

## Cross-promotion on TV: time to change the rules?

<sup>1</sup>This article puts a case for change in Ofcom's rules on cross-promotion by commercial TV broadcasters.

<sup>2</sup>The current regulations, inherited from the Independent Television Commission (ITC), seek to achieve a balance between the information benefits of cross-promotion, the concern that promotions may irritate and confuse viewers, and the risk that excessive cross-promotion may damage competition.

<sup>3</sup>While these seem appropriate goals, we argue that there are ways to adapt these regulations so as to enhance both competition and information provision. The case for change has been further strengthened by recent trends and developments in the sector.

Ofcom inherited the current rules on cross-promotion from the ITC

<sup>4</sup>The ITC's *Rules on the Promotion of Programmes, Channels and Related Services on Commercial Television* were published in January 2002, and have been carried forward by Ofcom.

<sup>5</sup>The regulation of cross-promotion needs to be considered within the context of broader regulations on the sale and use of advertising airtime. The ITC's rules on advertising airtime, also carried forward by Ofcom, restrict the amount of broadcasting time that channels can devote to advertisements, and require effective separation between advertising and programming content. (We do not consider sponsorship in this article.)

<sup>6</sup>The ITC rules on cross-promotion allow a commercial TV licensee to promote certain programmes, channels and related services *outside its allowable advertising airtime*, subject to conditions intended to ensure that these promotions provide information of value to viewers and avoid creating significant viewer annoyance. To qualify, the promoted services must be "provided" by the broadcaster, where provision is defined as possession of at least 30 per cent of shares or voting power. Examples of services that can be cross-promoted include TV channels and programmes, and related websites or interactive content.

<sup>7</sup>In addition to these general rules, special conditions are placed on ITV1, Channel 4, and Five, owing to particular competition concerns. These broadcasters must not give an "excessive" amount of promotional airtime to particular services, and cannot include any information on prices.

<sup>8</sup>The restrictions on cross-promotion are intended to address three main concerns:

(a) cross-promotion may irritate viewers;

(b) cross-promotion may damage competition in the markets in which the promoted services are supplied; and

(c) there may be concerns for editorial integrity if the boundary between promotion and information provision within programmes becomes blurred.

There was a major pro-competition rationale for the current rules

<sup>9</sup>A broadcaster may be able to harm competition if its opportunities for cross-promotion provide it with sufficient influence over potential customers in the markets in which promoted services are supplied.

<sup>10</sup>In particular, strong cross-promotion might become the main driver of a service's success, and competition might not then be on the wider merits. This could lessen competition and choice, and undermine the incentives of market participants' to innovate and introduce new services.

<sup>11</sup>The ITC rules were prepared amidst concern that the ITV licensees might excessively promote the ITV Digital platform, to the detriment of inter-platform competition.

The current rules also have an adverse effect on competition and entry

<sup>12</sup>Under current rules, the distinction between advertising airtime and cross-promotion airtime is largely based on ownership of the promoted service's supplier. Advertising airtime is used in the promotion of services to third parties, whilst cross-promotion airtime is used to promote services provided by the broadcaster, as defined by the 30 per cent rule. A broadcaster cannot therefore sell promotional opportunities for "related services" to a third party, outside its allowance of advertising airtime.

<sup>13</sup>This means that opportunities for cross-promotion will often have a low opportunity cost for the broadcaster: the airtime can be used for programming or the promotion of the broadcaster's services, but cannot be used to generate income from third parties in the way that advertising airtime can. This low opportunity cost means that it will be relatively cheap for broadcasters to support their own services through cross-promotion.

<sup>14</sup>Therefore, although the ITC rules include various conditions intended to prevent excessive cross-promotion, the restriction of promotional opportunities to services provided by the broadcaster creates incentives that may lead to adverse effects on competition, as rational broadcasters take advantage of "cheap" cross-promotional opportunities. In effect, the current definition of cross-promotion provides an artificial "efficiency" advantage in

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favour of the supply of related services by broadcasters with large shares of audience.

<sup>15</sup>The specific conditions placed on ITV1, Channel 4 and Five may be too blunt to address these risks to competition. They could also hinder the flow of relevant information to consumers (for example, the rules prevent promotions that include price information).

### Market conditions have changed

<sup>16</sup>Since the ITC's rules were established, the collapse of ITV Digital and the subsequent success of Freeview, following heavy promotion by the BBC, have changed the nature of inter-platform competition in the UK.

<sup>17</sup>At the same time, the BBC's emergence as a strong competitor in digital and online services highlights the need for Ofcom to ensure its own regulations do not unduly impede the ability of commercial broadcasters to compete effectively with the BBC.

<sup>18</sup>Furthermore, the number of channels has continued to grow, and there are now more than 300 channels available on Sky's digital satellite platform. The increase in choice means that the benefits to competition of effective information provision are even greater.

<sup>19</sup>More generally, the growth in online and interactive services suggests that it will be increasingly important for broadcasters to engage with their audience across different platforms and different media. To do so, they will need an effective cross-promotional strategy. As cross-promotion spreads in scope, it will be all the more important to ensure that competition in nascent markets is protected.

### Trade in promotional airtime should be encouraged

<sup>20</sup>Competition is best protected by ensuring that undertakings face strong incentives to refrain from behaviour that threatens competition. Often a direct profit incentive can be more effective than detailed behavioural regulation and this will typically have fewer adverse side effects.

<sup>21</sup>In this case, it is possible to adapt current regulations to address the risks to competition that arise from "cheap" opportunities for cross-promotion. A broadcaster would have incentives to avoid using promotional airtime in a way that harms competition if it was given the option of using this airtime to promote third parties' programming and related services, outside advertising airtime, for a fee.

<sup>22</sup>Broadcasters would then trade-off the benefits of promoting their own programming against the income they could generate from promoting the services of third parties. Broadcasters would no longer possess relatively cheap opportunities for promoting their own services. This would reduce the risks that competition is threatened by excessive cross-promotion.

<sup>23</sup>At the same time, competition between channels would be enhanced because these would be better able to promote their services to viewers. In particular, some of

the smaller digital channels might compete more effectively if they could more easily promote their services to the audiences of the established channels. (Ofcom's report on phase 1 of its PSB review finds that the audience share of the five terrestrial channels in multi-channel homes was still as high as 57 per cent in 2003.)

### Regulation should focus on the nature of services, not on ownership

<sup>24</sup>This calls for a new approach to the regulation of promotional airtime, which is directed more at *what* services are promoted rather than *whose* services are promoted. This would reflect the idea that restrictions on general advertising airtime are intended to protect viewers from undue annoyance and a lower quality of service, but should not impede the availability of information on channels, programming and related services that may be of interest to viewers.

<sup>25</sup>Under a service-focused approach such as this, Ofcom's regulation would need to define the types of services that can be promoted outside advertising airtime, paying attention to the types of information that viewers find useful and the types of promotion that they find irritating. There would be much less of a concern about threats to competition, as commercial broadcasters would face substantially higher costs of using cross-promotion in a way that harms competition.

### There are good reasons to review the code on cross-promotion

<sup>26</sup>As it comes to review the ex ante regulations applying to commercial television, Ofcom should look carefully at the rules relating to cross-promotion. Moving to a service-focused approach can be expected to reduce the risk that competition is harmed by cross-promotion. Ofcom should take this opportunity.

<sup>27</sup>This will allow the content side of these regulations to be fine-tuned, without a preconception that broadcasters should use promotional airtime for their own services. Research amongst viewers can be directed at revealing the types of services that should be promoted outside advertising airtime, and the appropriate nature of these promotions.

<sup>28</sup>In this way, a revision of the code could better reflect viewers' attitudes towards the use of promotional airtime, improve the flow of information to consumers and enable companies to compete more effectively in evolving media markets.

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