Response of Channel 5 Broadcasting Ltd (Five) to the Issues Paper for the Liverpool Audiovisual Conference on 'Commercial Communications'

Summary of Main Points

- New technologies and new business models pose a challenge to traditional advertiser-funded free to air channels like Five. If we lose audiences and revenue, it will reduce our ability to deliver a diverse range of high quality programming free to viewers.

- In order for advertiser-funded broadcasters to continue to be successful, they need greater flexibility to explore new ways of bringing advertising to television. The current rules have become rigid and actively prevent broadcasters from investigating new forms of advertising.

- Five is in favour of relaxing the current rules to allow product placement, which may represent a new source of revenue that could partly offset potential future shortfalls in advertising revenue.

- Five fully supports relaxation of the insertion rules, which would give advertising-funded channels the flexibility to identify new ways of advertising that appeal to our viewers - and allow us to find new ways of generating the revenues we need to fund our programming and improve its quality.

- The current '20 minute rule' is not in the interests of viewers, as it forces us to take commercial breaks at times that are not editorially desirable.

- A general relaxation of the insertion rules should extend to the rule requiring single spots to be 'the exception'. Such a rule is out of keeping with the trend to greater flexibility, although we do not believe its relaxation would lead in practice to a plethora of single spots.

- There should not be separate insertion rules for feature films. The existence of such rules inhibits our present ability to raise revenue around films compared to other programmes, and therefore makes it less likely that we schedule films rather than other TV content.

Introduction

Five welcomes the opportunity to comment on the Issues Papers drawn up to contribute to the deliberations on revising the Television Without Frontiers Directive. This paper sets out our views on the paper on ‘Commercial Communications’.

About Five

Five is the youngest of the terrestrial broadcasters in the UK. Five began broadcasting eight and a half year ago and has since grown our audience to 6.6% of all UK viewing, in spite of the strong growth in multi-channel viewing over this period.

Five has a diverse schedule, comprising all the major genres (including news; drama; entertainment; arts, history, science, religion and other factual programming; children’s programming; and sport). It is a public service broadcaster, obliged to deliver a range of public service programming as part of its licence requirements. Over 53% of its programming is original EU production.

Five is a free to air channel which can be watched by over 93% of the UK population. The channel is funded entirely by commercial revenues, primarily spot advertising. Five is owned by RTL Group, Europe’s leading broadcaster.

Our Main Concerns

Five believes the Television Without Frontiers (TVWF) Directive has been an effective instrument in underpinning the regulation of television throughout the EU. However, the Directive is becoming increasingly outmoded, largely as a result of the development of new means of delivering audio-visual content and new business models based on those technologies.

We are not opposed to the emergence of such businesses. But they provide a challenge to traditional advertiser-funded free to air channels like Five, as they have the potential to attract audiences and revenue away from us, and so reduce our ability to deliver a diverse range of high quality programming free to viewers.

Therefore we believe there needs to be a new Directive that takes account of the new market conditions of the digital age and provides a basis on which all viewers can continue to enjoy the benefits of free to air television.

The Regulation of Commercial Communications

The fast-changing market means that the traditional ways in which free-to-air television have been funded are under pressure.

Historically there were two principal ways of funding free-to-air television: licence fees and spot advertising. Television in the UK developed very successfully on the basis of such a funding duopoly. In recent years, the growth of pay television has opened up a new revenue stream, but one based on consumers having to pay directly for what they watch.

But in future the effectiveness of advertising as a means of funding free-to-air television could come under threat. The expansion of digital television, the growth in choice that it brings and the fragmentation that that leads to means it may become more difficult to attract audiences large enough to appeal to advertisers in a way that generates similar revenues as in the past. The growth of non-linear services and of technologies such as PVRs that allow ad-skipping also present direct and indirect threats to the advertising-funded model.

If advertising becomes less effective as a means of funding high quality programming, then increasingly the only ways in which viewers can receive such programmes may well be by paying for them – either directly through pay television or indirectly through a licence fee or increased taxes.

Five is not as pessimistic about this scenario as some others. We believe that advertisers will still want to advertise on television and that imaginative, forward looking broadcasters will still be able to invest in quality programmes that audiences want to watch and which can be paid for through advertising. Five's belief in this is partly born out of our own experience of growing our business and reputation over the last eight years in a period of rapid multi-channel expansion.

But in order for advertiser-funded broadcasters to continue to be successful, they need greater flexibility to explore new ways of bringing advertising to television. The current rules have become rigid and actively prevent broadcasters from investigating new ways of utilising funding from advertisers.

Therefore Five welcomes the relaxation of many of the rules discussed in the Issues Paper, although in two important respects - the treatment of single spots and, especially, the insertion rules governing feature films - we believe that that relaxation should go further.

Rules Common to all Audiovisual Commercial Communications

While Five is sympathetic to the argument in the Issues Papers that all forms of non-linear audio-visual content aimed at the general public should be subject to some common basic rules, we believe that the practical problems involved in enforcing such an approach are considerable.

But if it is decided to go ahead with extending the scope of the Directive, then it makes sense for there to be a common set of definitions as to what constitutes a commercial communication. There could also be common rules on human dignity and to some extent on the protection of minors.

However, one of the main ways in which rules governing the protection of minors are applied in practice in current linear services is through scheduling restrictions: but limits on when products such as alcohol or medicines can be advertised cannot be transposed easily to non-linear services. This is just one of the reasons that considerable thought would need to be given to how to apply rules to non-linear services in order for them to be effective.

Issue 4: Identification of Commercial Communications in General, including Sponsored Spots

Five welcomes the proposals that the current requirements in Article 10 for advertising and teleshopping to be both “readily recognisable as such” and “kept quite separate from other parts of the programme” should be replaced with a simple requirement for adverts to be recognisable or identified as such. So long as it is clear to viewers that an advertisement is an advertisement, then the parallel requirement for it to be kept separate from the programming is not necessary.

Five is in favour of relaxing the current rules to allow product placement. As the Issues Paper points out, acquired programmes already feature product placement, and it is therefore incongruous for it to be banned on originated programmes. Furthermore, product placement may represent a new source of revenue that could offset potential future shortfalls in advertising revenue.

One of the issues that a revised Directive will need to address is the responsibility that broadcasters will have for product placement. As product placement is a form of advertising, and so has to be identified, then it is the broadcaster that will need to ensure compliance with the new law. This means that broadcasters, not producers, will need to be involved in agreeing deals with advertisers. Producers will have to be party to this process, as they will need physically to include products in the programmes they make. There will need to be a guarantee of transparency in the dealings between advertiser, producer and broadcaster to ensure that all product placement deals comply with the new rules.

This is an important issue for Five, as a publisher-broadcaster that commissions all its original programmes from outside suppliers.

We question why the Issues Paper suggests a requirement for identification of product placement “at the beginning of the programme concerned”. Insisting that product placement is identified at the start of a programme means that such identification will conflict with other information - in particular commercial messages from sponsors of programmes - and lead to unnecessary ‘clutter’ for viewers.

There are a number of potential ways to identify product placement; we do not see particular merit in such identification taking place at the start of a programme. We also think such a requirement would be inimical to the more flexible spirit governing advertising generally that we hope to see in the revised Directive. We hope the revised Directive would lay down the principle of identification; it would then be up to Member States to stipulate how this identification needed to be manifest if they so wished.

Five agrees with the suggestion that product placement should not allowed in news, religious or children’s programmes.

Issue 5: identification of Sponsored Content in Particular

Five is satisfied with the current regime governing sponsorship, as set out in the new Ofcom Broadcast Code, which itself is based on the Commission’s 2004 Interpretative Communication on television advertising.

Programme sponsorship’s contribution to Five’s revenues has grown in recent years, and represents a supplementary revenue stream to spot advertising. We anticipate that it may become more significant to us in future. We also believe that sponsorship is widely accepted by viewers, who benefit from the revenue it generates, and would not want to see any restrictions that limit our ability to benefit from it.

Issue 6: Application of the Rules

In the UK non-broadcast advertising has been policed successfully for many years by the Advertising Standards Authority (ASA), a self-regulatory body that commands widespread acceptance from both industry and consumers. Recently the UK Parliament approved a co-regulatory model for the regulation of broadcast advertising content, in which the ASA is responsible for regulation within a framework set out by Ofcom. Five is a wholehearted participant in this arrangement, which has proved successful thus far.

In light of this, Five favours co-regulatory and self-regulatory models for advertising. We believe that well-constructed models are more likely to win acceptance from industry while commanding as much support from consumers as legislatively imposed models.

II – Quantitative Rules on Television Advertising

Issue 1: Hourly and Daily Advertising

Five believes that there are self-determining limits on the amount of advertising that any commercial channel can carry. Viewers will only tolerate a certain number of advertising minutes within or around any given programme, and will simply stop watching if the amount of advertising is excessive. This is particularly true when competing television services include licence fee funded channels that are advertisement-free and channels wholly or partially funded by subscription (which can therefore choose to become less dependent on advertising if that were to give them a competitive advantage).

However, Five does not wish to argue for a complete free-for-all, with no limits on advertising minutage. We believe that there could be greater flexibility; for example, limits on hourly minutage could be relaxed so that advertising time did not have to fit inflexibly into a clock hour: this could better fit the natural flow of some programmes. And there could possibly be some relaxation of the hourly limit if a daily limit was kept.

Issue 2: Hourly and Daily Limits Applied to Teleshopping

Five does not have direct experience of running a teleshopping operation. However, we would be in favour in principle of more flexible rules as part of a general approach whereby broad principles are contained in the revised Directive, and more detailed rules giving expression to them are drawn up by Member States and/or their national regulatory authorities.

Issue 3: Insertion of Advertising

Five fully supports the move to relax the insertion rules. This will give us and other advertising-funded channels the flexibility to identify new ways of advertising that appeal to our viewers, and allow us to find new ways of generating revenue in order to fund our programming and improve its quality.

The current rules are over-prescriptive and out of date. They are based on a traditional view that advertising can only be delivered in the form of three minute commercial breaks around and between programmes.

We do not know what forms advertising might take in the future. But in a fast changing world we believe that greater flexibility is essential if we are to be able to adapt to new challenges.

We also believe that even at present the ’20 minute rule’ set out in Article 11 (4) is not in the interests of viewers. The current rule forces us to choose where to put commercial breaks in hour long programmes on the basis of how we can comply with the 20 minute rule rather than where such breaks most naturally sit. We are forced to place breaks towards the beginning and end of programmes, rather than choose the most editorially sensible place to have them. This is not in the interests of viewers, advertisers or broadcasters.

Single spots

Five is surprised that there is no discussion in the Issues Paper of Article 10 (2): “Isolated advertising and teleshopping spots shall remain the exception”. Five believes that if there is to be a general relaxation of insertion rules, this must extend to this rule and single spots be allowed in general and not just as an exception.

Five thinks it is incongruous to abolish the rest of the insertion rules but keep the restriction on single spots. Keeping this rule would not affect the number or length of advertising breaks, as such breaks could be as long or as frequent as the broadcaster chose, so long as they contained at least two adverts.

To give an extreme hypothetical example: Broadcaster A schedules many commercial breaks, each consisting of two ten second adverts, so his breaks are only 20 seconds long. Broadcaster B wants to schedule breaks consisting of one 40 second advert each. Even though Broadcaster B’s breaks are twice as long and half as frequent as Broadcaster A, his plan would be unlawful because he deployed single spots.

We do not believe that in practice such a change would lead to isolated spots becoming the norm or even particularly widespread. The number of single spots needed to achieve a reasonable total of advertising minutage within an hour would prove intolerable to viewers, who would resist so many interruptions to a programme.

But removing the current limitation on single spots would allow greater flexibility to maximise revenue from advertising and hence invest in progarmming.

Feature Films

Five recognises the merit in specific insertion rules for religious services, news programmes and children's programmes being contained in a revised Directive. But we are dismayed and disappointed at the suggestion that there should be such rules for feature films.

This would have the effect of maintaining the distinction that exists in the current Directive between feature films and other programmes. This is of particular concern to Five, as we have a relatively large number of films in our schedule.

The regime established under the present Directive (the so-called 45 minute rule set out in Article 11 (3)) makes it far less lucrative to screen a feature film than non-film TV content that attracts a similar audience. As interpreted in the UK, the present rules allow the following maximum number of breaks to be taken during a film:

Film length in minutes, including breaks	Maximum number of breaks
46 - 89	one
90 - 109	two
110 - 135	three
136 - 180	four
181 - 225	five

If a channel is showing programmes other than films, it can normally show up to four breaks in any hour. Typically, an hour long programme will have three centre-breaks and one end-break, while a half-hour programme will have one centre-break and an end-break.

The length of breaks is not set out in the Directive, but in UK rules that apply specifically to public service broadcasters and which limit the length of time that can be devoted to advertisements in each break to three and a half minutes. (Even if this rule was relaxed to allow longer breaks, differential rules for feature films would still prove a disadvantage for viewers, broadcasters and advertisers, as the only way to equalise the position would be to schedule even longer breaks in the middle of films)

So at present if Five decides to schedule a film in a two hour (120 minute) slot, we would be able to schedule three centre-breaks and one end break. The total advertising minutage allowed would be 14 minutes (four breaks, each limited to 3.5 minutes of advertising).

If Five decides to schedule consecutively two one hour TV dramas, we would be able to include a total of six centre-breaks and two end breaks. This would enable us to use the full 12 minutes of allowed advertising minutage in each hour, so the total advertising time over the two hours would be 24 minutes.

Therefore, the present rules mean we can only show just over half the number of commercial minutes around films than we can around non-film programming. As a result, the rules make it relatively less commercially advantageous to show films rather than other content.

The effect of this, when taken together with other pressures on the showing of films – including the price of acquiring them and the other opportunities viewers have to watch them (cinema itself, the purchase and rental DVD markets, specialist film channels, Video on Demand services) – mean that we are tending to show fewer films than we did in the past.

Continuation of differential rules for advertising around films would mean that in the years ahead people would be likely to have fewer opportunities to watch films on free-to-air television. If they can afford it, they will watch films by paying for DVDs, pay channels, etc; if they cannot afford it, they will lose out. This cannot be in the interests of viewers, who would be denied opportunities to watch films, nor in the interests of the film industry which would be deprived of potential revenues.

Therefore, Five strongly believes that differential insertion rules should not apply to feature films. If there is to be greater flexibility in insertion rules, this should apply equally to films. The worst scenario would be one in which greater flexibility is allowed for other programming, but the current level of rigidity for films is maintained – making the current discrepancy much worse.

Five does not believe that greater flexibility of advertising rules for feature films would lead to constant disruption of such films by advertisements. Broadcasters recognise that viewers' tolerance of advertising is limited, and also acknowledge that the experience of watching a feature film on TV is different to watching a sitcom or quiz show. So it would be in broadcasters' own interest to ensure that the placing of advertising was judicious. Also, the competition from other sources (DVD, film channels, etc) would put pressure on terrestrial channels to make the movie-watching experience viewer-friendly.

The objective of differential rules is sometimes said to be the preservation of the integrity of European films, but this is not their effect as the rules affect all movies, whether made in the EU or elsewhere. So differential rules can damage the ability of broadcasters to earn revenue from acquired non-EU films; but at the same time allow more frequent interruption of high-end made-for-TV European drama or documentary.

Channel 5 Broadcasting Ltd.

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