues would be £2337m, indicating a rise of £172M which would come from the non-PSBs.

PC1

Oct-08

	% imps by hour	Eq Adult Impacts	av imps	ad mins	av mins per day	new mins per hour	Eq Adult Impacts	% diff
600	0.0%	0	0.0	0	0	0	0	0
700	0.0%	0	0.0	0	0	0	0	0
800	0.0%	0	0.0	0	0	0	0	0
900	0.9%	5683	15.4	369	11.9	7	3342	-41
1000	2.3%	14146	38.0	372	12.0	7	8252	-42
1100	3.0%	18360	49.4	372	12.0	12	18360	0
1200	4.5%	26985	72.5	372	12.0	12	26985	0
1300	4.7%	28338	76.2	372	12.0	12	28338	0
1400	5.1%	31082	83.6	372	12.0	12	31082	0
1500	8.1%	48805	131.2	372	12.0	12	48805	0
1600	8.2%	49275	132.5	372	12.0	12	49275	0
1700	7.0%	42473	114.2	372	12.0	12	42473	0
1800	7.7%	46589	125.2	372	12.0	3	11647	-75
1900	9.3%	56133	150.9	372	12.0	12	56133	0
2000	10.8%	65012	174.8	372	12.0	12	65012	0
2100	8.9%	53644	144.2	372	12.0	7	31292	-42
2200	8.5%	51338	144.2	356	11.5	6	26823	-48
2300	4.9%	29642	82.3	360	11.6	11	28078	-5
2400	2.7%	16571	45.4	365	11.8	7	9852	-41
2500	1.8%	10905	29.3	372	12.0	6	5453	-50
2600	0.9%	5496	14.8	372	12.0	3	1374	-75
2700	0.4%	2476	66.9	37	1.2	3	6223	151
2800	0.2%	958	0.0	0	0	0	0	0
2900	0.0%	0	0.0	0	0	0	0	0
Total		603910				168	498798	

-17.4 = Overall %change in impacts

Peak Total

272716

190907.2463

-30.0

DAVE

Oct-08

	%imps by hour	Eq Adult Impacts	avimps	ad mins	av mins per day	new mins per hour	Eq Adult Impacts	NEW	% diff
600	0.0%	0	0	0	0	0	0	0	0
700	1.0%	11968	34.5	347	11.2	6	6415	-46	-46
800	1.1%	13864	40.0	347	11.2	6	7431	-46	-46
900	1.3%	15525	44.7	347	11.2	6	8322	-46	-46
1000	2.3%	28516	84.4	338	10.9	6	15692	-45	-45
1100	3.2%	39759	118.0	337	10.9	11	40231	1	1
1200	3.0%	36897	103.1	358	11.5	11	35145	-5	-5
1300	2.7%	33990	93.6	363	11.7	11	31930	-6	-6
1400	2.7%	32839	96.0	342	11.0	6	17860	-46	-46
1500	2.5%	30630	88.3	347	11.2	6	16418	-46	-46
1600	4.4%	54677	161.3	339	10.9	12	60000	10	10
1700	7.0%	86786	256.8	338	10.9	12	95516	10	10
1800	4.6%	57209	167.3	342	11.0	2	10371	-82	-82
1900	5.8%	71469	206.6	346	11.2	3	19210	-73	-73
2000	10.4%	129143	371.1	348	11.2	11	126545	-2	-2
2100	13.9%	171725	469.2	366	11.8	12	174540	2	2
2200	13.9%	171775	461.8	372	12.0	12	171775	0	0
2300	10.3%	127274	344.0	370	11.9	12	127962	1	1
2400	6.3%	77370	217.3	356	11.5	12	80847	4	4
2500	3.7%	45496	127.8	356	11.5	11	43579	-4	-4
2600	0.1%	841	21.0	40	1.3	0	0	-100	-100
2700	0.0%	0	0	0	0	0	0	0	0
2800	0.0%	0	0	0	0	0	0	0	0
2900	0.0%	0	0	0	0	0	0	0	0
Total		1237755	184.8	6699	216.1	168	1089790		

-12.0 = Overall %change in impacts

601321

502442

-16.4

Station	Day	Date	Time	Dur	CVE	Programme
SKYSP1	Sat	06-Sep-08	1712.19		1:00 C	LIVE US OPEN TENNIS SEMI-FINAL
SKYSP1	Sat	06-Sep-08	1718.57		1:00 C	LIVE US OPEN TENNIS SEMI-FINAL
SKYSP1	Sat	06-Sep-08	1724.23	:30	C	LIVE US OPEN TENNIS SEMI-FINAL
SKYSP1	Sat	06-Sep-08	1749.15		1:00 C	LIVE US OPEN TENNIS SEMI-FINAL
SKYSP1	Sat	06-Sep-08	1758.11		1:00 C	LIVE US OPEN TENNIS SEMI-FINAL
SKYSP1	Sat	06-Sep-08	1808.17	:30	C	LIVE US OPEN TENNIS SEMI-FINAL
SKYSP1	Sat	06-Sep-08	1812.19		1:00 C	LIVE US OPEN TENNIS SEMI-FINAL
SKYSP1	Sat	06-Sep-08	1829.49		1:00 C	LIVE US OPEN TENNIS SEMI-FINAL
SKYSP1	Sat	06-Sep-08	1839.29	:30	C	LIVE US OPEN TENNIS SEMI-FINAL
SKYSP1	Sat	06-Sep-08	1846.09		1:00 C	LIVE US OPEN TENNIS SEMI-FINAL
SKYSP1	Sat	06-Sep-08	1855.17		1:00 C	LIVE US OPEN TENNIS SEMI-FINAL
SKYSP1	Sat	06-Sep-08	1907.4	:30	C	LIVE US OPEN TENNIS SEMI-FINAL
SKYSP1	Sat	06-Sep-08	1920.55		1:00 C	LIVE US OPEN TENNIS SEMI-FINAL
SKYSP1	Sat	06-Sep-08	1931.49		1:00 C	LIVE US OPEN TENNIS SEMI-FINAL
SKYSP1	Sat	06-Sep-08	1940.39	:30	C	LIVE US OPEN TENNIS SEMI-FINAL
SKYSP1	Sat	06-Sep-08	2012.19		1:00 C	LIVE US OPEN TENNIS SEMI-FINAL
SKYSP1	Sat	06-Sep-08	2021.25		1:00 C	LIVE US OPEN TENNIS SEMI-FINAL
SKYSP1	Sat	06-Sep-08	2029.12	:30	C	LIVE US OPEN TENNIS SEMI-FINAL
SKYSP1	Sat	06-Sep-08	2035.25		1:00 C	LIVE US OPEN TENNIS SEMI-FINAL
SKYSP1	Sat	06-Sep-08	2043.11		1:00 C	LIVE US OPEN TENNIS SEMI-FINAL
SKYSP1	Sat	06-Sep-08	2048.17	:30	C	LIVE US OPEN TENNIS SEMI-FINAL
SKYSP1	Sat	06-Sep-08	2101.4		1:00 C	LIVE US OPEN TENNIS SEMI-FINAL
SKYSP1	Sat	06-Sep-08	2113.08		1:00 C	LIVE US OPEN TENNIS SEMI-FINAL
SKYSP1	Sat	06-Sep-08	2122.04	:30	C	LIVE US OPEN TENNIS SEMI-FINAL
SKYSP1	Sat	06-Sep-08	2141.51		1:00 C	LIVE US OPEN TENNIS SEMI-FINAL
SKYSP1	Sat	06-Sep-08	2150.55		1:00 C	LIVE US OPEN TENNIS SEMI-FINAL
SKYSP1	Sat	06-Sep-08	2203.19	:30	C	LIVE US OPEN TENNIS SEMI-FINAL
SKYSP1	Sat	06-Sep-08	2215.52		1:00 C	LIVE US OPEN TENNIS SEMI-FINAL
SKYSP1	Sat	06-Sep-08	2227.13		2:30 E	LIVE US OPEN TENNIS SEMI-FINAL

