Reforming competition and consumer policy

Response from the Association for Commercial Broadcasters and On-Demand Services to BEIS

September 2021

COBA THE ASSOCIATION FOR COMMERCIAL BROADCASTERS AND ON-DEMAND SERVICES

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 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 [redacted] [redacted]@coba.org.uk or [redacted].

[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. As COBA represents a range of commercial broadcasters and on-demand services, we will limit our response to the section of the consultation on subscription contracts. For many of our members, subscriptions are the primary source of revenues or an important secondary source. These revenues allow them to invest in UK production, where the sector as a whole accounts for more than £1 billion a year of investment. Our members offer a range of services, including many niche channels and on-demand services providing content to specialist or minority audiences that would otherwise be underserved. Our members also provide a wide range of genres, including news, children's, entertainment and sport, amongst others.
2. In summary, we do not see the proposals as fitting for this sector, where there is a lack of meaningful evidence that consumers are locked into contracts. It is also important to understand that there are a variety of consumer packages on offer and that setting out a "one size fits all" approach may not be appropriate. To give one example, where a subscription starts with a free trial, should a three-day free trial give rise to the same consumer rights in terms of reminders as a three-month free trial? For this reason, Government should refrain from increasing the regulatory burden.
3. We are particularly concerned that certain proposals could have negative impacts on providers and unintended negative consequences for consumers. Firstly, where the Government proposes that consumers must opt in to a roll over contract raises a number of serious concerns. Many contracts in our sector roll over on a monthly or other short term basis. The consumer may choose to cancel the subscription on a monthly or similar basis, but requiring them to actively renew each month will be highly inconvenient for them and, if they miss a reminder, or are unable to do so, potentially lead to an undesired cancellation of the contract.
4. Such a policy will also require our members to build in mechanisms to support this specific nuance just for the UK market, adding to the cost of investing in the UK. Many of our member companies are active across numerous jurisdictions internationally and report that the UK is currently a relatively straightforward place for VoD services to operate. We would be concerned if the Government were to discard that advantage unless there is a compelling consumer case to do so. From our member companies' experience, there is no particular evidence of consumer dissatisfaction with VoD contracts.
5. Moreover, such an obligation could reduce consumer choice and result in higher prices. The digital video sector offers consumers different consumption

models, for example, catch-up services, transactional on demand (TVOD) and subscription on demand (SVOD). Each offering has a different price point. A mandatory opt-in model could limit a company's ability to properly forecast subscriptions and revenue and thereby result either in a move toward TVOD or potentially an increase in the subscription rate to compensate for a reduced ability to plan for the future. It could also limit consumer choice by driving businesses to eliminate or reduce availability of shorter-term subscriptions to allow for proper forecasting.

6. The easy exiting proposal should therefore not mean that a consumer can cancel a longer term contract (unless there is a breach of terms of course). Providers currently are incentivised to offer longer term contracts at a discounted rate, in return for the greater security of revenues that ensues, and permitting consumers to exit this contract will undermine this. This would dampen the incentive for providers to offer discounts in return for longer contracts, thereby reducing consumer choice.
7. We therefore call on the Government to allow exemptions for subscriptions:
    a. where a contract rolls over on a short term basis; and
    b. where a long term subscription provides clear and transparent information prior to conclusion of the contract, meaningful choice and offers easy cancellation mechanisms at the end of the renewal period, or in cases of a breach of contractual terms.
8. If it is established that there is a need for action, this should take the form of more robust enforcement with deterrent penalties against bad actors in our sector that do not provide clear and transparent information, meaningful choice or easy cancellation mechanisms. This seems like a more appropriate and proportionate response that balances consumer protection, benefit and overall welfare.

Q30. Do you agree with the description of a subscription contract set out in Figure 8 of this consultation? How could this description be improved?

9. We agree with the description.

Q31. How would the proposals of clarifying the pre-contract information requirements for subscription contracts impact traders?

10. In our view the proposals are unnecessary since there is already sufficient legislation covering pre-contract information requirements for subscription contracts. Our members are of the view that they already provide clear pre-contract information.

Q32. Would it make it easier or harder for traders to comply with the pre-contract requirements? And why?

11. It would potentially make it harder, if the legal requirements are unduly onerous or restrictive.

Q33. How would expressly requiring consumers to be given, in all circumstances, the choice upfront to take a subscription contract without autorenewal or rollover impact traders?

12. This an area of particular concern for our members in the Government proposals. It is of course right that consumers should be made aware of the nature of subscription contracts in a timely and transparent way, but in our view this is already the case for consumers contracting with our members.

13. Furthermore, most VOD services do not lock users into long contracts. Since VoD services are where there is the greatest uptake as consumer demand shifts online, regulating subscription arrangements is in our view unnecessary.

14. Indeed, a subscription might be charged on a monthly rolling basis, automatically renewing every month (unless a consumer cancels). Requiring a subscriber to pro-actively renew each month will be highly inconvenient for the consumer. In some cases, such as if they are on holiday and miss a reminder, the result could be the unintended cancellation of a service, which could also mean the loss of a subscription at a discounted offer rate. For this reason, we see this proposal as having the potential to cause consumer harm, especially if it is applied to short term roll over contracts.

Q34. Should the reminder requirement apply where (a) the contract will auto-renew or roll-over, at the end of the minimum commitment period, onto a new fixed term only, or (b) the contract will auto-renew or roll-over at the end of the minimum commitment period?

15. We have no view on this since we do not believe it is necessary nor desirable to impose a requirement to provide reminders in all circumstances.

Q35. How would the reminder requirement impact traders?

16. Please see response to question 32.

Q36. Should traders be required, a reasonable period before the end of a free trial or low-cost introductory offer to (a) provide consumers with a reminder that a "full or higher price" ongoing contract is about to begin or (b) obtain the consumer's explicit consent to continuing the subscription after the free trial or low cost introductory offer period ends?

17. In our view, a reminder is sufficient providing it meets with the proposed criteria, such as being in good time and via the consumer's preferred delivery route. Obtaining explicit permission is likely to create more uncertainty for companies, as outlined in response to question 33.

Q37. What would be the impact of proposals regarding long-term inactive subscriptions have on traders' business models?

18. Where an account holder is deceased, our members have dedicated teams to ensure that a contract is cancelled quickly and conveniently when they are contacted by next of kin. We do not see a need to introduce further rules in this area and do not support any automatic system that cancel accounts, if this is what is being proposed. This would create a range of problems, including how to define the criteria for establishing an account is inactive, such as how long it must be dormant. Many services do not require consumers to pro-actively do anything and therefore establishing whether a subscription is dormant is problematic.

Q38. What do you consider would be a reasonable timeframe of inactivity to give notice of suspension?

19. As noted above, this will vary greatly from service to service as some are more interactive than others. We do not support an automatic suspension of service.

Q39. Do you agree that the process to enter a subscription contract can be quicker and more straightforward than the process to cancel the contract (in particular after any initial 14 day withdrawal period, where appropriate, has passed)?

20. No, as we are not aware of any issues in this regard in our sector. In our sector, in order to purchase a subscription, a customer may often have to go through at least three pages of requirements - subscription selection, registration and billing - before they are able to enter into a contract. Additionally, the process of cancellation can be typically done at the press of a button in a customer's account or via the app store.

21. Therefore, we disagree with this statement and view the proposals as unnecessary in our sector.

Q40. Would the easy exiting proposal, to provide a mechanism for consumers that is straightforward, cost-effective, and timely, be appropriate and proportionate to address the problem described?

22. It is crucial to recognise that providers are able to offer consumers a discounted rate in return for them taking a longer subscription, based on the security of revenues that ensues. Allowing consumers to cancel a subscription (other than where the terms are breached) would effectively end providers' ability to offer a reduced rate, to the detriment of the consumer.

Q41. Are there certain contract types or types of goods, services, or digital content that should be exempt from the rules proposed and why?

23. As we have argued throughout this response, we see this increase in regulation as unnecessary for broadcast and VoD services, where there is already significant legislation in place to regulate the industry. Services in our sector already provide clear information and do not typically require long contracts where a consumer is locked in.

24. We therefore request that exemptions from any new rules be made where there is clearly no consumer harm, and where in fact the new rules might be to the detriment of consumers. Specifically:

    a. where a contract rolls over on a short term basis; and

    b. where a long term subscription provides clear and transparent information prior to conclusion of the contract, meaningful choice and offers easy cancellation mechanisms that take effect at the end of the billing period or earlier, in cases of breach of contractual terms.

25. Finally, given the lack of meaningful evidence of a problem and the good practice of COBA members, any action should take the form of more robust enforcement with deterrent penalties against bad actors in our sector that do not provide clear and transparent information, meaningful choice and easy cancellation mechanisms. This seems like a more appropriate and proportionate response that balances consumer protection, benefit and overall welfare.

Q42. Should government add to the list of automatically unfair practices in Schedule 1 of the CPRs the practice of (a) commissioning consumer reviews in all circumstances or (b) commissioning a person to write and/or submit fake consumer reviews of goods or services or (c)

commissioning or incentivising any person to write and/or submit a fake consumer review of goods or services?

26. We have no view on this.

Q43. What impact would the reforms mentioned in Q42 have on (a) small and micro businesses, both offline and online (b) large online businesses and (c) consumers?

27. We have no view on this.

Q44. What 'reasonable and proportionate' steps should be taken by businesses to ensure consumer reviews hosted on their sites are 'genuine'? What would be the cost of such steps for businesses?

28. We have no view on this.

Q45. Should government add to the list of automatically unfair practices in Schedule 1 of the CPRs the practice of traders offering or advertising to submit, commission or facilitate fake reviews?

29. We have no view on this.

Q46. Are consumers aware of businesses using behavioural techniques to influence choice that affect their purchasing decisions? Is this a concern that they would want to be addressed?

30. The collection and use of behavioural data for content and ad targeting are heavily regulated already under data protection law. Due to the transparency and consent requirements under those laws, there is already a high degree of consumer awareness and ability to exercise choice. We do not see any case for further specific regulation here.

Q47. Do you think government or regulators should do more to address (a) 'drip pricing' and (b) paid-for search results that are not labelled accordingly, as practices likely to be breached under the CPRs?

31. We have no view on this.

Q48. Are there examples of existing consumer law which could be simplified or where we could give greater clarity, reducing uncertainty (and cost of legal advice) for businesses/consumers?

32. Unfortunately, the proposals in this consultation may achieve the opposite of this aim, and increase uncertainty for businesses, as outlined in answer to question 33.

Q49. Are there perverse incentives or unintended consequences from our existing consumer law?

33. Not that we are aware of.

Q50. Are there any redundant or unnecessarily burdensome requirements to provide information or other reporting requirements, which burden businesses disproportionately compared to the benefits they bring to consumers?

34. Not that we are aware of.

Q51. Do you agree that these powers should be used to protect those using "savings" clubs that are not currently within scope of financial protection laws and regulators?

35. We have no view on this.

Q52. What other sectors might new powers regarding prepayment protections be usefully applied to?

36. We have no view on this.

Q53. How common is the practice of using terms and conditions to delay the formation of a sales contract?

37. We are not aware of this being a practice in our sector.

Q54. Does the practice of using terms and conditions to delay the formation of a sales contract cause, or have the potential to cause, detriment to consumers? If so, what is the nature of the detriment or likely detriment?

38. We have no view on this.