

15 February 2011

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Dear Ulrike,

Questions of jurisdiction/compliance with Danish advertising rules by Danish-speaking TV stations owned by SBS and Viasat.

I am responding to your letter of 18 November 2010 in respect of the two matters specified above.

1. Questions of Jurisdiction

The Danish Radio and Television Board (the “Board”) requested, under Article 4(2) of the Audiovisual Media Services Directive (the “AVMS Directive”),¹ that the broadcasters of the following channels be asked to comply with the Danish rule in relation to advertising breaks as set out in section 73(1) and (2) of the Danish Radio and Television Act:

- The Danish-speaking TV channels TV3, TV3 + and TV3 Puls, licensed by Ofcom to Viasat Broadcasting UK limited; and
- The Danish-speaking TV channels Kanal 4, Kanal 5, 6'eren (previously known as Kanal 6) and The Voice DK licensed by Ofcom to SBS Broadcasting Networks Limited.

In accordance with the requirements of Article 4(2) of the AVMS Directive, we have written to both Viasat and SBS Broadcasting Limited to request that they comply with the Danish rules relating to the prohibition against the insertion of advertisement blocks during most types of programming.

Both Viasat Broadcasting UK Limited and SBS Broadcasting Limited have carefully considered Ofcom’s request. Both companies have recently informed us that they do not believe it is appropriate to comply with this request.

¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:095:0001:0024:EN:PDF>

2. Compliance with Danish advertising rules by Danish-speaking TV stations owned by SBS and Viasat

I would also like to take this opportunity to follow up on an issue that was first discussed at our meeting with the Board on the 9 September 2010. The Board presented Ofcom with data which suggested that TV3, TV3 Puls and TV3+ had transmitted more than the 12 minutes of advertising permitted in any one hour. We requested tapes for a number of the hours you had listed from each of the broadcasters. A detailed inspection of the transmission tapes revealed that TV3 and TV3+ were compliant with the advertising minutage rules. The overruns suggested in your reports can be attributed to the inclusion of sponsorship credits and self promotion (as permitted under the AVMS Directive). However, our analysis did suggest that more than 12 minutes of advertising may have been broadcast during each of the TV3 Puls hours examined. We have requested TV3 Puls's comments on this matter and will notify you of the outcome of this case.

With regard to the additional monitoring data provided with your letter received on 25 November 2010, we noted that the report spanned the period 1 September to 31 October 2010. As stated in Ofcom's Guidelines², and reiterated during our September meeting, Ofcom will investigate complaints made within 20 working days of the broadcast being transmitted. As a result, I am afraid that we have only been able to take data from 29 to 31 October 2010 into consideration.

The paperwork suggests similar programme/sponsorship/break patterns as those examined in the previous data sample. Given that we concluded that TV3 and TV3+ were compliant with the advertising restrictions in our earlier investigation, we have limited our request for additional tapes to TV3 Puls. We have also asked them for a more recent sample of broadcast hours to ensure we are assessing their most recent transmissions. Again, we will inform you of the outcome of this investigation in due course.

We remain at your disposal in case you have any further queries.

Yours sincerely

Kathleen Stewart

²Ofcom Guidelines for dealing with regulators of other EU Member States in relation to UK-licensed television channels

http://stakeholders.ofcom.org.uk/binaries/broadcast/international/Procedural_Guidelines.pdf