



Satellite & Cable
Broadcasters' Group

OFCOM CONSULTATION REVIEW OF TELEVISION ADVERTISING AND TEleshopping

Submission by the Satellite and Cable Broadcasters' Group

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The SCBG is the trade association for satellite and cable programme providers who are independent of one of the main terrestrial broadcasters. Its members are responsible for over 100 channels in the UK and in addition broadcast many more services from the UK to continental Europe and beyond. Many member companies are pan-European broadcasters, producing and commissioning content for different national markets.

SCBG channels provide citizens and consumers with programmes and services for a diverse range of audiences across a wide range of genres and audiences, including entertainment, factual, educational, history, music, nature, art and science. Our member companies make and show programmes for children and young people, and for ethnic minorities in their own languages. SCBG members' channels are available in almost 50% of UK homes.

Satellite and cable broadcasters operate in an extremely competitive and volatile environment, without privileged access to scarce Government-controlled spectrum or to the must-carry status afforded to terrestrial networks. They are therefore unable to attract mass advertising revenues, and – with a couple of notable exceptions – do not benefit from public funding.

Satellite and cable broadcasting has been the fastest growing sector in the UK television industry, now employing over 6,000 people in the UK with revenues of nearly £5 billion.

Executive summary

The main arguments in our paper can be summarised as follows:

- SCBG strongly agrees with Ofcom that the 20-minute rule should be scrapped at the earliest convenience.
- We do not agree with Ofcom's analysis that there should be a limit to the number of advertising breaks within a programme. There are a number of reasons why break patterns should be left to the self-regulatory discretion of individual broadcasters such as audience retention, financial benefits and future-proofing of regulation.
- We strongly support maintaining the status quo in the amount of advertising on both PSB and non-PSB channels as increasing minutes in the market would have a detrimental effect not only on multi-channel operators, but on the market as a whole.
- Volume restrictions on teleshopping should be removed from non-PSB channels.
- The implementation of new 30-minute rules in children's programming should be deferred for as long as possible.

1. Introduction

The Satellite and Cable Broadcasters Group (SCBG) represents a large number of Ofcom licensees providing targeted news, entertainment, documentary, music, children's or other specialist services. Our members collectively broadcast hundreds of thousands of hours of programming each year, though most channels remain highly targeted with audience shares ranging from less than 0.01% to 2% of digital viewers.

The SCBG welcomes the opportunity to comment on the review of television advertising and teleshopping regulation, both of which are key income streams for its membership. We have throughout the evolution of the Audiovisual Media Services Directive supported Ofcom in its approach to liberalise the current framework, especially when it comes to removing artificial rules on break patterns such as the 20-minute rule. We have also worked with external consultants to understand how possible changes in the amount of advertising minutes in the market would affect our members and have already presented the initial results to Ofcom.

In this paper we will focus on the issue of the removal of the 20-minute rule and its possible replacement, together with the issue of advertising minutage. Many of our members and their sales houses will send Ofcom their own responses focussing on more practical experiences.

2. Distribution of advertising

General issues

In section 6 of Ofcom's issues paper, Ofcom is asking whether the genre-specific rules on natural breaks should be discontinued. Here we would agree with Ofcom's analysis.

Ofcom is also wondering whether the new code should allow advertising and teleshopping breaks to be signalled in sound or vision or by spatial means. Again, here we agree with Ofcom that all these signalling systems must be authorised in order to allow broadcasters to experiment with new forms of advertising such as split screen, which has proven very successful in other parts of Europe.

As Ofcom is well aware, the new 30-minute rule in children's programmes is going to have a detrimental effect on our children's channels and their ability to provide high-quality programming. We regret that this issue was not more strongly tackled in the discussions on the AVMS Directive and agree that the implementation of this new rule should be deferred for as long as possible.

Restrictions of advertising within programmes

SCBG strongly agrees with Ofcom that the 20-minute rule should be scrapped at the earliest convenience. SCBG members have throughout the AVMS Directive process argued for this artificial and disruptive rule to be removed. The viewer experience is

always going to be improved if advertising is inserted within the natural breaks of the programme.

However, we do not agree with Ofcom's analysis that there should be a limit to the number of advertising breaks within a programme. For a number of reasons outlined below, we strongly believe that break patterns should be left to the self-regulatory discretion of individual broadcasters. The key issue to remember is that due to the 12 minute per hour limit, there can never be an excess of advertising within a programme and therefore the viewer will always be protected.

Retention of audiences

The most important issue for cable and satellite broadcasters is programme ratings. High ratings have a fundamental effect on all aspects of the business and, most importantly, on the resources the broadcaster has to invest in high-quality programming. The last thing that a broadcaster therefore would do is to alienate its viewers by disrupting their viewing experience. However, individual broadcasters know their audiences and their content well enough to understand how advertising breaks are best placed to limit the disturbance caused by them. Shorter breaks are more likely to limit channel-hopping and retain audiences. This is the main reason why SCBG and its members call for a full liberalisation of the number of breaks for the multi-channel sector.

Pure commercial operators

SCBG represents multi-channel broadcasters independent of any of the terrestrial PSB in the UK. Our licences are not subject to any public value obligations and we have full commercial and editorial freedom to decide on the best content for our audiences. We therefore cannot see any reason why commercial operators would be subject to any further advertising restrictions, bearing in mind the 12 minute hourly limit.

Natural breaks

As mentioned above, we certainly believe that the best way to avoid disrupting audiences is to follow the natural breaks of the programme. According to the AVMS Directive, this should be the general rule guiding us in the future. If allowed full liberalisation, this would lead to different scenarios depending on the programme. Acquired US programming might be interrupted more frequently in order to follow the natural breaks in those programmes, while commissioned or acquired UK or European programming would have less interruptions.

UK market

Ofcom's main concern in allowing such liberalisation is the fear of the US example. We feel that this concern is flawed for several reasons. Firstly, American broadcasters are not as heavily regulated as we are in the UK. They do not have any hourly limits and have never had any rules as to how programmes can be interrupted. Viewer

expectations in the US are therefore very different from those of TV audiences in the UK where the 20-minute rule has prevailed and an hourly limit has always existed. Secondly, the US does not have dominant PSB broadcasters with no advertising or a restricted hourly limit, which allows UK viewers to turn to the BBC or the commercial PSBs if they feel that advertising volumes are too high on the non-PSB channels.

Moreover, we would strongly disagree with the concern that if one broadcaster sought to increase their commercial impacts that others would follow suit. As mentioned above, the multi-channel operators represent different genres and have therefore very different relationships with their audiences. Individual broadcasters have every incentive to do what is best for their particular viewers, and will not revert to a completely different break pattern just because another operator is doing so.

Future-proofing

We also think that it is of utmost importance to take into account all technological advances that have an impact on the viewing experience and the reach and impact of advertising messages. Therefore, any new rules by Ofcom must be future-proof in this very rapidly changing environment. Ad skipping and live pausing of programmes can have a serious impact on how effective television advertising will be in the future and shorter more frequent breaks may be the only way to avoid diminishing its value.

Moreover, short-form content that already exists mainly on music channels and on channels with a large amount of user-generated content may increase in the future. This type of content also lends itself to shorter, more frequent breaks that may be to the liking of the viewers.

For all the above-mentioned reasons we strongly call for a full liberalisation of the rules on the distribution of advertising. We urge Ofcom to seriously consider this alternative and to fully explore it in any consumer research that is being conducted.

3. Amount of advertising and teleshopping

Advertising minutage

SCBG has commissioned Oliver & Ohlbaum Associates Ltd to produce an independent assessment of the impact of any likely changes to the RADA regulations on the overall TV market and in particular the revenues and profitability of multichannel operators. The report was finished at the end of December and presented to Ofcom at a meeting on 20 December 2007. Since the publication of Ofcom's issues paper in March 2008, we have asked O&O to update their report by comparing the methodology used by them to the one used by Ofcom. O&O has also looked at those scenarios in the Ofcom paper that were not used in the original O&O report. Both O&O reports will be annexed to this

paper and sent to Ofcom separately for information by the end of the consultation period.

The O&O report looked in particular at the likely impact of possible changes to advertising minutage changes on:

- PSB network impact;
- Independent thematic channel net advertising revenue;
- Independent thematic channel profitability;
- Investment in content;
- Ability of networks to deliver PSB programming commitments.

The report did not look at the issue of advertising breaks.

The O&O UK Television Market model predicts that:

- Platforms are the key driver of TV NAR growth, as viewing patterns by platform differs, and hence as platform mix changes particularly in advance of DSO, viewing will alter;
- Thematic and spin-off NAR will increase as their share of impacts increases;
- Gradual increase in TV CPT driven by long term CPI and corporate profits growth;
- Total volume of impacts rises with increased multi-channel penetration.

O&O has in the updated report looked at the methodology and modelling used by Ofcom in its paper. According to O&O, the overall methodology as laid out by Ofcom is sound. However they have strong reservations over Ofcom's all week approach – distribution of viewing and minutage is markedly different at weekends, particularly on the PSBs, and therefore they should be modelled separately. Moreover, Ofcom's model assumes different sell out rates for different channels. The O&O model assumes an average sell out rate. As the audiences are concentrated in those channels with the highest sell out rate, in practice the two approaches yield very similar results – Ofcom's approach is potentially more accurate for the smaller channels, but as both modelled the impact on multi-channel as a whole, this is of limited value.

We understand that Ofcom has not yet formed its view on this issue and whether any changes to the rules are necessary. Ofcom is however flagging up three possibilities that we would like to briefly comment on here. A more detailed analysis of the options can be found in the O&O reports.

The current rules allow multi-channel operators an average of nine minutes an hour and PSB and average of seven minutes an hour. All broadcasters were extremely supportive of a full liberalisation of the advertising rules in the AVMS Directive, but although we managed to remove the 20-minute rule we are still left with an hourly limit of 12 minutes an hour. As discussed above, we are strongly encouraging Ofcom to scrap the 20-minute rule as soon as possible and to allow full flexibility when it comes to interruptions

in programmes. The main reason why we believe that this will not be a problem for viewers is that this particular hourly limit will continue to exist.

We have also argued that when it comes to advertising regulation, one needs to distinguish between the dominant players in the market, ie the commercial PSBs that currently have certain obligations in exchange of free or gifted spectrum as well as other benefits and the much smaller, but purely commercial operators that need the advertising revenue to afford high-quality programming, but that are not able to compete for this revenue on an equal footing with the PSBs. Therefore we believe that in order to maintain the validity of the multi-channel sector in the UK and to facilitate non-PSBs to provide the UK audience with high-quality programming, there need to be limitations to the amount of advertising minutage offered to the PSBs.

We therefore strongly support maintaining the status quo. This approach is also backed up by O&O in its conclusions where they determined that in the short term, the release of a large number of impacts on to the market will cause the price to tumble as existing advertisers buy their required volumes at a lower price. It is also understood that it is highly unlikely that media buyers will increase spend if the minutage regulations are liberalised. Instead they will buy the same volume of impacts at a reduced price and invest the savings elsewhere.

In the long term, the lower price impacts will attract new money into the market and the market is therefore expected to recover, but the effect will be only marginally positive (an increase of around £36m –or 1% -for the whole market). While the PSBs show a slight net increase, their gains are offset by a large decrease in multi-channel revenue. O&O estimates that multi-channel will lose about £130m pa if more impacts were allowed on the market. According to the report, adding more minutes to the market would lead to a scenario where:

- Multi-channel advertising prices would fall due to increased supply of network impacts, and multi-channel's SOCI would fall;
- Multi-channel's important daytime advertising sales business becomes more competitive as the supply of daytime network impacts increases;
- The "Second tier" advertisers that make up the core of multi-channel's client base are the buyers that are most likely to switch spend.

O&O also predicts that the decrease in multi-channel revenue is likely to be experienced to a varying degree by all channels:

- Smaller general thematic channels receive low, or in some cases no, subscription revenue and are thus dependent on advertising for revenue. Programming costs are already low and so any reduction in advertising revenue may well result in many smaller channels closing;
- Larger general thematic channels have more robust business models but are also more direct competitors to the PSBs than their smaller peers. A loss of advertising revenue, will, in the first instance probably lead to a reduction in

programming spend, but a significant loss would even call the commercial viability of these channels into question. Platforms may intervene to raise subscription fees of channels that they deem to be key to their subscription businesses, but this is likely to be rare;

- Advertising revenues of the larger free-to-air thematic channels will come under pressure and their continued presence on DTT may be threatened, leaving the DTT platform dominated by PSB channels. The free to air channels' economics are already weak due to DTT transmission costs and the significant incremental cost of free-to-air rights;
- Specialist channels that target specific audience segments (e.g. some children's networks and sport) are likely to be relatively less affected as these channels do not compete directly with the networks for advertising. The only area of their advertising sales business that is likely to be affected would be their sales of generic audiences –which for some children's channels can be significant, particularly in the first half of the year.

For these reasons, we call on Ofcom to maintain the status quo in advertising minutage. Increasing the minutage for PSBs or levelling down the minutes allowed on multi-channel will have clear detrimental effects on the multi-channel sector as a whole.

Teleshopping restrictions

In order to compete in this highly competitive market place and to be able to provide UK viewers with high-quality, public value programming that many SCBG members currently do and would like to do much more of, any additional revenue will be helpful. We therefore support Ofcom's option 4 on removing volume restrictions on teleshopping on non-PSB channels. We also support maintaining restrictions on PSBs to show teleshopping as this kind of programming would not fit well with their PSB obligations.

4. Conclusions

We understand that Ofcom is going to develop a new code already this summer and hope that our position will be considered in the deliberations of the new rules. One of Ofcom's duties is to support and encourage competition in the market and thereby ensure that the smaller players in the market can operate under fair and reasonable conditions. We believe that it is essential to remember the pure commercial nature of SCBG operators that do their utmost to provide UK audiences with high-quality programming without any subsidies or benefits. Allowing us to maximise returns on our investments by liberalising the distribution rules according to the European AVMS Directive would not only be economically beneficial for multi-channel broadcasters, but also make programme interruptions more enjoyable for our viewers and create a true level-playing field across Europe that is fundamental for pan-European operators.

We look forward to continuing the discussion with Ofcom in the coming months.