

# **Consultation on draft guidance on Digital Markets, Consumer and Competition Act**

**Response from COBA**

**January 2025**

## Introduction

1. COBA is the Association for Commercial Broadcasters and On-Demand Services. It represents a wide range of broadcasters and on-demand services, including leading and niche players.
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.<sup>1</sup>
  - Employment: As part of this growth, the multichannel sector has doubled direct employment over the last decade.<sup>2</sup>
  - UK production: In addition, the sector has increased investment in UK television content to well over £1.1 billion per annum, up nearly 75% on 2011 levels.<sup>3</sup>
4. For further information please contact [REDACTED]  
[REDACTED]

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<sup>1</sup> Ofcom International Broadcasting Market Report 2013

<sup>2</sup> Skillset, Television Sector – Labour Market Intelligence Profile

<sup>3</sup> COBA 2019 Content Report, Oliver & Ohlbaum Associates for COBA

## Response

1. COBA members include a wide range of content providers in the screen sector, ranging from linear broadcasters to video-on-demand services, often combining the two services within their corporate structure. As such, subscriptions are often key to their business models. Indeed, for many members, subscriptions are the most important source of revenue. As such, the income from these subscriptions is vital to their ability to invest in UK content (across the sector, investment in UK film and TV content is now at a record £6.2 billion<sup>4</sup>), as well as support infrastructure such as production studios across the entire UK. This provides investment, jobs and growth for the UK.
2. It is vital this is not taken for granted by, for example, going beyond the requirements of comparable EU-wide subscription laws (in particular, following the updated regime set out in the Omnibus Directive (2019/2161)). This could damage the UK's ability to attract global investment.
3. Crucially, we are not aware of any widespread concern or issues with how the screen sector treats subscribers currently. COBA members are typically brands with household recognition who greatly value their relationship with their subscribers and act highly responsibly.
4. In its current wording, we believe parts of the guidance could have an unintended negative impact on our members' businesses and their ability to invest in the UK. While we endorse requirements to provide clear, upfront information to consumers, imposing overly prescriptive rules will also disrupt the customer experience.

### Stating fees

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<sup>4</sup> <https://www.bfi.org.uk/news/official-2022-statistics>

5. Specifically, the draft guidance will require the total amount of a subscription over the minimum contract period to be stated at all parts of the purchase journey and marketing (where the price is required to be included). This goes far beyond dealing with legitimate concerns about drip pricing. In our view, consumers are used to comparing monthly prices, which is how most households budget. In this context, requiring services to state the price for the entire minimum length of the contract will, perhaps counter intuitively, be misleading to anyone used to dealing with monthly payments.
  
6. Providing the stated monthly fee is the entire fee for that month – ie there is no hidden drip pricing on top of that monthly fee – we believe the conditions of the Act are fulfilled. Indeed, it is notable that the CMA’s rationale (9.15 in the consultation paper) suggests requiring the total fee for the minimum length of contract to be stated will avoid drip pricing, not that consumers are unaware they are entering a longer term contract or unhappy about the current presentation of fees (our emphasis):

“The purpose of this provision is to ensure that consumers know up front what they will end up paying, ***instead of additional mandatory pricing information being revealed gradually...***”

7. We therefore ask for it to be clear that monthly fees are acceptable providing they are the full fee for that period.

### **Marketing of VoD**

8. We additionally request clarification in the Draft Guidance around digital content which is 'already apparent from the context'. *Paragraph 9.12* of the Draft Guidance provides a useful example of information for a physical store, but digital content may have its own nuances. For example, we assume that if a consumer views a clearly-branded advert for a well-known streaming service

provided by a particular trader, the identity of the trader will be obvious from the context.

### **Price as material information**

9. In addition, paragraph 7.6 clarifies that the "price of a product in most circumstances is material information", and that failing to provide this in a timely fashion before a transactional decision is made is likely to amount to a misleading omission. For clarity, it would be helpful if the CMA could confirm that not all promotions must include pricing information in order to avoid being a misleading omission (i.e. provided this information is given in a timely fashion prior to the transactional decision). Examples given in a digital context would also be useful.
10. This clarification would be particularly useful in the context of the new strict liability provisions relating to omissions of material information from an invitation to purchase. Our understanding of the Draft Guidance, in an SVoD context, is that it would be permissible to continue to run "coming soon" or "tune in" styles of promotion (i.e. promoting the service rather than specific products/tiers) without pricing information and that these promotions would not amount to "invitations to purchase". However, it would be useful if the CMA could make this distinction clear.

### **Use of hyperlinks to disclose "material information"**

11. VoD services, and indeed the wider digital sector, may struggle to accommodate the detailed 'material information' set out in the DMCCA. The Draft Guidance clarifies that the CMA will consider whether the trader has conveyed this information via other means. SVoD providers would be grateful for explicit confirmation that the full material information required can also be delivered, e.g. via a hyperlink rather than in the main promotional message. It would also

be helpful for the CMA to confirm that the size of digital advertising inventory is a relevant consideration when assessing compliance.

### **Implementation period**

12. We also question the timescales for implementation – as soon as this April is in our view unreasonable, especially given the short length of this consultation and its timing over the Christmas period. We suggest implementation should be aligned with the subscription part of the Act, ie April 2026.