

*Championing
excellence and diversity
in broadcasting*



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VLV RESPONSE TO OFCOM CALL FOR EVIDENCE: REGULATING THE QUANTITY AND SCHEDULING OF TELEVISION ADVERTISING ON PUBLIC SERVICE CHANNELS

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INFORMATION ABOUT THE VLV

The Voice of the Listener & Viewer (VLV) is an independent, not for profit membership-based charity, free from political and sectarian affiliations. VLV supports high quality broadcasting which maintains the democratic and cultural traditions of the UK. We support the independence and integrity of the BBC and encourage work which demonstrates commitment to the principles of Public Service Broadcasting (PSB). VLV is a charitable company limited by guarantee (registered in England and Wales No 4407712 - Charity No 1152136).

INTRODUCTION

1. VLV works to represent the interests of citizens in broadcasting policy. Our interest, in the context of this call for evidence, is that the audience experience of viewing PSB channels should not be diminished by a significant increase in advertising on the commercial PSB channels because this would be detrimental for citizens and for the PSB system as a whole because it could lead to a reduction in the impact of PSB. Having said that, VLV is keenly aware of the significant pressure the PSBs are under in an ever more competitive marketplace, so we recognise that any revision of regulation should take into account its impact on the financial sustainability of the PSBs.
2. VLV understands that Ofcom is conducting up to date research on audience attitudes to TV advertising and we will welcome the opportunity to see this research once it is published. It is clear from previous research that audiences prefer generally to not have their viewing interrupted by adverts¹, however they do recognise its role in funding TV content.
3. The challenge for the regulation of advertising on commercial TV channels, specifically in the context of the public service broadcasting system, is to ensure that the quality of viewing experience for audiences is maintained, while ensuring the commercial PSBs remain financially sustainable and their PSB Licences remain viable at a time when they are facing significant challenges in an increasingly competitive market².
4. VLV believes that it is not in the interest of broadcasters that audiences are exposed to more TV advertising because this could alienate them. VLV considers that COSTA rules benefit viewers by restricting the volume of advertising on TV and should be retained. However, we believe that the existing rules, which favour the non-PSB channels, are distorting competition and therefore we believe they should be revised so that there is a level playing field for the commercial PSB channels and the non-PSB channels.
5. The COSTA rules were originally established at a time when the PSBs dominated the market and the lower restrictions on non-PSB channels ensured lower barriers to entry to the market. VLV considers that this intervention is no longer required since the commercial non-PSB channels now have a significant share of the market and are benefitting significantly from the distortion in the market caused by

¹ *Regulating the quantity of advertising on television*, Ofcom, 15 December 2011, Figure 4.

² *Recommendations to Government on the future of Public Service Media*, Ofcom, 15 July 2021, para 1.3

the COSTA rules. VLV notes that streaming platforms are also increasingly looking to enter the free ad-funded broadcaster VOD space.

PSB Legislation

6. VLV considers there is no guarantee that allowing the commercial PSBs to show more adverts will of itself ensure their financial sustainability. Alongside potential reforms to the COSTA rules, it is essential that the reforms to the Communications Act proposed by Ofcom to ensure PSB prominence and fair carriage terms on platforms and hardware are instituted as a matter of urgency. Additionally, any existing regulation which applies to broadcasters should equally apply to streaming VOD platforms – both in terms of content standards and advertising rules.

Online advertising

7. VLV acknowledges that TV advertising income has fallen in recent years³. This is largely due to the rapid growth in online advertising which is far more loosely regulated than TV advertising. Levelling the playing field for online advertising is equally, if not more urgent, than reforming the COSTA rules. VLV notes that this issue was highlighted in Ofcom's *Recommendations to Government on the future of Public Service Media*⁴ where Ofcom said they are working on 'plans for a new digital pro-competition regime...on assessing aspects of digital advertising technologies to respond to potential competition, consumer and privacy concerns'. VLV considers it essential that advertising regulation takes a platform neutral approach now that convergence of media platforms is advanced.

Levelling up PSB advertising minutes

8. Clearly, allowing the commercial PSBs to increase the volume of adverts they show will not guarantee an increase in total expenditure in the TV advertising market. .
9. As highlighted by Ofcom when it reviewed the COSTA rules previously⁵, there could be consequences of levelling up PSB advertising minutes so they are the same as those for the non-PSB channels which would be detrimental for both broadcasters and audiences.
10. Levelling up could shift investment from the non-PSBs, which would be beneficial for the PSBs and potentially for audiences if this increased content investment. However, there is a risk that such a move could reduce the cost per spot for advertising. Therefore there is no guarantee such a move will increase PSB income.
11. Thus allowing the commercial PSBs to show more ads could lead to a reduced quality of viewing experience for audiences and little increase in PSB income, therefore VLV would oppose such a move.

³ *Regulating the quantity and scheduling of television advertising on public service channels: Call for evidence*, Ofcom, 15 July 2022, para 2.22

⁴ *Recommendations to Government on the future of Public Service Media*, Ofcom, 15 July 2021, para 10.15

⁵ *Regulating the quantity of advertising on television*, Ofcom, 15 December 2011, para 5.31

Levelling down commercial advertising minutes

12. VLV notes that the 2011 Ofcom statement⁶ ruled out this option as well.
13. Levelling the COSTA rules downwards, so that the commercial channels are allowed to show only the same volume of adverts as the PSB channels, may increase income because the cost of ad spots could rise, but this could in turn deter advertisers who might choose to advertise online instead where the costs are lower.
14. This move could lead to a reduction in advertising income for the PSBs, therefore VLV would oppose it.

A Middle Way

15. VLV notes Patrick Barwise and Robert Picard's 2014 analysis⁷ which concluded that the price elasticity of TV advertising is very uncertain and that the potential impacts of any revision of COSTA rules are consequently uncertain.
16. In light of this uncertainty, VLV agrees with Patrick Barwise that the most sensible approach to avoid these risks is to find a middle way with the aim to keep the number of commercial impacts constant: 'To minimise this risk, the rules should be revised in a way that keeps the number of commercial impacts roughly constant, so the changes have negligible impact on total revenue, regardless of the price elasticity'⁸.
17. Therefore, in conclusion, VLV recommends that the COSTA rules should be revised so they eliminate the existing market distortion and apply equally to the non-PSB and PSB commercial channels. As suggested above, we would support a 'middle way' which aims to keep the number of commercial impacts roughly constant. We would also, in principle, support increased flexibility for the PSBs with regard to scheduling as long as there were limits set on the total volume of adverts allowed/hour.
18. We agree with Patrick Barwise that a phased transition should be considered to minimise the potential disruption caused to the non-PSBs.
19. With reference to the specific proposals in the consultation document, these are VLV's responses:

i. Removing Rule 4/Amending Rule 3

VLV opposes this proposal. As stated above, VLV believes that instead of simply 'levelling up' the COSTA rules so that the PSBs and non-PSBs are both allowed to show an average of 12 minutes advertising/hour, VLV would suggest a more nuanced approach. One rule should apply to both non-PSB and PSB channels, but the limits on minutes of advertising and scheduling will take a 'middle road' between the existing limits for non-PSBs and PSBs. The

⁶ *Regulating the quantity of advertising on television*, Ofcom, 15 December 2011, para 5.33

⁷ *What If There Were No BBC Television?: The Net Impact on UK Viewers*, Reuters Institute for the Study of Journalism, Oxford University, Patrick Barwise and Robert Picard, February 2014,

⁸ Patrick Barwise submission to *Regulating the quantity and scheduling of television advertising on public service channels: Call for evidence*, Ofcom, 15 July 2022

levels and scheduling rules adopted should be designed to aim to keep the number of commercial impacts constant.

ii. **Removing Rule 5**

Any rule restricting the length of advertising breaks should apply equally to PSB and non-PSB. VLV would want to consider up to date audience research before concluding whether the limit on the length of advertising breaks should be removed.

iii. **Amending Rule 16**

VLV would not oppose this proposal so that PSB channels are subject to the same restrictions as non-PSB channels on the number of internal breaks permitted in programmes, subject to such a move being supported by evidence in the ongoing Ofcom audience research.

iv. **Rule 7**

VLV would not agree with any change to Rule 7 which requires that teleshopping on PSB channels may be scheduled between 00:00 and 06:00. VLV considers that it is important that the PSB channels provide a range of high quality content from 06:00 until 00:00 and does not consider that teleshopping is as societally valuable as other PSB content.