

Quantity and scheduling of television advertising on public service channels: Proposals for removing regulation

Response from COBA to Ofcom

May 2023

Introduction

1. COBA is the Association for Commercial Broadcasters and On-Demand Services. It represents multichannel broadcasters in the digital, cable and satellite television sector and a range of on-demand services.
2. COBA members operate a wide variety of services, offering news, factual, children's, drama, music, arts, entertainment, sports and comedy. Their content is available on free-to-air and pay-TV platforms, as well as on-demand.
3. COBA members are arguably the fastest growing part of the UK television industry, and are increasing their investment in jobs, UK content and infrastructure. They make this investment without support from the licence fee or indirect support from statutory prominence.
 - Scale: In the last decade, the sector has increased its turnover by 30% to more than £5 billion a year. This is rapidly approaching half of the UK broadcasting sector's total annual turnover, and has helped establish the UK as a leading global television hub.¹
 - Employment: As part of this growth, the multichannel sector has doubled direct employment over the last decade.²
 - UK production: In addition, the sector has increased investment in UK television content to a record £1.1 billion per annum, up nearly 75% on 2011 levels.³
4. For further information please contact ☎.

¹ Ofcom International Broadcasting Market Report 2013

² Skillset, Television Sector – Labour Market Intelligence Profile

³ COBA 2019 Content Report, Oliver & Ohlbaum Associates for COBA

Response

1. We believe that the status quo is the logical choice. Both of Ofcom's proposals have outcomes that are, at best, unproven and unclear. Furthermore, they come coupled with significant risks to the provision of public service news, the quality of the PSB experience for viewers, the TV advertising market overall, and the plurality of the broadcasting sector, as we will outline. Ofcom's proposals are not even universally supported by the PSBs that the regulator argues could benefit.
2. In our view, proceeding with either option could potentially put Ofcom in danger of breaching its statutory duties under the Communications Act to further the interests of citizens in communications matters – notably by eroding public service news. Both options also risk going against Ofcom's duty to ensure the maintenance of a plurality of channels, as we will outline.
3. Of Ofcom's two proposals, we see the second, which keeps the existing rules on frequency, as least harmful, yet it still carries the serious risks we have noted above. While we firmly believe there is no case for change based on the available evidence, we set out at the end of this submission possible ways to mitigate those potential negative impacts if Ofcom proceeds with its proposal. In short, these would involve either:
 - a. Introducing Ofcom's proposed changes during weekends only. Weekdays would remain under current rules.
 - b. Or introducing Ofcom's proposed change only during peak times at weekends. Daytime during weekends and the weekday daytime and peak would remain under current rules.
4. For this consultation, COBA has commissioned further independent research looking at the impact of Ofcom's proposals in two new areas:
 - a. The risk of damage to public service news.
 - b. The risk of undermining niche channels in the so-called long tail, which serve minority or specialist audiences.

5. We have also commissioned independent analysis from research specialists identifying clear limitations in Ofcom’s audience research for the call to evidence, leading to what in our view is a deeply flawed use of the results. In our view, when the implications of these flaws are understood, Ofcom’s audience research indicates that respondents would not support Ofcom’s proposals. On the contrary, they would be likely to support the status quo.
6. In light of this new evidence, we ask Ofcom to reconsider its position.

The impact on public service news

7. Ofcom acknowledges in its consultation paper that ITV and other PSBs are likely to increase the amount of adverts around news as a result of its proposals, as PSB channels are already at or near the maximum permitted in other peak hours. Ofcom states:

“We are particularly mindful that given current scheduling patterns, the rules could lead to a reduction in the amount of news content on PSB channels. This is because the change would, in effect, allow broadcasters to schedule more advertising minutes in their evening slots, which generally run during 18:00 to 19:00 and 22:00 to 23:00. Currently, these slots include relatively fewer minutes of advertising.”⁴

8. This is precisely what we expect to happen. We note that the Frontier Economics research commissioned by ITV for the call for evidence seems to argue precisely this, i.e. that ITV would place additional advertising minutage around its news slots, i.e. the 6-7pm and 10-11pm slots.⁵
9. A risk to public service news is a matter for serious concern. The Government’s White Paper for the Media Bill highlighted the importance of PSB news in providing: “democratically impactful content such as trusted, impartial news and current affairs.”⁶

⁴ Ofcom, consultation paper, 1.18

⁵ https://www.ofcom.org.uk/data/assets/pdf_file/0028/248617/ITV.pdf, Frontier Economics for ITV, page 16

⁶ DCMS, Up Next: The Government’s vision for the broadcasting sector (PDF), 28 April 2022, p22

10. This view was echoed by the Culture, Media and Sport Committee, which highlighted the importance of PSB news as demonstrated during the pandemic and to combat misinformation.⁷
11. Ofcom's own audience research for its most recent PSB review found that audiences valued PSB news as the most important aspect of the PSB system by far. Ofcom's audience research for *Small Screen, Big Debate* found that: 'Trusted and accurate news' is by far the most valued aspect of PSBs, both to people individually and to society."⁸
12. Ofcom added: "Overall, young people have similar personal priorities as adults, with 'trusted and accurate news' coming out top."⁹
13. COBA has therefore commissioned new independent analysis to gauge the potential impact of Ofcom's proposals on public service news. O&O's analysis for COBA indicates that up to 27.5 minutes of PSB news (editorial) could be lost per weekday under Ofcom's proposals. This would amount to 115 hours per year. To put this in context, ITV's total potential lost news editorial of 16.5 minutes per weekday is 13% of its current total news provision (by clock hours) and up to 36% of its combined minimum under its local and national quotas.
14. A reduction of 27.5 minutes would only occur if broadcasters used all their additional inventory, but as Ofcom notes, this would not be untypical:

"PSB channels can, and often do, show up to or close to the absolute maximum of 12 minutes of advertising in three of the five hours between 18:00 and 23:00."¹⁰
15. ITV's news is particularly vulnerable to being cut back editorially, as the broadcaster carries network and regional news, and therefore has an advert break between the shows. In fact, ITV may even cut further than the O&O report suggests, as O&O's analysis does not factor in the risk of ITV removing its news hours that are over the minimum required by its PSB licence. There is a significant

⁷ DCMS Committee, *The future of public service broadcasting* (PDF), para 35

⁸ https://www.ofcom.org.uk/data/assets/pdf_file/0025/199105/psb-omnibus-survey-findings.pdf, page 1

⁹ *Ibid*

¹⁰ Ofcom, consultation paper, 4.10

risk that, as a result of Ofcom’s proposal, ITV would seek to maximise the value of additional advertising minutes by cutting these “surplus” news hours in favour of content, such as soaps, that will attract greater audiences. ITV’s own report from Frontier Economics, submitted for the call for evidence, makes this point in regard to the 18.00 and 22.00 slots, stating:

“At 1800 and 2200, ITV is not incentivised to premiere new or expensive content that would be difficult to monetise under current rules.”¹¹

16. Were ITV to cut surplus news hours in this way, Ofcom would have incentivised ITV to reduce its news content over and above the potential loss of 27.5 minutes per weekday.
17. Ofcom’s two proposals therefore risk undermining the very core of the PSB system: news. While Ofcom frames its COSTA proposals as a way to help preserve the “sustainability of commercial PSB providers,” it seems perverse to do this by risking the erosion of the most important area of public service provision. This is quite apart from the fact that Ofcom has already advised the Secretary of State that the commercial PSB licences are sustainable as part of the ongoing licence renewal process – a view born out by Channel 4’s recent decision to award its entire staff, including the most senior executives, bonuses worth £15m¹² - and the fact that Ofcom’s proposals may have a harmful impact on the revenues of at least some aspects of the PSBs system.
18. Ofcom’s consultation paper offers two reasons for proceeding with its proposals despite the almost inevitable erosion of public service news: existing regulatory checks and balances that will supposedly protect news, and the view that audiences will, for various reasons, not mind, or fail to notice. To deal with existing regulations first, Ofcom mentions maintaining current frequency breaks and the news quotas in the PSB licences as ways to safeguard news. While maintaining the rules for the frequency of breaks is welcome, neither this nor the news quotas

¹¹ https://www.ofcom.org.uk/data/assets/pdf_file/0028/248617/ITV.pdf, Frontier Economics for ITV, page 16

¹² <https://www.broadcastnow.co.uk/channel-4/channel-4-to-pay-staff-around-15m-extra-under-retention-scheme/5182699.article>

would stop the loss of 27.5 minutes of news per weekday. While ITV and other PSBs are required to show a certain amount of news hours in their PSB licences, these are measured by clock hours, or slot time. Within those hours, the PSB channels may show as much advertising as is permitted under the COSTA rules and still count a full hour towards their statutory quotas.

19. For example, Channel 4's licence states (our emphasis):

““[H]ours/minutes” refers to the number of hours/minutes per calendar year or per week averaged over a calendar year that would be broadcast, measured in “slot times” (that is, **including advertising breaks**, Programme trailers and presentation material during and at the end of Programmes).”

20. Ofcom also mentions using a PSB's general contribution to the PSB remit as a safeguard. Aside from the quotas, which we have dealt with above, news obligations in the PSB remit are high-level. For example, Channel 4's licence states:

“Such news programmes shall be of high quality and deal with both national and international matters. Coverage shall be accurate, impartial, authoritative and comprehensive, in terms both of geography and subject matter. Live coverage of important, fast-moving events shall be provided, with news flashes outside regular bulletins as appropriate.”

21. In addition, there are requirements for the broadcaster to show a number of news programmes at various times of the day, without specifying their length beyond the quotas we have mentioned.

22. We cannot see how any of these requirements would enable Ofcom to prevent a reduction in news editorial in the way that we have described. “Quality” is subjective and relative. Shorter news bulletins might not cover as many topics, or they might not treat the same number of topics with the current depth, but this does not necessarily mean that they would not qualify as “high quality” or “comprehensive.” Ofcom presumably does not wish to be in the situation of having to judge whether PSB news bulletins should have carried particular stories, or covered particular stories for a longer period of time. This would raise obvious questions about the independence of news.

23. Ofcom also refers to its News Consumption Survey and PSB Compliance reports, but these would not offer any regulatory protection to stop the reduction of editorial minutes in the way we have set out. In short, Ofcom has no means by which to stop this potentially substantial cut in editorial news if it wanted to, certainly not in anything approaching a timely manner.

Ofcom’s audience research

24. In the consultation paper, Ofcom’s second reason for proceeding with its proposals despite the risk to news is that audiences would, the regulator suggests, tolerate increased advertising for a number of reasons, including technology that allows them to skip adverts, or the prospect of this advertising yielding more investment in content. Particularly in the context of the impact on news, we are concerned at how Ofcom has reached these conclusions about audience attitudes, and have identified significant flaws in the interpretation of respondents’ views.

25. According to Ofcom’s deliberative research, audiences had a “visceral”¹³ dislike of the idea of increased adverts when first asked, before prompting. This echoes Ofcom’s tracker survey, which the regulator says “consistently shows that most audiences do not want more advertising minutes on the PSB channels.”¹⁴

26. The conclusion that Ofcom draws from its audience research post prompting – that audiences will tolerate increased adverts - is based on the tenuous assumption that more investment will flow into content as a result of Ofcom’s proposal, as well as the highly questionable view that this advertising will not be disruptive. Ofcom states:

“[W]hile audiences do not want more advertising on PSB channels, they are more likely to tolerate it if it can be assured that additional advertising revenue will be generated as a result, and that this will be invested in content. Audiences’ willingness to accept more advertising on PSB channels also grew when they

¹³ https://www.ofcom.org.uk/_data/assets/pdf_file/0031/256774/qualitative-research-viewers-perceptions-of-costa.pdf, 2CV report for Ofcom, page 22

¹⁴ Ofcom, consultation paper, 3.2

recognised that it might not be as disruptive to their viewing experience as they had initially feared.”

27. To deal with the assumption about investment first, this presumes that, firstly, increased advertising inventory will result in increased revenues and, secondly, that these revenues will be spent on content. O&O’s analysis for COBA, previously submitted to Ofcom for the call for evidence, suggests that increased inventory could lead to deflation that, in the worst case scenario, would see up to £304.2m pa lost across the whole sector.¹⁵ While ITV might be insulated because of its mass reach, at least some other PSBs would not be. This is of course in addition to the risk of a negative impact on the wider market.

28. Ofcom suggests that deflation in the linear TV advertising market may draw in advertising revenues from online. This is not supported by any evidence that Ofcom – or any respondent - presents. Ultimately, Ofcom concludes that it is not possible to predict with any certainty what will happen. The regulator states:

“It is not possible to predict with any certainty the impact on the market, or particular broadcasters.”¹⁶

29. The best that can be said, therefore, is that, by its own admission, Ofcom does not know what will happen in terms of the market impact. Even ITV acknowledged the risk attached with its own proposals for change when it called for a two-year trial period in its submission to the call for evidence. Therefore, the first part of the assumption, the prospect of additional revenues, is at best uncertain.

30. In terms of the second part of the assumption, even if a PSB were to secure more revenues as a result of Ofcom’s proposals, Ofcom has no powers to require it to invest additional revenues in content, providing it fulfils its statutory obligations. ITV is of course a commercial company with shareholders that expect profits, while even the publically-owned Channel 4 took the recent decision to award staff a £15m bonus. As Ofcom states:

¹⁵ O&O for COBA, Impact of Potential Changes to COSTA, page 50

¹⁶ Ofcom, consultation paper, 1.23

“[W]e cannot be certain of additional revenues being generated, or how they may be used if they are.”¹⁷

31. Ofcom also argues in its consultation paper that audiences will not notice increased advertising. While the regulator points out that PSBs often schedule similar amounts of advertising already, especially in peak, they do not do so in news hours, where the increases could be substantial. Analysis by O&O for COBA shows that Channel 4 currently shows under one minute of advertising during its peaktime weekday news transmission, while ITV1 averages three minutes during weekday peaktime news.¹⁸ Ofcom’s proposals will therefore usher in potential increases of up to twelve times the current volume of adverts for Channel 4, and four times for ITV1.
32. As evidence that audiences will fail to notice increased adverts, Ofcom cites its research into audience attitudes towards adverts from the period after National Mourning, when broadcasters were permitted to show additional minutes. This does not appear to offer a reasonable comparison to the increases in advertising that Ofcom’s proposals could lead to. Ofcom states that 4,960 extra minutes of adverts were shown across 30 channels during the first three weeks of the survey. Ofcom does not appear to state how this advertising broke down across those channels, but, across 21 days, 4,960 amounts to a daily average of just under eight minutes of additional advertising across the entire day for each channel. In contrast, Ofcom states in the consultation paper that PSBs would have an extra 48 minutes of adverts per day under its proposals – six times the average additional amount following the National Mourning period. Furthermore, for the period after National Mourning, Ofcom suspended rules 3 and 4 of the COSTA code governing average minutes for non PSBs and PSBs, but not rule 5 limiting PSBs’ advert breaks to 3 minutes and fifty seconds. This would be removed under Ofcom’s proposals.
33. The upshot is that Channel 4 could, for example, show up to 11 more minutes in just one hour of peaktime news. Even when exposed to the far smaller increases in

¹⁷ Ibid, 4.17

¹⁸ O&O for COBA, Impact on News, pp 5 and 6

the amounts of advertising in Ofcom’s audience research, “a significant minority” of 20% of respondents did notice, and of these a majority 85% were bothered a little or a lot.¹⁹

34. Ofcom also argues that viewers are using technologies that allow them to fast forward through advertising, so they are better able to manage their exposure to advertising. This is far less likely to happen when watching a live news broadcast on linear TV. A Kantar Media report for Ofcom on linear vs non-linear viewing observed that audiences:

- a. “particularly associated linear with watching news and live sports, which were less suited for viewing following the original broadcast.”²⁰
- b. And: “The majority of family participants would still make the effort to watch ‘event TV’ and news at the time of broadcast.”²¹
- c. And: “[A]lthough [soaps] were often watched on the same day to keep up-to-date and avoid spoilers there was not the same urgency experienced as noted previously for news or ‘event TV’.”²²

35. As we have mentioned, we are concerned at how Ofcom has reached its conclusions that audiences will not mind, or will not notice the impact of its proposals, despite their strong initial dislike of Ofcom’s proposed increase. We commissioned audience research specialist Fly Research to critique the use of the deliberative research conducted by 2CV for Ofcom. We have supplied the full report to Ofcom, but Fly Research concluded that they had “major concerns about this report or, much more specifically, the way that it appears to have been interpreted in the Ofcom proposal for removing regulation...using the opinions obtained by this particular piece of research has substantial challenges.”

36. Fly Research were clear that using prompts, as 2CV has done in putting questions to respondents about investment in content, is standard practice in principle. But,

¹⁹ Ofcom consultation paper, section 3.13

²⁰ https://www.ofcom.org.uk/data/assets/pdf_file/0029/68816/km_report.pdf, page 27

²¹ Ibid, page 22

²² Ibid, page 22

they pointed out, the post-prompted opinions are “hard-wired” to the information provided in the prompts. As Fly Research states: “You cannot use the one without accepting the other.”

37. Fly Research offers a hypothetical example where respondents are asked first if they would buy an electric car, and then whether they would buy an electric car if there were a 10-fold increase in the price of petrol, with very different answers each time. This underlines how any reluctant willingness to accept more adverts on the part of audiences should be disregarded unless accompanied by increased investment in content. As we have argued, such investment is far from guaranteed in reality.
38. But Fly Research’s concerns go deeper. It is important, they argue, to contextualise the research by looking at alternative assumptions (or different possible briefs) which could have resulted in very different opinions. Fly Research noted that the current differences between TV advertising rules for PSB and non-PSB channels were assumed to be unfair (by the respondents), but: “No attempt was made to explain the current differences and why they were originally justifiable.”
39. This is admitted by 2CV, which states in its report for Ofcom: “The pre-task materials explained the rationale behind having rules around quantity and frequency of advertising but not specifically on the difference in rules between PSB and non-PSB channels.”²³
40. The original rationale of the COSTA rules - that the PSB viewing experience should be higher quality compared to other channels, that there was a need to protect competition in broadcasting - is therefore lost to respondents. The same can be said of the range of benefits such as statutory prominence that PSBs receive when they voluntarily accept their licence conditions and accompanying regulations, which of course include a lower cap on advertising minutes under the current COSTA rules. These benefits are of course expected to be greatly augmented in the Media Bill, which was not mentioned to respondents either.

²³ 2CV report, page 20, footnote 4

41. Fly Research concludes: “Believing the additional rules to be unfair will, obviously, have predisposed [respondents] towards a point of view on the possible options for the future - about which they were later asked to comment.”
42. Furthermore, while 2CV does note that the assumptions put forward about increased investment in content are not certain, there is no attempt to understand how audiences would feel if that assumption does not happen. FlyResearch states that, under this scenario:
- “[I]t seems very likely they would not have then accepted the proposed relaxation of the advertising rules. They would not have seen the benefit that they so clearly required in return for their acceptance.”
43. Ofcom only partially acknowledges these limitations to the research. The regulator states that (our emphasis): “Our audience research also suggests that, while audiences do not want more advertising on PSB channels, they are **more likely** to tolerate it if it can be assured that additional advertising revenue will be generated as a result, and that this will be invested in content.”
44. By contrast, 2CV’s summary of the research makes it clear that audiences are not “more likely to tolerate” increased adverts, but rather absolutely require there to be additional revenues, and that these revenues be spent on high quality programming, to offer their support. 2CV state this on numerous occasions during their report (our emphasis):
- a. “Viewers felt strongly that any additional revenue **must** go towards the development of good-quality programming, and not solely towards broadcasters’ profits or to their shareholders.”²⁴
 - b. “Throughout the research process, viewers were quick to reiterate that any additional revenue **must** go towards the development of good-quality programming, and not solely towards broadcasters’ profits or to their shareholders.”²⁵

²⁴ 2CV Report for Ofcom, page 4

²⁵ Ibid, page 21

- c. “Critically, viewers felt that it was **essential** that the additional revenue generated by increased advertising would be invested in providing good-quality programming.”²⁶

45. It is clear, therefore, that audiences are only willing to accept more adverts on the condition that they result in more investment in content. Without such a guarantee, there is no support for Ofcom’s proposal, as 2CV states:

“In the minds of viewers, this was felt to be a **non-negotiable** condition of increased advertising. This made viewers less accepting of the idea of increased advertising; if there is no proof of a tangible benefit to them (i.e. investment in good-quality programming), this is where the idea of more advertising falls down in their minds.”²⁷

46. There are several more examples, but, perhaps most egregiously, the assumption that Ofcom’s proposal will result in more investment for content is the sole basis for audiences rejecting the option put forward of keeping the status quo. 2CV states:

“[T]he prospect of less good-quality programmes as a result of ‘rules staying the same’ was strongly rejected by viewers.”

47. Compounding this, respondents’ acceptance of Scenario 4 - increased advertising during peak 6-7pm and 10-11pm time slots, the news slots - is absolutely dependent on the perceived increase in investment in content. 2CV states:

- a. “Overall, Scenario 4 was perceived to be an effective way to help PSB channels raise revenue.”
- b. And: “there was a general acceptance that if their favourite programme was broadcast during these peak slots, they might have to make a compromise and accept an increase in advertising to ensure that programmes continue to exist in the future.”

²⁶ Ibid, page 24

²⁷ Ibid, page 24

48. In this last quote, respondents have linked an increase in advertising to the very survival of public service content. This is completely overblown, given how investment in PSB first-run content has been relatively stable in recent years, with Ofcom's Media Nations report putting first-run investment at £2.6 billion in 2021, slightly up on 2016.²⁸ If an accurate take on respondents' views, it can only in our view speak to flaws in how those respondents have been briefed.
49. Moreover, as we have noted, Ofcom's proposals are expected to lead to a reduction in news editorial – a reduction in programming - precisely the opposite of what respondents are saying is vital to their acceptance of increased adverts.
50. We also question how respondents have come to the conclusion that, according to 2CV's report, Scenario 4 offers “minimal disruption to current TV viewing experiences.” The potential increase in minutes around news hours is far from minimal, as we have noted. We question whether respondents were aware of just how much increased advertising might occur during these news slots.
51. Alternatively, if respondents believed Scenario 4 would lead to minimal disruption because it would stop increases in adverts elsewhere in the schedule, they seem to have misunderstood Ofcom's proposal, which was never going to lead to significant increases in other slots that are already maximised or near their maximum.
52. Strangely, respondents to 2CV's research seemed not to care about public service news. 2CV says some did not mind increased adverts around news as they used other sources such as social media – one quote given emphasis in is: “I like Scenario 4 best as I don't really watch the news anymore.”
53. Yet when Ofcom carried out audience research for its last PSB review, it found that respondents valued news more than anything else within the PSB system. As we have already noted, Ofcom's audience research for Small Screen, Big Debate found

²⁸ https://www.ofcom.org.uk/data/assets/pdf_file/0016/242701/media-nations-report-2022.pdf, page 68

that: ‘Trusted and accurate news’ is by far the most valued aspect of PSBs, both to people individually and to society.”²⁹

54. These conclusions are wildly inconsistent. Fly Research points out that it would have been appropriate to specifically explore how respondents would have felt about the erosion of news by probing in much more detail. “In particular those viewers interested in National and Local news on PSBs would see a noticeable decrease in programming content. It seems unlikely they would regard this as a “minimal disruption” as a result of relaxing the advertising rules.”
55. We would suggest that, had respondents been fully informed as to the implications of Ofcom’s proposal for news, they would have reached a very different conclusion. Given the uncertainty around any additional investment, the likely damage to public service news, and the disruption from dramatically increased advertising levels in the slots in question, we believe that respondents would have been likely to reject Scenario 4, more adverts at certain times, and have favoured the status quo.

The impact on plurality in broadcasting

56. Ofcom is required, in carrying out its principal duty, to secure the maintenance of a sufficient plurality of providers of TV and radio services, and the provision of a wide range of TV and radio services that are of high quality and calculated to appeal to a wide variety of tastes and interests.³⁰ In line with this, the COSTA rules were put in place partly to ensure plurality in broadcasting.
57. While COBA members will in our view be significantly harmed by Ofcom’s proposals, the channels that are likely to be most damaged – both from revenue transfer from non-PSBs to PSBs and in terms of deflation - are the many small, niche channels, often serving cultural minorities and broadcasting in non-English languages. The so-called “long tail” – which O&O’s report for COBA defines as 93 channels with a BARB share of viewing of less than 0.05% - is an important part

²⁹ https://www.ofcom.org.uk/data/assets/pdf_file/0025/199105/psb-omnibus-survey-findings.pdf, page 1

³⁰ 2003 Communications Act, Section 3(1)

of the UK broadcasting ecology. As O&O note, 93 channels is already more than half the multichannels measured by BARB; in addition there will many smaller channel not measured by BARB. They play a vital role in the plurality and diversity of the UK broadcasting sector, serving interests that many mainstream channels do not. For clarity, these “long tail” channels are not COBA members.

58. We commissioned O&O to provide independent analysis of the impact on these channels, based on financial data for a sample and O&O’s own modelling. It is clear these channels are particularly vulnerable to the potential impact of Ofcom’s proposals, having little or no alternative revenue streams such as carriage fees and very little in the way of areas where they can cut costs – some, for example, already keep programming and other costs down by broadcasting only at certain times of the day. Many, perhaps all, rely on being able to offer advertising that is significantly cheaper than the rest of the market – with daytime on mainstream channels being the closest price competitor.
59. Ofcom’s proposed changes to COSTA are expected to lower the cost of advertising on PSBs, and indeed the wider market, including in daytime. As O&O states: “This would significantly erode small channels’ appeal and force them to greatly lower prices in order to attract advertisers.”³¹
60. Looking at the financial accounts of a sample, O&O concludes that a 15% reduction in advertising revenues would reduce revenues for many of these channels to near or into the red. O&O’s modelling suggests that the multichannel sector as a whole stands to lose in the range of 11-17% in advertising revenues overall from Ofcom’s proposals. This could affect a great number of the long tail channels.
61. If Ofcom does not accept the implications of O&O’s analysis, we believe it is incumbent on the regulator, in line with its statutory duty to protect plurality, to examine the impact for itself and to publish its findings. Ofcom cannot assume these channels are able to provide it with analysis themselves. Many do not have the resources to commission such work. Almost certainly, they do not have regulatory affairs specialists to advise them, and may not even be aware of Ofcom’s

³¹ O&O analysis of small channels for COBA, page 9

proposals for COSTA (the lack of responses from them to Ofcom's call for evidence underscores this in our view). Ofcom has a statutory duty in this regard and it would be, we suggest, a failure not to take a proactive approach in ascertaining the impact on these channels.

Suggested next steps

62. We therefore firmly believe that the status quo is the logical choice here, and that both of Ofcom's proposals carry serious risks and are based on flawed conclusions from audience research and an acknowledged uncertainty about the impact on revenues. However, we agree with Ofcom's conclusion that removing the rules on frequency would impact severely on the viewer experience, and therefore, of the two options Ofcom puts forward, see the second as least harmful, though it still comes with a number of significant risks. But, if Ofcom wishes to proceed with this proposal, then the regulator should consider mitigating the clear and serious risks that it creates. In the event that Ofcom does proceed with its preferred option (or indeed its less preferred option), to reduce the risk to news and to niche channels, Ofcom should:

- a. Apply the change (harmonization while retaining frequency rules) to weekends only. The status quo would remain during weekdays in both peak and daytime, thereby protecting weekday news and niche channels.
- b. In addition, we would recommend the change be applied to peak-time only at weekends to further protect niche channels from deflation in the daytime advertising market, the closest price competitor to niche channels.

63. This would address the clear and serious risks arising from Ofcom's proposal, while affording PSBs significant additional minutes at the most valuable time. This seems to be a key goal for ITV as a means of coordinating content delivery with its on-demand service, ITVX. We base this understanding on Frontier Economics' report for ITV for the call for evidence, which states (our emphasis):

"ITVX's stated investment in new content, whilst premiered on VoD, is intended to subsequently be aired as part of the linear schedules of ITV's channels, including

the main PSB channel, potentially in the 18.00 or 22.00 peak hours (**particularly at weekends**).

64. We also ask Ofcom to consider a longer lead in time of two years. These rules have been in place for decades and Ofcom’s proposals represent a potentially seismic change in TV advertising. The market should have a significant period to prepare. For the far smaller impact on commercial broadcasters of the awarding of prominence in the top 24 slots of the EPG to BBC Three, Ofcom decided that an 18-month implementation period would be appropriate. This was in part “to mitigate some one-off costs to commercial broadcasters and EPG providers.”³² Ofcom’s proposal for one year is therefore not proportionate or in comparison with previous Ofcom decisions.
65. Ofcom also refers in the consultation to the need for parties to have sufficient time to revise commercial agreements to factor in the increased availability of advertising minutes on PSB channels.³³ A number of commercial agreements will run beyond one year, including commissioning agreements that stipulate running time of deliverable content, and there needs to be a longer period of time in which to assess the impact of any change and to revise agreements accordingly.
66. Instead, a two-year lead in period would avoid such disruption and be more proportionate with previous decisions, as well as being in line with ITV’s proposed two-year trial period.
67. We also note Channel 4’s support for a staged implementation process and would strongly welcome this as a way to manage this potentially seismic shift in the market, in addition to an implementation period. Ofcom might increase permitted minutage in stages, which would also help gauge the resulting impact on the market, which remains unknown.

³² https://www.ofcom.org.uk/data/assets/pdf_file/0030/228486/statement-review-of-rules-bbc-three.pdf, para 3.105

³³ Ofcom consultation paper, 5.7



Assessing the impact of potential changes to TV advertising minutage regulation

A report for COBA

IMPACT ON NEWS

Ofcom's proposed changes are likely to negatively impact news coverage

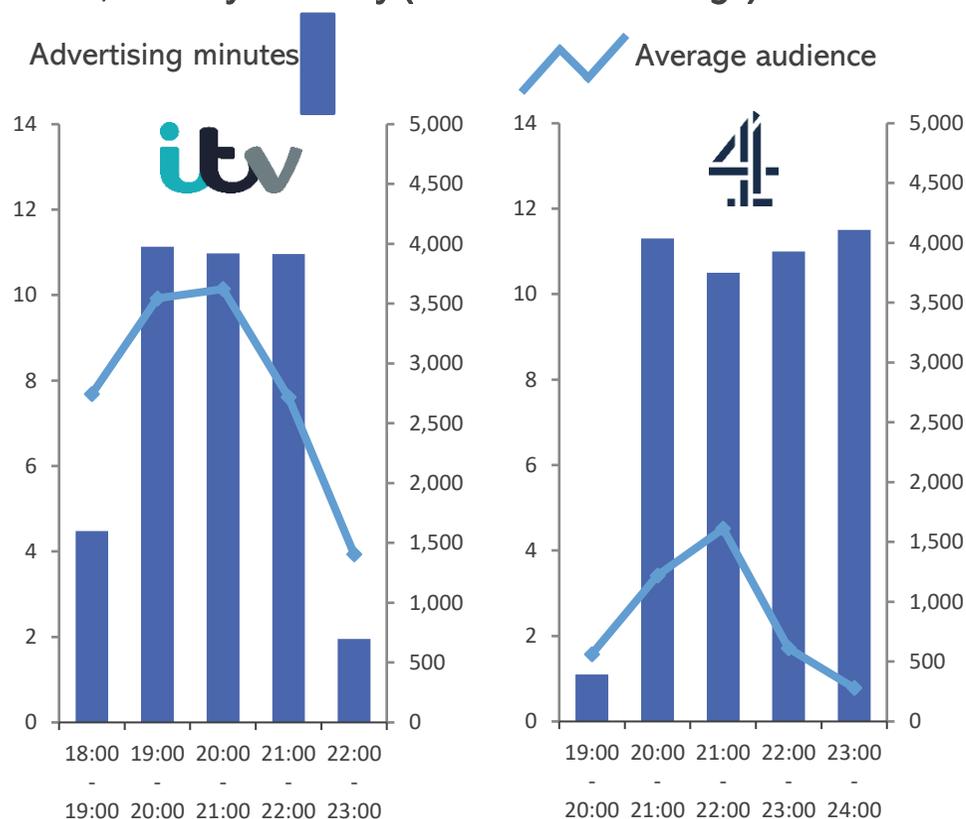
This is because broadcasters could schedule more advertising minutes in their peak evening slots, where they have an obligation to broadcast news

- In Ofcom's consultation paper, the following point was raised:
 - *"We are particularly mindful that given current scheduling patterns, the rules could lead to a reduction in the amount of news content on PSB channels. This is because the change would, in effect, allow broadcasters to schedule more advertising minutes in their evening slots, which generally run during 18:00 to 19:00 and 22:00 to 23:00. Currently, these slots include relatively fewer minutes of advertising" (1.18 – Ofcom COSTA Consultation, 19 April 2023)*
- In this section, we seek to conduct analysis that will interrogate this more closely, to develop a detailed understanding of how the proposed changes to COSTA could impact provision of news

PSBs currently run limited advertising during peak time news

Running minimal advertising during news hours allows broadcasters to fill other peak programming (where audiences are typically higher) with the maximum level of advertising possible (12 minutes), maximising revenue

Main channel average ad minutes and audience per hour, Monday to Friday (2022 annual average)



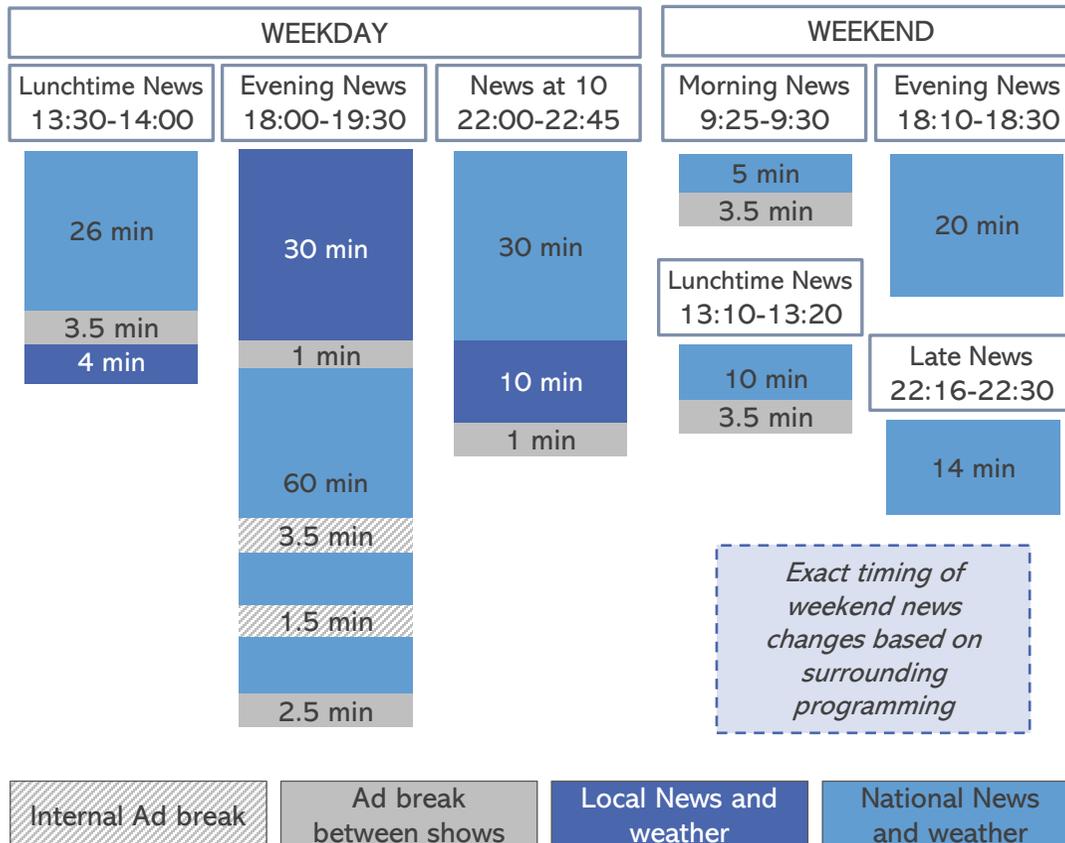
- The current regulatory environment has two separate areas that PSBs use symbiotically:
 - A requirement to broadcast news during peak hours
 - A requirement to have an average of 8 min / hour advertising in peak, with a maximum of 12 min
- PSBs achieve this by running limited advertising during news programming hours (6-7pm and 10pm for ITV, and 7-8pm for Channel 4)
- This allows other hours to reach full utilisation of the 12 minute allocation for advertising, while meeting the 8 min average requirement in peak hours

Note: Data above is inclusive of ITV main channel (inc. Breakfast) in both SD, HD, and +1
 Source: BARB, Oliver & Ohlbaum analysis

ITV averages around 3 minutes per broadcast hour during weekday peak time news

ITV's two main news blocks – Evening News and News at 10 – currently feature very little advertising, this allows ITV to maximise its ad load elsewhere

Illustrative ITV news schedule



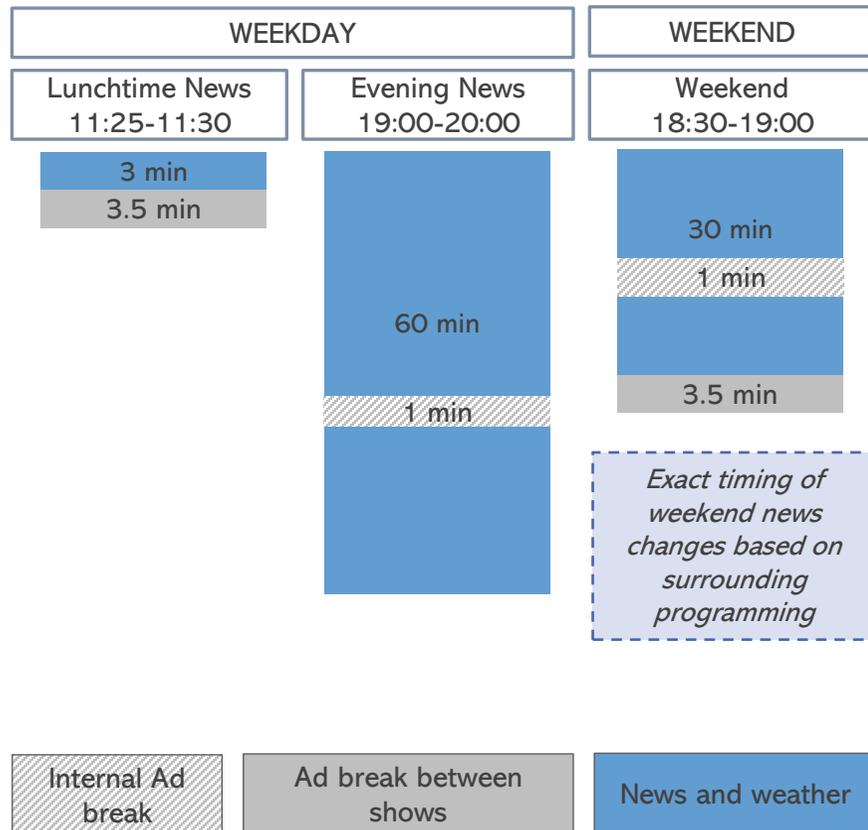
- On weekdays, ITV broadcasts approximately 2 hours and 15 minutes of news content during peak time. Consisting of around 90 minutes of national content and 40 minutes of local content.
- This is well above its peak time news required by its Ofcom license for both local and regional news
- During a sample of five normal weeks between weeks Q1 2022 and Q1 2023, ITV aired an average of 7 minutes and 8 seconds of advertising during weekday peak time news programming
- ITV's evening news block, from 6pm-7.30pm, typically includes 6 minutes of internal advertising per transmission
- While this is high for news content, it is still well below the maximum ad load during peak time

Note: Data above is inclusive of ITV main channel (inc. Breakfast) both SD, HD, and +1. Averages include days with no advertising minutage. Advertising minutage attributed to news programmes includes centre-breaks, direct end-breaks or end-breaks of any following weather bulletin or party-political broadcast.
 Source: BARB, Oliver & Ohlbaum analysis

Channel 4 currently runs under one minute of advertising during its peak time news

On a typical weekday, Channel 4 runs one hour of News content in early peak time, with additional news content at lunch time in the form of a short news bulletin

Illustrative Channel 4 news schedule

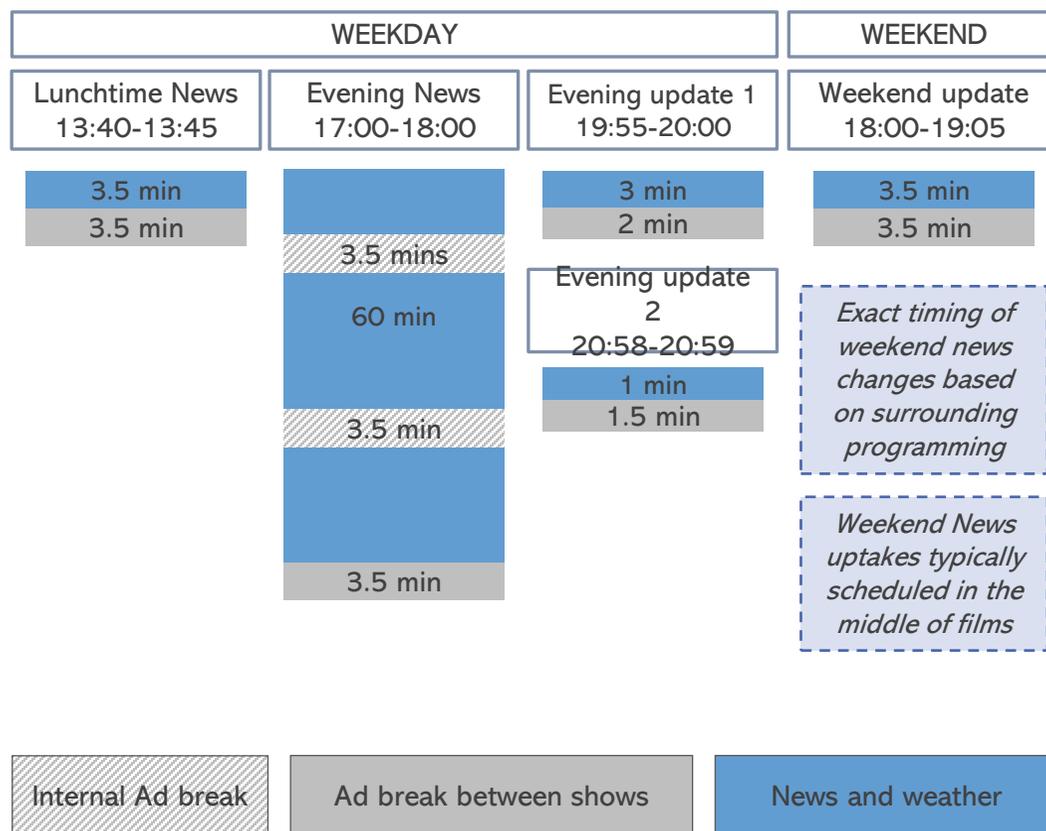


- On weekdays, Channel 4 schedules one hour of news programming during peak time, with this reducing to 30 minutes on weekends
- Channel 4 currently places extremely limited advertising minutes during its prime time news content, with an average ad time per transmission during peak time of just 56 seconds
- Channel 4 currently broadcasts little additional news coverage outside of prime time, with just a short 3 minute news bulletin at 11:25 appearing regularly on its schedule
- Channel 4 is required in its licence to provide at least one news programme at lunchtimes and one in the early evening each weekday, and also program in the early evening at weekends, while also providing a total of at least 207 hours per annum of news content

Channel 5 programmes the majority of its news content outside of peak time

During peak time, Channel 5 programs 7 minutes of news content per weekday, delivered as two short news bulletins. Due to the brief nature of this programming, it is unlikely that a change in peak time COSTA rules would have a significant impact on Channel 5's news output

Illustrative Channel 5 news schedule



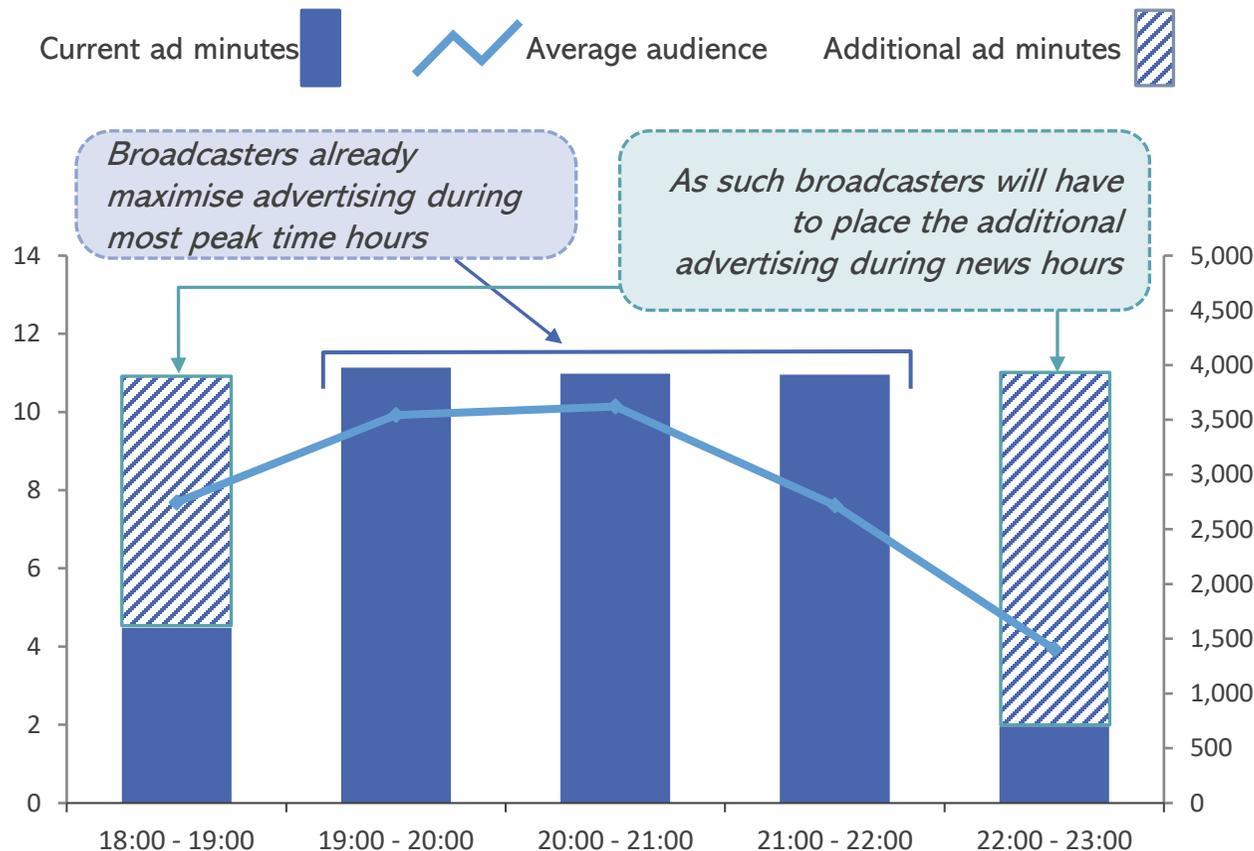
- Channel 5's remit stipulates its main news programming takes place in the early evening. It takes place outside of peak, between 5-6pm, avoiding overlaps with other PSB provision
- During peak time Channel 5 broadcasts multiple short News bulletins, averaging just under 7 minutes of peak time news content per evening
- Channel 5 is required to broadcast 20 hours of news content in each calendar year during peak time
- Due to the limited amount of News content that Channel 5 currently broadcasts during peak time it is unlikely that any change in peak time ad requirements will have a significant impact on Channel 5's total news output

Note: Data above is inclusive of ITV main channel (inc. Breakfast) in both SD, HD, and +1
 Source: BARB, Oliver & Ohlbaum analysis

Removing restrictions could lead to an increase in ads during peak time news

This would lead to a reduction in the amount of news programming in the news hours

ITV's main channel average ad minutes and audience per hour, Monday to Friday (2022 annual average)



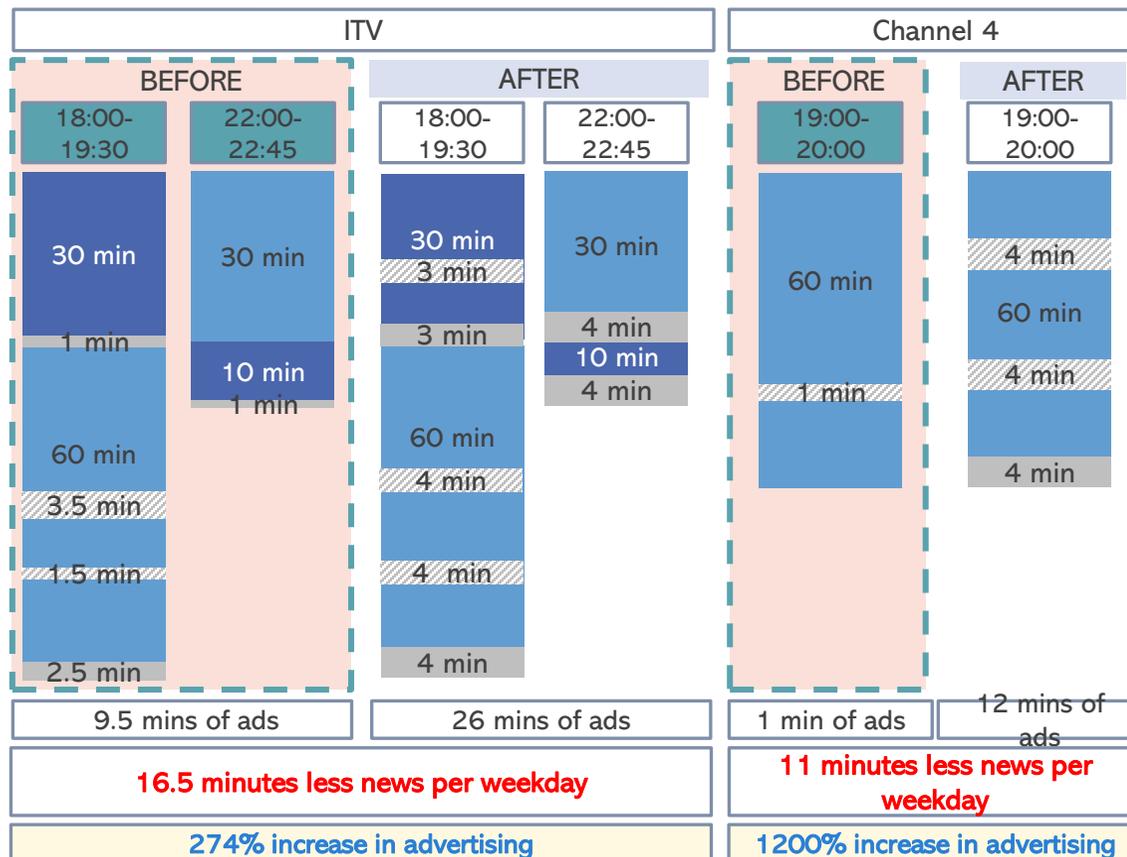
- Removing the peak time ad minutage restriction which is exclusive to PSB channels would enable them to utilise 12 minutes per hour of advertising throughout peak time
- However, since PSBs already utilise the 12 minute allowance in most peak time hours, the additional advertising minutes will primarily affect news programming hours which currently have low levels of advertising
- Increasing advertising minutage in these hours will lead to a corresponding reduction in news programming

Note: Data above is inclusive of ITV main channel (inc. Breakfast) in both SD, HD, and +1
Source: BARB, Oliver & Ohlbaum analysis

ITV and C4 could increase their ad minutage during peak time news

If peak time ad restrictions changed for PSBs, it is possible that PSBs would maximise their ad load during peak time news. We estimate that this could result in up to 27.5 minutes less peak time news content per day

Illustrative Changes to ITV and C4 weekday peak time news schedule



- Ofcom has committed to retaining the existing rules that restrict the frequency of advertising in news, under both its proposed options
- This includes Rule 10 of COSTA: “*The transmission of films and news programmes may be interrupted by advertising or teleshopping only once for each scheduled period of at least 30 minutes*”
- In addition, removing the maximum advertising break duration (currently 3min30secs), as Ofcom propose, would allow broadcasters to hit the maximum 12 minutes through a number of different break combinations (see left)
 - 4 mins, 4 mins, 4mins
 - 3.5 mins, 5 mins, 3.5 mins
- Our analysis shows that this could result in up to 27.5 minutes less peak time news content on a typical weekday, amounting to over 115 hours over the course of a year

Note: Data above is inclusive of ITV main channel (inc. Breakfast) in both SD, HD, and +1
 Source: BARB, Oliver & Ohlbaum analysis

These changes would therefore lead to a reduction in total news consumption

This would come as a result of a reduced number of news reports covered and a diminished audience

- 1** Reduction in news coverage
 - As we have illustrated, changing the regulations could lead to channels 3, 4 and 5 increasing their ad minutage in peak time news hours, leading to a reduction in the volume of their news output
 - This would lead to a reduction in the length and breadth of stories covered, as either:
 - News programmes will contain fewer reports
 - Or the duration of each news report will reduce (to maintain the same number of reports)
- 2** Diminished news audience
 - Although viewers are used to advertising on TV, these potential changes are substantial – up to 11x more advertising in the case of Channel 4 News
 - This level of increase is likely to have a negative impact on audiences – both on perception of news and on audience levels, with some deterred from watching
- 3** Total consumption of news falls
 - We estimate that this may amount to over 115 hours of news programming lost during peak time each year on the PSB channels
 - This lost volume of programming would combine with a decrease in audience to result in a significant fall in total PSB news consumption (audience hours)



Assessing the impact of potential changes to TV advertising minutage regulation

A report for COBA

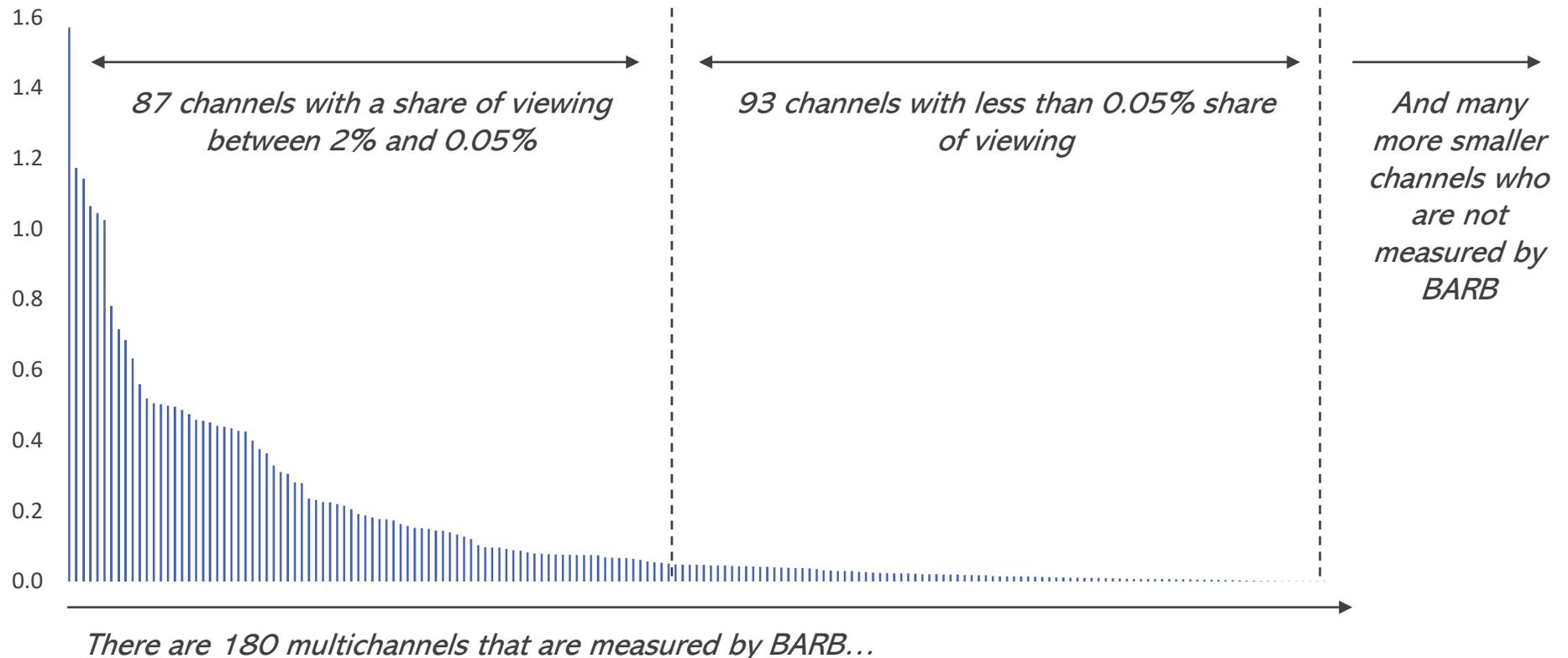
IMPACT ON LONG TAIL (anonymised)

There is a long tail of smaller channels who make up the TV ecosystem

Of the 180 multichannels that are measured by BARB, 93 have a share of viewing of less than 0.05%. In addition, there are many smaller channels who are not measured by BARB

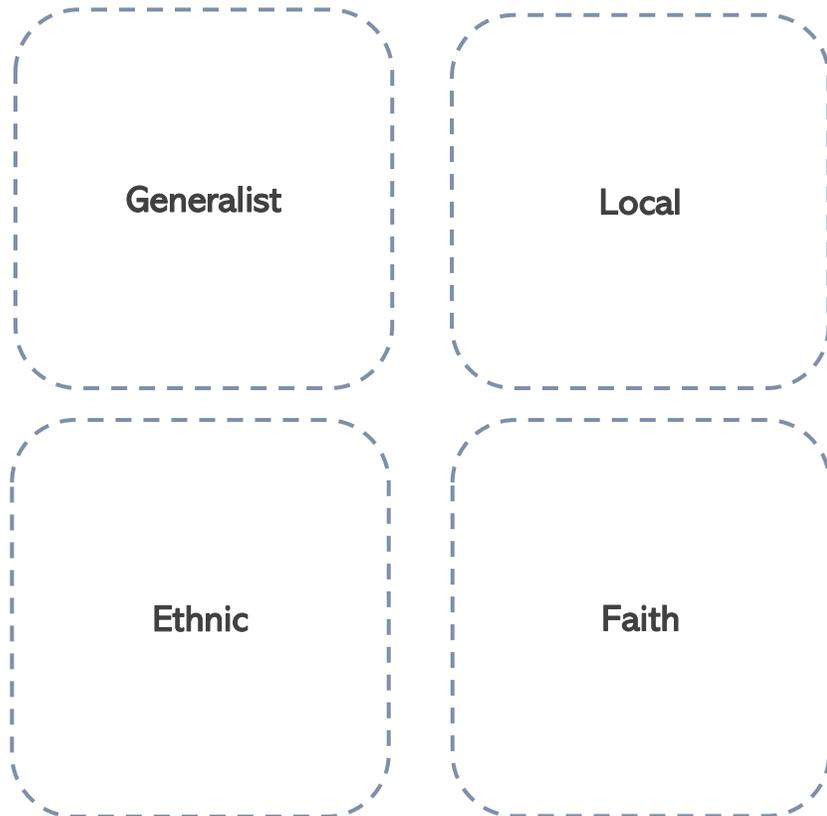
Share of viewing (SOV) of all multichannels, 2022

% All day viewing, A16+



These smaller channels are vital for the diversity and plurality of the sector

Many channels in the 'long tail' of the sector are dedicated to underserved religious and ethnic groups



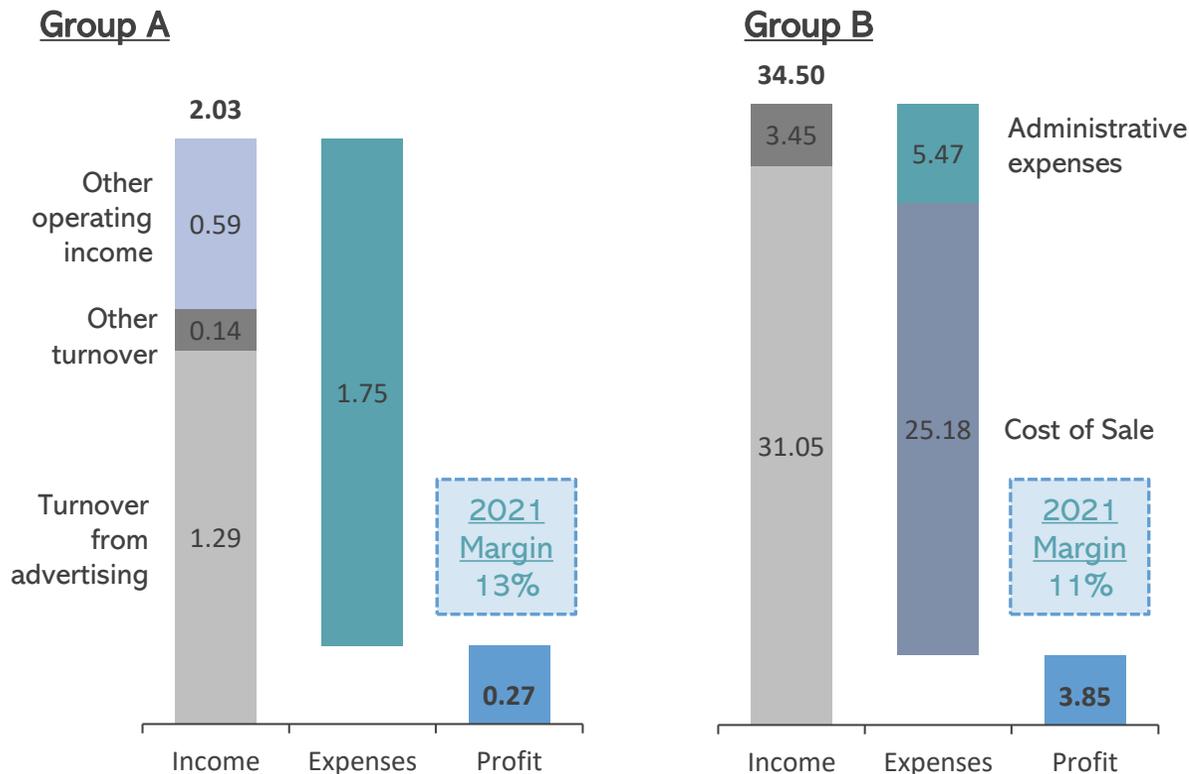
- Many of these channels in the 'long tail', whilst being small, play an important role in representing specific interests and communities
- This includes channels dedicated to faith, specific ethnicities and localities
- All of these channels not only cater to specific audiences, but promote inclusivity and cultural exchange
- Losing such channels would diminish the richness of the sector and would negatively impact diversity and plurality in the sector
- These channels are not COBA members

Many of these channels already operate on relatively thin margins...

Two media groups, who both run portfolio of small channels across the UK, operated on margins under 15% in 2021.

Financial accounts for two operators of multiple small TV channels, FY 2021

£millions



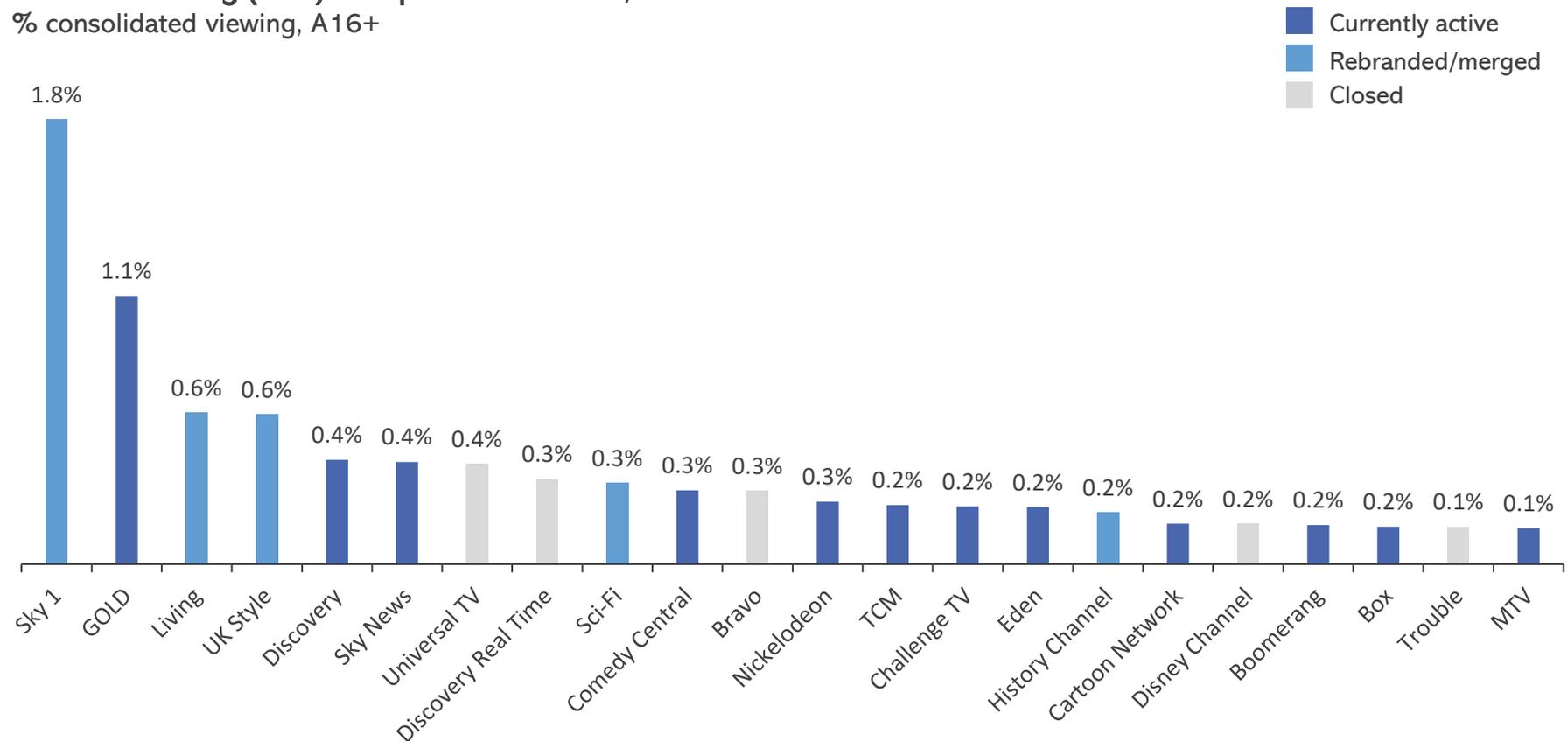
- Many of the broadcasting companies in the long tail of channels are not large enough to report in companies house. As such, we have looked at the finances of two TV groups that operate multiple small local and generalist channels across the UK
- Both of these media groups operated with relatively slim operating margins in 2021, 13% and 11% respectively.
- The vast majority of these companies turnover will come from advertising revenue, as such any disruption on the ad market could severely impact the companies financial viability

Note: Advertising turnover assumed as 90% of total turnover
Source: Companies house, Oliver & Ohlbaum analysis and estimates

... and the sector has seen a number of closures/mergers since inception

Much of this change is due to the fragile economics lower down the schedule; this has led to many channels closing or being merged over the past two decades

Share of viewing (SOV) of top multichannels*, 2002
% consolidated viewing, A16+



Note: *Excludes sports and movies/film thematic channels
Source: BARB, Oliver & Ohlbaum analysis

The proposed changes are likely to impact these channels' advertising revenues...

Our modelling suggests that the multichannel sector could face a loss in the range of 11-17%

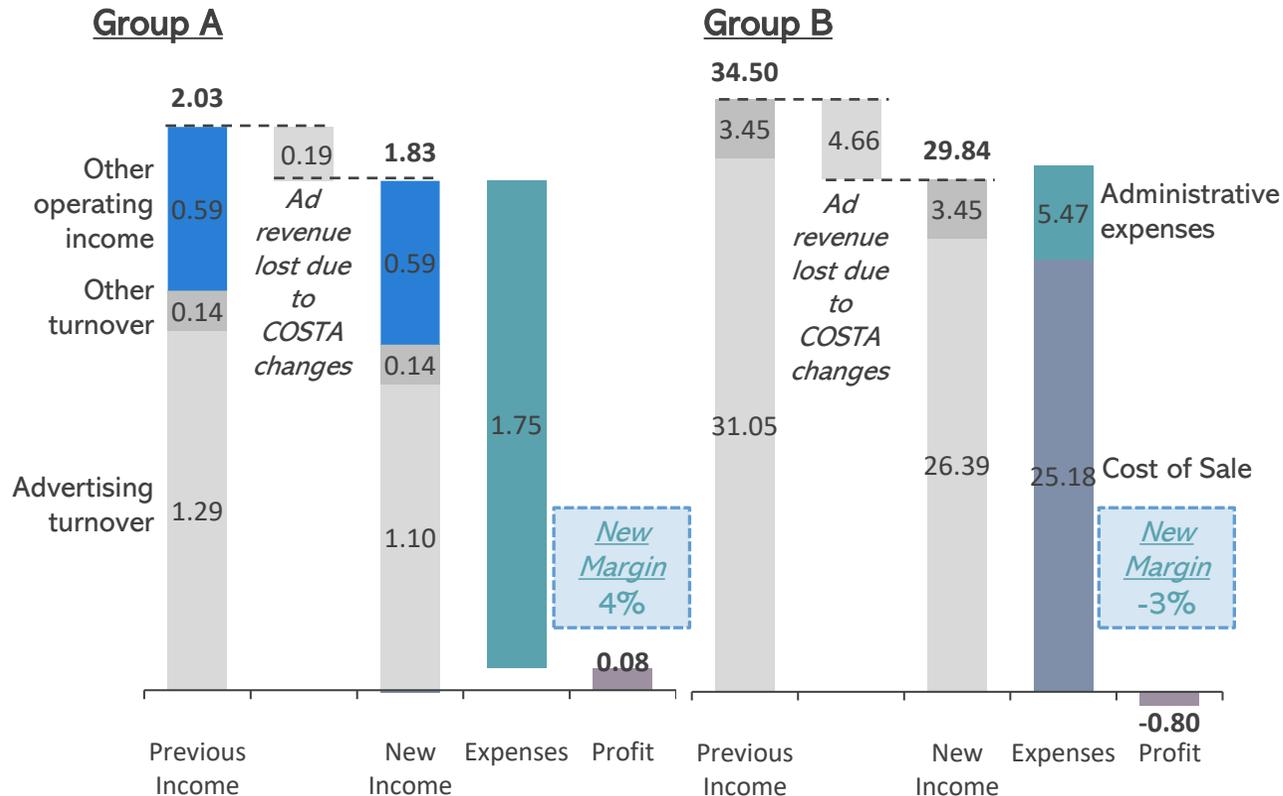
- We believe that Ofcom's current proposals to reduce advertising minutage regulations for PSBs is likely to increase the supply of advertising spots, leading to deflation and a loss of advertising revenue across the sector
- Our modelling, illustrated earlier in this report, suggests that the supply of impacts in the total market may increase 5-10%, leading to a fall of market net advertising revenues of 5-9% (depending on scenario)
- This includes an effect on the multichannel sector and the 'long tail' of smaller channels. Given their smaller reach and audiences, these smaller channels offer cheaper advertising, and the deflationary pressure on the market is likely to push their CPTs even lower
- Our modelling suggests that the multichannel sector is likely to be the biggest loser from the proposed changes, with an impact would be could be a loss in the range of 11-17%

... and this is likely to damage these channels' businesses...

The financial accounts of smaller channel groups suggest that a 15% reduction to their advertising revenues could push their margin near or into the red

Accounts for two operators of multiple small TV channels, with new advertising rates

£millions



- To illustrate the challenges that many of these smaller channels may face, we have applied a 15% reduction (in line with our earlier modelling), to the revenues provided in the public accounts of smaller channels
- This exercise suggests that this reduction in revenue threatens the viability of Group A, bringing their margin down to just 4%, while for Group B the loss in ad revenue brings the company into the red with a margin of -3%
- This illustrates the type of challenge that could be facing a large share of the hundreds of smaller channels that are vital to the plurality and diversity television, following the proposed changes to COSTA

Small channels are particularly vulnerable to declining ad revenues

Small channels are often more reliant on ad revenue than larger channels, additionally they are likely to already operate on minimal cost giving them little opportunity to preserve margins

Small channels would likely face the largest drop in NAR

- Many small channels' USP to advertisers is the fact that they offer advertising at significantly lower prices
- A change to COSTA would significantly lower the cost of advertising on PSBs, allowing some PSB channels and their portfolio channels to offer daytime advertising at a comparable price to smaller channels. This would significantly erode small channels' appeal and force them to greatly lower prices in order to attract advertisers
- This would lead to a considerable drop in NAR for small channels, well above the decline seen in the overall market

Small channels are the most reliant on advertising

- Small channels are often more heavily reliant on advertising revenue as their main source of income, as they are likely to have fewer alternative revenue streams
- As such, a 15% in NAR will affect a larger share of these channels' total income

Small channels will be unable to cut costs to maintain margins

- Many small channels will already be operating with minimal costs and have limited room for further expense reduction
- Consequently, when faced with a substantial decline in revenue, there is very little they can do to reduce their costs in order to maintain their margins, forcing the companies into the red

A minor change could start a vicious cycle of decline for small channels

- In the long term, this decline in revenue and thus profit will likely start a vicious cycle for small channels
- A small decline in revenue could make small channels unable to afford the same quality of programming or may even cause them to stop broadcasting during some hours of the day
- As they start airing lower-quality or less content, viewers may move to larger channels, leading to even less revenue for the smaller ones and worsening the cycle
- This would likely result in the closure of several small channels, damaging the diversity and plurality of the market

Critique for COBA on the “Qualitative research: Viewers’ perceptions of the Code on the scheduling of television advertising” report prepared by 2CV

2CV describe themselves as a “global market research agency” and were commissioned by Ofcom to investigate, via qualitative research techniques, viewers perceptions of the COSTA code on the frequency and scheduling of TV advertising. This included a specific requirement to “understand viewers’ attitudes to allowing commercial PSBs the same flexibility as non-PSB’s with regard to the quantity and scheduling of TV advertising”. This document is a critique of that work produced on behalf of COBA.

Stripping the approach of 2CV for their research down to its most basic elements they used a three-stage technique as follows:

1. Obtaining the unprompted opinions of a suitable subset (sample) of viewers (I will refer to this as the pre-prompted opinions)
2. They then briefed (or prompted) the respondents with more detail on how TV advertising works (the prompt stage) which then was discussed by the respondents
3. Then they sought new opinions from the sample after the brief was given (the post-prompted opinions)

I think, for the most part, the pre-prompted opinions are not controversial. They pretty much say what we would expect – specifically that most viewers either dislike, or at best tolerate, TV advertising and consequently have relatively poor knowledge of the way advertising works commercially. However, for non-researchers, there might be some obvious concern due to the prompt stage and the great importance put, in the 2CV report and the conclusions drawn from it by Ofcom, on the post-prompted opinions. I’ve looked at the survey results in the light of that concern but, as somebody with around four decades of experience across a very wide variety of research techniques, I don’t see anything wrong with this approach. In fact, I have often used a similar approach myself in various research scenarios. I would say that the pre-prompt, prompting stage, post-prompt technique is very common in market research. Furthermore, as somebody who has worked extensively in the media research area, I would most probably have used the same approach had I been attempting to meet this particular client brief. Within the context of Qualitative Research this approach is, in fact, sufficiently well recognised that it is known as “Deliberative Research”. This is defined, by the Association of Qualitative Research, as follows:

“Deliberative research focuses upon participants’ viewpoints after they have been presented with the opportunity to ‘deliberate’ the issue(s) in question (as opposed to traditional qualitative methods that seek to understand current viewpoints). The sessions which usually take the form of an extended workshop, present a range of information and encourage differing points of view and perspectives to be presented, before considered decisions are finally sought. It can be a useful approach for policy consultations as it allows the public to be involved in decision-making that incorporates a wide range of viewpoints and ideas.”

(source: <https://www.aqr.org.uk/glossary/deliberative-research>)

As Researchers we might use this deliberative, or three-stage technique, for one, or possibly a combination, of two reasons. Firstly, because we wanted to test how a change in a market might influence respondents (What if prices changed? Or – what if Sport X was no longer shown on Broadcaster Y? etc). Or, secondly, we might have good reason to believe Respondents were not fully aware of important information and that, if they were aware, their opinions might change. In this particular research there is an extent to which both reasons apply. Hence, it is sensible – and appropriate - for 2CV, in my opinion, to have used a three-stage deliberative approach.

However, that is not to say I don't have major concerns about this report or, much more specifically, the way that it appears to have been interpreted in the Ofcom proposal for removing regulation. I'm unclear as to the extent to which Ofcom needs to rely on viewer opinions when proposing to remove regulation, but using the opinions obtained by this particular piece of research has substantial challenges in my considered view.

To understand those challenges it is essential to understand a critical aspect of the three-stage technique outlined above. The post-prompted opinions are, as it were, "hard-wired" to the information provided (as are ANY ASSUMPTIONS MADE by the respondents based on that information) during the prompt stage. Critically this was a qualitative piece of research – so the information initially provided by the researchers was then discussed (deliberated) by the research respondents. The information initially provided, and then the deliberation resulting from that information, are – thus – to be treated as one. Then these post-prompted opinions should never be used outside of the context of the prompt (brief) that was given and the resulting deliberations. Clearly, the brief given to the respondents – and how they interpret that brief – are a critical part of the opinions expressed as a result of that brief. You cannot use the one without accepting the other.

I consider that it might be helpful to briefly divert to a simpler example to properly convey the importance of this "hard-wiring". Suppose we were asked to predict future sales of electric vehicles. We might use this three-stage approach here as well. In stage one we might simply ask "Are you intending to buy an electric vehicle in the next 12 months?" Next, we might be interested in a specific change to future pricing (just as an example). So, we might brief the respondents about a potential increase in the price of conventional fuel (petrol and diesel). Suppose, we might say, "there was a 10-fold increase in conventional fuels – then how likely would you be to buy an electric vehicle in the next 12 months?" Let's assume 10% answered "yes" to the pre-prompted question and 50% to the post-prompted one.

Now you might question "why a 10-fold increase in fuel? Why not 5-fold, or 20-fold for that matter?" This is indeed critical. The exact nature of the prompt is, as already stated, "hard-wired" to the post-prompted opinions. We should not advise an EV Manufacturer to plan for 50% market share unless there was exactly a 10-fold increase in pump prices. We cannot even guesstimate that a 5-fold increase would be halfway between 10% and 50%, since we have no

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way of telling the threshold price (the price that tipped them from no to yes – I'll buy an EV) of the 40% of consumers who changed their mind between the stages. If we had wanted a data point at 5-fold price increase – then we should have asked about one. We simply cannot disassociate the post-prompted opinions from the EXACT nature of the prompt that was given in the research.

If we now move back to the research done by 2CV on TV advertising, you can see that it's critical to look in detail at the assumptions made in the brief (or prompt) given to the respondents. Also, I think it's important, as in the 5-fold fuel increase, to contextualise the research by looking at alternative assumptions (or different possible briefs) that were NOT given to the respondents but logically could have been and might have resulted in very different opinions.

In particular I would point out the following important assumptions that were either overtly made by the researchers, or were not corrected by them if drawn by the respondents themselves. Note that it doesn't matter whether the assumptions were made in the brief, or as a response to the brief. In fact, it doesn't really matter even if the brief made one assumption that the respondents chose to interpret in a different way. If this mattered, and was considered incorrect or incomplete, the researchers could, and should, have informed the respondents and guided an additional discussion. What really matters is that we know exactly how the researchers briefed the respondents, and that they clearly specify where assumptions have been made by the respondents as a result of that briefing. 2CV have indeed done exactly that in their report – quite correctly. These are then the assumptions “hard-wired” into the post-prompt opinions. Any conclusions made about those opinions must recognise the brief and the connected assumptions that were made.

Specifically, I note the following specifics that I believe are important here:

- The current differences between TV advertising rules for PSB and non-PSB channels was assumed to be unfair (by the respondents), to have no obvious justification and, therefore, to need changing. No attempt was made to explain the current differences and why they were originally justifiable.
 - o As we know, there are rules that limit TV advertising on all channels. But then there are additional rules that apply specifically to PSB channels. The reasons behind the basic rules were clearly explained to the respondents. But no reason appears to have been given as to why the additional rules are **currently** applied to PSB channels. As a result, respondents were supportive of the overall rules ¹ but then saw no good reason for the additional PSB rules and concluded, therefore, that they are unfair ².
 - o Unlike the reasoning behind the basic rules, the original justification for the additional rules was not briefed to the respondents. It may be that Ofcom believe that justification is no longer valid? Either way, it did not form part of the brief ³. Accordingly, respondents did not have a chance to express their

¹ *“In spite of an initial lack of awareness, on consideration and deliberation of the rules, viewers were generally supportive of the rationale behind the COSTA rules and the idea that the regulations in place are there to protect their TV viewing experience by limiting their exposure to advertising.” (page 18)*

² *“Viewers were uncertain why PSB and non-PSB channels had different quantity and scheduling rules, and many thought the differences unfair and uncompetitive.” (page 4)*

own view on that validity. They may have come to the same view – but they may not have. Given no explanation, they concluded the additional rules are unfair⁴. Importantly, even then, they were still reluctant to accept more advertising as a result of equalising the advertising rules⁵.

- Believing the additional rules to be unfair will, obviously, have predisposed them towards a point of view on the possible options for the future - about which they were later asked to comment. We do not have a means of knowing (within this research) how viewers would have regarded the possible future options contextualised by an explanation of why the extra rules were originally thought to be appropriate. Critically, they were pre-disposed towards any option that changed the status quo simply because they believed the status quo to be unfair⁶.
- Removing the additional rules on the number of adverts shown on PSB channels is assumed to result in more advertising revenue.
 - Clearly the current rules on TV advertising generally are an artificial constraint on supply. They may be understandable (and even desirable) but they are still a supply side constraint for all that. It clearly cannot be guaranteed that partially removing that constraint will result in a demand side increase. Although that might happen, it seems equally valid to assume that the current demand for TV advertising is simply redistributed resulting in no increase in revenue overall.
 - Indeed, 2CV did say that an increase could not be guaranteed. But they did not explore in detail how viewers would feel about a relaxation of the PSB rules that resulted in a zero change in advertising revenue – something that surely cannot be ruled out? The warning that was given is immaterial. Despite their warning that no increase could be assumed – 2CV make it very clear (at multiple points in their research summary) that respondents DID assume an increase in revenue would occur and (see next point) that this revenue would be spent on additional high-quality programming.
 - As viewers were not asked what they would think about a rule relaxation that did not result in more advertising revenue, we cannot know for sure how they would have reacted. However, it seems very likely they would not have then accepted the proposed relaxation of the advertising rules. They would not have seen the benefit that they so clearly required in return for their acceptance. Therefore, Ofcom, if they wish to depend on the findings of this research, can only do so if they are able to ensure an increase in TV advertising overall (and that this increase will result in additional high-quality TV programming). That may not be possible – but it's completely clear that the post-prompted opinions were based on these assumptions. Change the assumptions and you simply cannot use the post-prompted opinions as any kind of justification.

³ *“The pre-task materials explained the rationale behind having rules around quantity and frequency of advertising but not specifically on the difference in rules between PSB and non-PSB channels.” (footnote 4 on page 20)*

⁴ *“Viewers were uncertain as to why there is a difference in rules across television channels, with this lack of parity between them being seen as ‘unfair’ to the channels.” (page 20)*

⁵ *“While viewers wanted a fairer application of the rules, they were resistant to the idea of more advertising as a consequence of bringing parity. It was apparent that the ultimate priority for viewers would always be the preservation of their current TV experiences over and above the idea of fairness.” (page 4)*

⁶ *“Overall, viewers recognised the need for a re-examination of the COSTA rules and felt like the current status quo needed to be addressed. As noted, viewers were generally unclear on why the two types of broadcasters (PSB and non-PSBs) have different regulations. For many, this difference felt ‘unfair’ and initially led them to believe that change to advertising rules needed to happen in order to bring parity between PSB and non-PSB channels.” (page 21)*



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- The additional advertising revenue will be spent on making high quality TV programmes. This point was linked by the respondents in their post-prompted assumptions. Practically speaking though it is a separate point. Even if there were to be additional revenue, there's then a secondary assumption that PSB's would spend that money purely on making additional high-quality programmes.
 - o Again, this seems a big, and completely unwarranted, assumption. Once again 2CV did make it clear in their brief that any increase in revenue could not be guaranteed to go towards more programming (⁷ and ⁸). But this was not explored as a potential future scenario even though it must be considered as a distinct possibility. In their report 2CV make it very clear (at multiple points in their report (⁹, ¹⁰, ¹¹, ¹² and ¹³ are just examples) that respondent's approval of changing the rules was completely dependent on PSB's making more quality programming as a direct result of the rule change. Because the researchers make this point so frequently, we might be able to assume respondents would not have approved a change to the rules without the new high-quality programming they wanted as a trade-off.
 - o Certainly, if Ofcom cannot require PSB's to make additional high-quality TV Programmes – then it is not possible to use the post-prompted opinions to justify the rule change. Ofcom themselves come part way towards accepting this (but only part way) in point 1.20 of their proposal document which states *“Our audience research also suggests that, while audiences do not want more advertising on PSB channels, they are more likely to tolerate it if it can be assured that additional advertising revenue will be generated as a result, and that this will be invested in content.”* This is a considerable understatement. The research summary itself makes it clear that audiences are not “more likely to tolerate” but absolutely require there to be additional revenue and that this be spent on high quality

⁷ *“If these channels had more money they might invest in new UK made programming.” (point 4 on slide “Things for viewers to think about”)*

⁸ *“However, we can't say with certainty how much more revenue the PSBs would have, if any, if the rules were changed, and how any additional revenue would feed back into UK programming.” (point 5 on slide “Things for viewers to think about”)*

⁹ *“Viewers felt strongly that any additional revenue must go towards the development of good-quality programming, and not solely towards broadcasters' profits or to their shareholders.” (page 4)*

¹⁰ *“Throughout the research process, viewers were quick to reiterate that any additional revenue must go towards the development of good-quality programming, and not solely towards broadcasters' profits or to their shareholders. In the minds of viewers, this was felt to be a non-negotiable condition of increased advertising. This made viewers less accepting of the idea of increased advertising; if there is no proof of a tangible benefit to them (i.e. investment in good-quality programming), this is where the idea of more advertising falls down in their minds.” (page 21)*

¹¹ *“Tolerance levels towards each scenario were determined by how disruptive the proposed idea was perceived to be to overall viewing experiences and were based around the condition that the additional revenue had to be invested in good-quality programming for the enjoyment of viewers.” (page 23)*

¹² *“Critically, viewers felt that it was essential that the additional revenue generated by increased advertising would be invested in providing good-quality programming.” (page 24)*

¹³ *“...when the conversation moved to the future of TV advertising, and what Ofcom as a regulator should bear in mind when introducing any new rules, it became clear that viewers ultimately prioritised the continuation of good-quality programming. Preserving good-quality programming is a non-negotiable factor for viewers – this means that their willingness to tolerate more advertising on PSB channels in the future is on the condition that any additional revenue, generated through increased advertising, is invested in engaging content.” (page 24)*

- programming. As just one example, on page 4 2CV state *“Viewers felt strongly that any additional revenue must go towards the development of good-quality programming”*
- The key question then becomes – how are Ofcom going to guarantee that their proposed rule change will result in more advertising revenue (for PSB and non-PSB channels combined) and that this additional revenue will be spent on additional high-quality programming?
- The likely impact of additional adverts reducing the amount of (for example) news coverage was not fully assessed because it was not a specific scenario properly explored in the research.
- The specific hours where advertising might impact was discussed under scenario 4 - with viewers accepting increased advertising on PSB channel during peak 6-7pm and 10-11pm time slots ¹⁴. But it is not clear that viewers were informed that these time slots would bear nearly the full impact of changing the rules. Indeed, 2CV state this was perceived to have a “minimal disruption to current TV viewing experiences” ¹⁵.
 - In fact, there’s a very good reason why the disruption could be regarded as far from minimal and I believe, therefore, that it should have been probed in considerably more detail with the full impact being made explicit. It is important to recognise that the way PSB’s currently work within the existing rules is to rely on the freedom they have to **average** the number of minutes shown across the 6pm to 11pm window as a whole. As a result, the “missing” minutes (those which a rule relaxation would allow them to increase) are dominated by a small number of hours and not equally spread across the evening as a whole by any means.
 - In their own analysis (of BARB data on current advertising minutes) it is clear that Ofcom expect any relaxation of the PSB specific rules to result in more advertising during the 6pm to 7pm and 10pm to 11pm hours ¹⁶.
 - For example, on ITV between 6pm and 7pm they expect an additional 7.5 advertising minutes on top of the base of 4.5 minutes currently. Then, between 10pm and 11pm, an increase of 10.6 minutes on a current base of 1.4 minutes ¹⁷. Therefore, viewers of ITV at 10pm would see nearly nine times as much advertising. This is obviously not a “minimal disruption”. By contrast they expect an increase of only 20 seconds or so of advertising between 7pm and 8pm on ITV if the rules were to be relaxed.
 - Ofcom recognise this in their proposal document. Point 1.18 reads *“We are particularly mindful that given current scheduling patterns, the rules could lead to a reduction in the amount of news content on PSB channels. This is because the change would, in effect, allow broadcasters to schedule more advertising minutes in their evening slots, which generally run during 18:00 to 19:00 and 22:00 to 23:00. Currently, these slots include relatively fewer minutes of advertising.”*

¹⁴ *“It was generally understood that the peak-time slots provide opportunities to raise the largest revenue based on high audience numbers at these times. Viewers were therefore more accepting of increased advertising on PSB channels during the peak 6-7pm and 10-11pm slots.” (page 28)*

¹⁵ *“Overall, Scenario 4 was perceived to be an effective way to help PSB channels raise revenue with minimal disruption to current TV viewing experiences.” (page 28)*

¹⁶ *“So where is the greatest potential for change?”*

- *ITV1’s clock hours with significantly unmaximized minutage but higher viewing than outside Peak are 1800 and 2200*
- *Chanel 4’s clock hours with significantly unmaximized minutage but higher viewing than outside Peak are 1800, 1900 and 2200*
- *Channel 5’s clock hours with significantly unmaximized minutage but higher viewing than outside Peak are 1800 and 2200” (Ofcom Analysis of BARB data slide 3)*

¹⁷ *Slide 6 of the Ofcom “Analysis of BARB data”*

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- It would, therefore, have been appropriate to specifically explore how respondents would have felt about this by probing in much more detail. In particular those viewers interested in National and Local news on PSB's would see a noticeable decrease in programming content. It seems unlikely they would regard this as a "minimal disruption" as a result of relaxing the advertising rules. But we don't know for sure as this was not explored in depth in the research.

In conclusion – I do not find any fault in the use of a deliberative approach to this research. I do find some issues with the specific assumptions that were made and scenarios that were explored. These certainly do not represent the full range of possible outcomes that might result from changing the advertising rules. I then find additional issues with the way that key components of the research have not been properly considered in the proposal document. Specifically, I would say that viewers (as represented by the 2CV research) gave guarded approval to a change in the advertising rules on PSB's but only if such a change can be guaranteed to result in more revenue and that this additional revenue will be spent on additional high-quality programming. I can see no reference in the Ofcom document as to how they would ensure this would happen.