

Response of Channel 5 Broadcasting Ltd (Five) to the ICSTIS consultation on proposed conditions applicable to premium rate TV Quiz programme and channel services

Five is glad of the opportunity to respond to this consultation, although we have serious concerns about the way the consultation has been conducted and many of the proposals in it.

Five and its Involvement in Call TV

Five is one of the UK's main public service channels. We provide a wide range of programmes, and make a significant contribution to public service broadcasting. Five is a growing business, with an annual audience share of 6.6% and revenues of £289 millions¹.

Our daytime schedule includes the popular quiz-based show *Brainteaser*, which has been on air since August 2002. *Brainteaser* is an entertainment programme with studio participants competing against each other. It also has an interactive element: four of the puzzles within the programme are created for viewers and they are invited to contact the programme either by phone or by free web entry to try to solve the puzzle and win a cash prize. As this interactive element is only one part of the programme, and the primary function of *Brainteaser* is not the provision of competition services, we consider that the show to be outside the remit of the proposed regulation.

Brainteaser TV is a joint venture by Five and Endemol UK (the producers of *Brainteaser*) which was launched in August this year on YooPay TV on the Sky Digital platform. Brainteaser TV is based on the interactive element of *Brainteaser*. The channel, one of a number of quiz-based channels to have launched this year, is in its early stages and still developing as a project. Brainteaser TV would clearly be within the ambit of this consultation.

¹ Both share and revenue figures are for 2004

Five is a reputable broadcaster enjoying good relations with our viewers that we want to maintain and strengthen. Not only would we be opposed to misleading our viewers or hoodwinking them into doing anything they did not wish to do, it would be clearly contrary to our broader reputation and hence to our interests. Therefore we believe in providing our viewers with all the information they need in order to take part in the games on Brainteaser TV, on *Brainteaser* itself and on all the other competitions we run. We would resist any suggestion that we cannot be trusted to run competitions fairly or provide viewers with adequate information about them.

The Consultation

Five is concerned about the way this consultation has been issued and the short time allowed for responses. Although involved in an affected business, Five was not sent a copy of the consultation paper. We believe that four weeks is too short a period to provide adequate responses to a wide-ranging consultation of this nature. We also believe that ICSTIS should have pre-consulted with ourselves and other promoters of these services before issuing its consultation. (In contrast, Ofcom is committed to pre-consultation with interested parties wherever possible and normally allows ten weeks for responses².)

Five also questions the evidential base for ICSTIS' proposals. To have received 100 or so complaints about 14 different services does not seem a huge number to us; it suggests the average number of complaints per service is just eight. Some complaints are probably inevitable at the start of a new service – Five received a handful of complaints about Brainteaser TV when it first launched. ICSTIS provides no analysis of the nature of the complaints – making it impossible for us and other respondents to the consultation to assess whether its proposals are appropriate to the complaints ICSTIS has received.

We believe that rather than issuing this document, ICSTIS should have conducted proper research which would then inform its view as to whether proposals of the kind proposed in this document are necessary or appropriate.

Five considers that several of the proposals in the consultation document, especially about exactly what appears on screen, are outside ICSTIS' remit. As a television content regulator, Ofcom has a much clearer understanding of what it is appropriate to show on screen and how to ensure television competitions are run fairly, so we believe many of the issues covered in the consultation should be left to Ofcom to regulate as part of its Broadcast Code.

²For Ofcom's consultation principles, see www.ofcom.org.uk/consult/consult_method/ofcom_consult_guide

One of our main concerns is that ICSTIS seeks to require us to include a huge amount of information on screen all the time in a static format. The accumulative effects of its proposals would be a heavily cluttered screen that could well make viewers less likely to read the detailed information on it; that would seriously interfere with viewers' enjoyment of the programme; and make it effectively unwatchable.

We are also concerned that ICSTIS wants these TV services to obtain prior permission from it. Not all ICSTIS regulated services require prior permission, and no arguments are put forward in the consultation paper as to why the prior permission regime should apply to the services under consideration. Five is a responsible broadcaster accustomed to a post-broadcast regulatory regime, and we do not see why Brainteaser TV, having obtained an Ofcom TLCS licence which obliges it to abide by the Ofcom Broadcast Code, should also have to obtain prior permission from ICSTIS in addition to abiding by its code of practice.

The consultation paper says ICSTIS "would welcome meetings with affected stakeholders". We believe that such meetings are essential, in order to go through all the issues raised by the consultation, and we look forward to participating in one or more meetings before ICSTIS makes any decisions.

Notwithstanding our concerns about this consultation, we set out below our responses to the consultation questions.

1. Service name

We are not convinced that there is a discrete set of services limited to television. Potentially the same programme model could be used on radio, on mobile telephones and on services delivered by broadband; in which case the same or similar rules should apply.

2. Service description

In spite of our misgivings about the entire regime, we recognise that ICSTIS is concerned with programmes and channels where "the primary function and content is the provision of competition services". This is a discrete group of services, including Brainteaser TV and other channels such as Channel 4's Quiz Call.

We would be opposed to drawing the definition any wider to include all programmes which have some element of these competitions within them, such as *Brainteaser* or ITV's *Who Wants to be a Millionaire*.

3. Promotion of services

We agree with the principle of this proposal. On Brainteaser TV presenters make clear that most people do not get through to the studio when they explain how to enter the competitions. They do this at least every ten minutes.

But ICSTIS' detailed suggestions as to how viewers might be alerted to their likelihood of getting through are not grounded in an understanding of how these services work in practice. For example, it is not possible to give 'odds' on getting through, as the number of people making calls at any given time varies considerably; and as all our systems are computerised, there are no 'operators'.

To introduce a requirement to provide the sort of information suggested here would be disproportionate, as there is no such requirement on other competitions that involve an element of chance, such as lotteries, prize competitions or newspaper crosswords.

4. Clarity of pricing and premium rate charges

We agree it is essential for viewers to know the price of calling and the circumstances under which they are likely to be successful in leaving their details. The presenters on Brainteaser TV regularly explain to viewers that all calls incur a premium rate charge, whether successful or not. We do not see why it is necessary for this information to appear in text as well.

Brainteaser TV displays call price information on a rotating bar that spells out all key conditions. We believe that this presents viewers with call price information in the most balanced, clear and accessible way. The rotating bar is prominent and legible at all times. It comprises five key messages: 'entrants must be 16 or over'; 'calls cost 60p from BT landlines'; 'mobiles and other networks vary'; 'www.brainteaser.tv/entry'; 'please ask bill payer's permission'. The bar rotates these messages on a five second cycle, which allows them to be read clearly and means they are always being brought to viewers' attention.

We do not agree that it is necessary for price information to be static for viewers to be made aware of it; in fact, the rotating bar keeps drawing viewers' eyes in a way that static text does not. Moreover, to have all the key terms and conditions displayed in static form rather than in the form of a rotating bar would mean they would take up significant space on screen, adding the appearance of clutter for no clear benefit.

It is not possible to tell callers when they have spent £20 because of technical barriers and the existence of different tariffs. However, we do believe that it is appropriate to warn viewers who call many times, and Intext Media (who provide our premium rate line service) have established practices for doing this.

We agree that ‘unsuccessful’ messages should be short and remind callers that they have been charged. This is our current practice.

Five strongly resents the implication in the final paragraph in this section of the consultation paper, that “the proposed requirements are proportional to the detriment currently being caused”. ICSTIS has not produced any evidence that any ‘detriment’ is being caused; we would be interested in seeing what evidence it has to support such a contention. This assertion underlines a major problem with the consultation paper – a lack of evidence, a failure to identify what the real problems might be, and a consequent failure to put forward remedies that are appropriate and proportionate.

5. Contact Information

Five agrees that viewers ought to be able to contact the company responsible for running a channel. Five maintains a customer service department to take viewers’ calls and answer their letters and e-mails. Our address, phone number and website address are readily available. Viewers of Brainteaser TV can and do make use of these facilities.

But this is not what ICSTIS appears to be proposing. An ever-present ‘help line’ phone number would be more clutter on screen; it could lead to confusion, with callers mistaking that number for the premium rate line number; and it could require considerable resource to service the calls from such a prominently displayed number, for no obvious benefit.

We believe it would be more sensible to require quiz programmes to ensure that contact information about how to obtain full details about competitions and their terms and conditions is displayed prominently from time to time during and at the end of a programme. Such contact information could include a phone number with a recorded message; a web address; and a postal address (which could be a P O Box).

6. Terms and Conditions

Brainteaser TV already provides prominent information about its call charges, age limits, prizes and the conditions under which callers can expect to pay, and makes its full terms and conditions available. We believe that this is sufficient.

But the consultation paper says “significant terms and conditions that are likely to affect a consumer’s decision to participate in a competition must be clearly stated” and “We do not believe that currently all such information is clearly and readily available to consumers” without specifying which significant terms and conditions are not currently made available. It is thus impossible to answer this question with any clarity.

We would resist proposals for any further information to be provided on screen unless it could be clearly demonstrated that such information was necessary for viewers' protection or information. We would be concerned that non-essential extra information would clutter up the screen further.

7. Age/bill payer warning

Brainteaser TV already includes 'players must be over 16' and 'please ask bill payer's permission' on its permanently present rotating bar (see answer to question 4). This information is repeated regularly by our presenters.

8. Closing dates and times and hours of operation

Five accepts that where competitions have a definite closing date and/or time, then this should be stated clearly and unambiguously. However, many of the competitions run on Brainteaser TV do not have a closing time; often the competition ends when someone gets the right answer.

Five believes that all the competitions on Brainteaser TV must be run fairly and in accordance with the law. However, if there is any suggestion that a particular competition is not fair, we believe this is a matter for Ofcom or the Gambling Commission rather than ICSTIS.

9. Substantiation

Five is a reputable broadcaster, and the competitions on Five itself and on Brainteaser TV are run fairly. We have a strong brand and a close relationship with our viewers – it would be entirely counterproductive for us to have rules that were less than clear or answers that were subject to manipulation.

We do not believe these proposals are proportionate, nor do we believe that they are within ICSTIS' remit. We have an obligation under the Ofcom Broadcast Code to run competitions fairly, and are answerable to Ofcom if we fail to honour that obligation in any way.

10. Legality

Five has a highly experienced team of in-house lawyers who approve all the competitions run on Five itself and on Brainteaser TV. The legal advice provided by our in-house team – or by external lawyers that we may use from time to time – is privileged and would not be provided to any outside body. This is standard legal practice, and we are surprised that ICSTIS would even consider asking to see such advice.

Conclusion

Five is a responsible broadcaster that runs competitions fairly. We launched Brainteaser TV because we knew there was an appetite among our viewers for the sorts of interactive competitions that we feature on our *Brainteaser* programme. No-one is forced to use premium rate phone lines in order to participate in its competitions as there is a free route of entry via the internet. We consider Brainteaser TV a new venture that we are still developing, but we are committed to ensuring that its competitions are run properly and fairly.

Five is concerned at the way in which ICSTIS is proceeding with this consultation. As we have pointed out in detail in this response, the effect of many of its proposals would be to damage the viewing experience without any clear benefit. We also believe there ought to be a clearer distinction between the responsibilities of ICSTIS and of Ofcom.

We look forward to participating in further discussions with ICSTIS and Ofcom about these issues.

Channel 5 Broadcasting Ltd.

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