



**Mobile Broadband Group
PO Box 34586, London SE15 5YA**

31st January 2007

Yvonne Matthews
Content and Standards
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

Dear Yvonne,

Ofcom's pre-consultation issues paper on Participation TV

The Mobile Broadband Group ("MBG", whose members are O2, Orange, T-Mobile, Virgin Mobile, Vodafone and 3) welcomes the opportunity to submit some initial comments on Ofcom's pre-consultation paper on Participation TV. We look forward to responding to the full consultation in due course.

This topic is clearly of major importance to broadcasters, because the television programmes in question generate meaningful amounts of revenue, which in turn funds original programming. The mobile operators, as providers of a wholesale platform for some of the interactive elements (e.g. text messaging) also have a significant interest. In the future, customers may also access this programming through mobile TV.

We very much support Ofcom in carrying out a pre-consultation as a way of ensuring that the resultant consultation is as thorough and evidence-based as possible. However, we are concerned to ensure that the results of the deliberations and consultations of the Gambling Commission and ICSTIS are considered before a full Ofcom consultation is issued. We welcome the Select Committee's proposal that Ofcom should lead the debate (paragraph 18 of their conclusions). We also welcome the Select Committee's statement that they "*have no issue with the type of entertainment provided by the shows: some of those on terrestrial channels have large audiences and many people thoroughly enjoy them*". It is incumbent on us all, therefore, to ensure that viewers can continue to enjoy this programming, in a regulatory regime that is proportionately and correctly devised.

We have considered in outline the four alternative approaches set out in Section 4 of the Pre-consultation issues paper. Here are our comments:

Option A:

This option would appear to reflect the current position and therefore require minimal amendments to the existing legal regime. The MBG would support this approach for

the time being, to give ICSTIS's "Statement of Expectations on Call TV Quiz services" a proper chance to take effect and for the overall take-up of the new formats to be evaluated. (This applies equally to the new proposals on information transparency that ICSTIS is consulting on).

Option B:

If all Participation TV were re-classified as advertising, the MBG would have two main concerns:

1. It would no longer be viable for many channels to offer Participation TV programming at its current schedule weight, or indeed at all, as the broadcast time would displace too much of the total hourly allowance for all advertising, including the very important spot advertising.
2. That adult and psychic Participation programming will be totally prohibited due to the current provisions of the ASA Broadcast code.

These outcomes will have a significant negative impact on the revenue currently earned by MBG members from viewers' interaction with the programming via, for example, text messaging.

Moving on to conceptual issues:

1. We do not believe that there is justification for this genre to have the blanket designation of advertising. Intuitively, it seems the audience is tuning in to be entertained rather than advertised to. This is demonstrated by the significant proportion of the audience that is happy just to watch and rarely, or even never, participates by calling in to a show. Ofcom's consultation process should include research to establish a clear evidence base on these aspects.
2. Ofcom and other stakeholders have long recognised that the new media landscape is going to throw up new business models for television production that don't rely solely on spot advertising. As everyone knows, the financial contribution from interactive elements such as voting has grown enormously in just a few years. The logical extension is that we should be able to have editorial programming that has minimal, if any, reliance on spot advertising and is mostly funded by interactivity.

Option C

The MBG does not feel that it currently has enough information about who and how value judgements about what is editorial and what is advertising content in order to seriously evaluate how this option would work in practice. It is hard to see how it would work apart from clearing every programme through a body such as the Broadcasting Advertising Clearance Committee (BACC), each time making a bespoke judgement. Clearly such a judgement would have a huge impact on (amongst other things) the scheduling of the classified content. Therefore applying the BACC's advertising clearance procedure and leaving such a classification until the programme is created is not going to be workable in practice. The MBG is of course happy to consider a structured alternative to this approach.

Option D

The MBG is not averse to a new category of licensable programming being created, if that is what it takes to form a coherent and consistent regime. It is more important to focus on the objective. Whatever the outcome of this consultation process, we should end up with a regime that allows these new genres to flourish, providing they operate fairly and within the law (matters that ICSTIS and the Gambling Commission are considering separately). It is abundantly clear that these new shows, particularly Quiz TV, have found a significant audience and the regulatory regime should support them.

Much has also been made of the potential for financial loss where a customer does not understand that charges apply in some instances. It is not clear whether this problem is transitory or an ongoing concern. Clearly, programmes must make it clear how and when charges apply but Ofcom, before enshrining rules in its code, must establish whether these problems arose only because the audience's lack of familiarity with the format or whether there is an enduring problem to deal with. Either way, it will be possible to establish sensible rules for ensuring that no material consumer detriment arises from the way these shows are presented.

Finally, on this point the MBG would be agree with Ofcom that the separation of editorial and advertising content would have to remain clear, especially in the context of an MBG member wishing to be an editorial programme sponsor.

Teleshopping

The MBG has considered whether it would be a viable option to consider re-classifying Participation TV as teleshopping. The MBG does not think that the current definition of "teleshopping" in the TWF Directive explicitly covers Participation TV. This is because, on a plain English interpretation, Participation TV shows aren't exhorting viewers to purchase "goods or services" but to join in (for example) the quiz, to which the purchase of a telephony service such as a text message is merely ancillary. If Participation TV were to form part of an amended definition of teleshopping, then the MBG would have serious concerns about the restriction of such programming on terrestrial channels 3 to 5 inclusive, with reference to section 8.1.4 of the Ofcom Rules on the Amount and Distribution of advertising. Our concerns in relation to Option A would again therefore apply.

Conclusion

Ofcom is right to be carrying out this review, as the new formats and funding models perhaps do not fit squarely with existing rules. It is vital, though, that the tail does not wag the dog. At the conclusion of this process, Ofcom will have succeeded if we end up with a) a robust definition for 'participation TV' (tighter than proposed in 4.2), b) joined up regulation c) a good evidence base to back up policy and d) a set of rules that has adapted to the new context and which will allow this new programming content to flourish.

Yours sincerely,

Hamish MacLeod

Hamish MacLeod
Mobile Broadband Group