

## Written evidence submitted by the Advertising Association (FRE0071)

### About the Advertising Association

1. The Advertising Association promotes the role and rights of responsible advertising and its value to people, society, businesses and the economy. We bring together companies that advertise, their agencies, the media and relevant trade associations to seek consensus on the issues that affect them. We develop and communicate industry positions for politicians and opinion-formers, and publish industry research through advertising's think-tank, Credos, including the Advertising Pays series which has quantified the advertising industry's contribution to the economy, culture, jobs and society.

### Context

2. The membership of the Advertising Association is very broad and includes the associations representing industry sectors, such as the advertisers (through ISBA), the agencies and advertising production houses (through the IPA and APA), all the media (from broadcasters and publishers, cinema, radio, outdoor and digital), market research (through MRS) and marketing services such as direct marketing, promotions.
3. Advertising is important. It plays a crucial role in brand competition, drives product innovation and fuels economic growth. It also provides revenues to fund a diverse and pluralistic media enjoyed by children and young people.
4. Advertising informs, entertains, persuades, dissuades and helps to enhance the perception of value. Its effects stretch across the economy, with roles ranging from an enabler of efficient markets to a significant supporter of the creative industries.
5. Previously commissioned econometric modelling found that for every £1 spent on advertising it generated £6 to GDP. Advertising expenditure across the whole of the UK was £25.4bn in 2019, meaning the industry was worth around £152bn to the wider economy.
6. According to Deloitte research carried out on behalf of the Advertising Association, the one million UK jobs supported by advertising can be broken down as follows:
  - 350,000 jobs in advertising and the in-house (brands) production of

- advertising;
  - 76,000 jobs in the media sectors supported by revenue from advertising;
  - 560,000 jobs supported by the advertising industry across the wider economy.
7. The UK is a global leader in advertising, digital and market research. It is currently the fourth largest advertising market globally and, according to ONS figures, the UK exported £9.7 bn worth of Advertising and Market Research services in 2018. The industry's largest export destination for UK advertising and marketing services is the EU, in particular France and Germany. The UK exported £958 million and £869 million of advertising and market research services to these markets respectively.
8. Please contact Konrad Shek (konrad.shek@adassoc.org.uk) for further information on any of the points raised in this submission.

**Question 1: What are the key priorities of the various non-financial services sectors in the negotiations? What particular concerns are there in the advertising industry? Has the Covid-19 pandemic changed any of these priorities? What might be the consequences of a deal which does not meet these priorities?**

9. Our key priorities for the future UK-EU relationship would encompass the following areas:
- A mobility framework with a broad definition of business visitors ;
  - A data adequacy decision(s) between the UK and EU to allow the two-way free flow of data;
  - Provisions to facilitate digital trade and prevent unjustified barriers to electronic commerce;
  - National treatment both pre- and post-establishment;
  - Prohibition of any performance requirements with respect to investment, establishment or operation of an enterprise;
  - Elimination of restrictions on the importation and broadcast of foreign-produced television commercials;
  - Elimination of any economic needs test.
10. London is the preeminent hub for global advertising. International clients are attracted to London because of its reputation to develop European advertising campaigns and vice versa. UK advertising agencies have also benefitted from the flexibility to quickly open offices across the EU to service clients. The consequences of a deal that does not meet these priorities, or a no-deal scenario for that matter, would mean a significant increase in administrative burdens and a loss of competitive advantage. Amsterdam, for example, has been making a strong push to attract advertising and marketing agencies to set-up or relocate there<sup>1</sup>.

11. One of the consequences of COVID-19 is that the requirement to fly-in fly-out same day for sales pitches or meetings has diminished and this work can be done remotely via videoconferencing facilities. We think that this behaviour maybe become a longer term accepted norm, not least because

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<sup>1</sup> <https://www.iamsterdam.com/en/work/opportunities-per-each-industry/creative> of the implications of flights have on the environment and there is a greater desire to behave in a more sustainable way.

**Question 2: To what extent did the UK Government consult these sectors before publishing its negotiating aims and draft texts? How well does what the Government has proposed meet their needs? What further provisions would you have advised the Government to seek?**

12. The Advertising Association has had regular contact with officials from DCMS and BEIS on EU negotiations and we feel that officials have a good understanding of the issues we face regarding. However, we would like to point out that there was no consultation on the draft UK negotiating document prior to it being published.
13. The UK draft negotiating text has usefully set out its definition of short-term business visits in more detail. However, neither the UK nor the EU has provided a draft list of covered activities under short-term business visits. Without it this list of covered activities it makes it difficult to understand the full scope of what is being proposed by each side.
14. We did welcome the inclusion of an audio-visual services chapter in the UK negotiating text and we see this as an important nod to the sector. Given the EU's historical position of excluding audio-visual services in FTA negotiations, we have low expectations that this will form part of the final agreement.
15. We were somewhat surprised that the UK draft negotiating text did not have any text on public procurement. Public procurement is important to the advertising industry as advertising agencies regularly bid for tourism, investment promotion, education and government information campaigns. Additionally, market research companies participate in bids for opinion polling and market research projects

**Question 3: How do the UK and the EU's positions in the negotiations compare with regard to non-financial services? On which areas are the UK and EU's aims farthest**

**apart? Where do their positions align? What is your assessment of the level of technical detail the negotiators have grappled with on this topic to date?**

16. There is broad alignment between the negotiating texts, but we have noted a number of differences and these are highlighted below. As advertising and market research services is not a regulated sector, we have not commented on areas such as MRPQs as this is not within our competence.

Trade in Services

17. The UK negotiating text proposes a Committee on Trade in Services and Investment whereas the EU does not. We are unclear on what the EU's position on this specific committee, but the issue of governance has been a source of contention between the two sides. The EU has publicly favoured an overarching framework of governance and has been critical of UK proposals, which EU stakeholders have described as being more akin to the EU-Swiss model of governance. The EU have stated that there is no appetite to follow a Swiss model with the UK as it thinks the siloed approach to governance is potentially duplicative and inefficient.

Investment

18. The chapter on investment appears to be broadly similar between the both sides but the UK has taken the extra step of excluding government procurement and other state activity to be outside of the scope of the Investment Chapter (Article 10.1.2). Moreover, the UK invokes a clause clarifying that investment can be restricted on the basis of concentration of ownership to ensure fair competition (Article 10.2.2) rather than relying on the chapter on competition policy to provide the overarching framework.

Domestic Regulation

19. The UK text sets out additional conditions for authorisation (Article 12.2), electronic applications and acceptance (Article 12.5) which go slightly beyond the EU offer. The UK also introduces the opportunity to comment before domestic regulation enters into force (Article 12.11), sets out a review procedure (Article 12.12) and attempts to lay the ground work for ongoing cooperation (Article 12.13). The EU text includes a clause on objectivity, impartiality and independence (Article SERVIN 5.8) which is not replicated in the UK text.

Cross-border trade in services

20. Government procurement, government-supported loans guarantees, and insurance and services supplied in the exercise of governmental authority (Article 9.1.2) is excluded from the scope in the UK negotiating text .

### Temporary Entry and Stay of Natural Persons for Business Purposes

21. The UK requires contractual services suppliers and independent professionals to have a university degree or relevant professional qualifications. This appears to be stricter than the proposals offered by the EU. The UK text also proposes making allowances for spouse and children to accompany an intra-corporate transferee and for that spouse to have the right to work during the duration of the visa (Article 11.9). On the former, this will most likely lead to reciprocal action. On the latter proposal, there appears to be no historical precedent in EU FTAs.

### Digital trade

22. The UK and EU's position on digital appear to be very close and less contentious, although the issue of personal data transfers is outside the scope of this FTA and is being dealt in the data adequacy negotiations.

### Telecommunication Services

23. UK proposes text on roaming (Article 14.16) whereas the EU does not offer anything in this area.

### MFN Clauses

24. Both sides have refrained from publishing their MFN clauses so far and but this could create another area of contention within the negotiations.

### **Question 4: How does the EU's position on non-financial services compare to that which it held in negotiations on CETA with Canada and the EU -Japan FTA? To what extent are these FTAs suitable precedents for a UK/EU deal?**

25. The EU negotiating text follows a similar structure to the EU-Canada CETA and the EU-Japan EPA. The key differences between the level of liberalisation offered CETA and EPA is contained in the annexes and reservations, with CETA providing deeper market access compared to EPA. Whilst there is no detail on UK and EU potential annexes and reservations it is difficult to accurately compare the current EU's offer with CETA or EPA. And we appear to be some way off from starting negotiations on the annexes which will be key in determining the level of liberalisation afforded both sides.
26. Whilst EU precedent may be useful, key EU figures have been keen to point out that it would prefer a bespoke arrangement with the UK. We should be mindful that taking parts of existing EU deals, is seen to be cherry-picking by EU stakeholders.

### **Question 5: To what extent is the UK seeking provisions on non-financial services unprecedented in existing FTAs (for example on the mutual recognition**

**of professional qualifications)? What would be the advantages and disadvantages of agreeing these provisions for each party? Why might agreeing such provisions prove difficult?**

27. The UK draft negotiating text includes a chapter on audio-visual Services (Chapter 16). Whilst it flags the importance the UK attaches to the trade in audio-visual services it is unprecedented in existing EU FTAs. Given the EU's propensity to exercise cultural carve-outs it seems unlikely that the EU will be willing accept or compromise on this position.

**Question 6: Why do you think the EU does not want to include audio-visual services in any agreement? How might the EU's reluctance to consider audio-visual services in the negotiations affect the UK broadcasting sector?**

28. Cultural carve-outs has its origins in the Uruguay Round of negotiations<sup>2</sup> and it should be noted that the EU is not the only WTO member that exercises

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<sup>2</sup> Pauwels, C. & Loisen, J. (2003). The WTO and the Audiovisual Sector: Economic Free Trade vs Cultural Horse Trading?' *European Journal of Communication* Vol 18(3) 291-313.

cultural exceptions, even Canada is a strong advocate of them. Whilst, the cultural exception is aimed at protecting cultural diversity, the reality of it is a trade-restrictive measure to protect the domestic audio-visual sector.

29. The EU views audio-visual services within the dual prisms of trade and culture. It is keen also to mitigate the risks of trade liberalisation to prevent what it sees as potential domination by US culture. Additionally, the EU has been a key proponent of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expression and views this convention as an important part of protecting European cultural diversity, hence the it is usually referenced in EU Free Trade Agreements. Whilst the Convention recognises the distinctive nature of cultural goods and services and highlights measures that Parties may adopt to protect and promote the diversity of cultural expressions, it does not take into account the commercial nature of audio-visual services.
30. The biggest impact of leaving the EU on the UK broadcasting sector is the loss of Country of Origin rights under the Audio-visual Media Services Directive (AVMSD). This has implications for advertising carried by UK-based broadcasters as it will no longer be able to rely on complying with UK regulation only to broadcast into the EU. Loss of Country of Origin rights

will mean having to comply with host state rules. To put this into perspective, Sweden has a complete ban on alcohol advertising on TV and radio. Under the Country of Origin principle, UK based broadcasters are able to retransmit programmes that carry alcohol adverts as it is permissible under UK regulation.

31. There are possible mitigations and a UK broadcaster can qualify for AVMSD jurisdiction post-transition period if it satisfies certain conditions. For example, if the broadcaster's editorial office and a significant part of its workforce is located within an EU Member Country. Additionally, there are other technical criteria that could be applied.

32. To maintain service availability in the EU two types of licences<sup>3</sup> will be required for UK-based broadcasters:

- an Ofcom licence for services receivable in the UK and in the 20 EU Member States that are signatories to the ECTT.
- licences covering services receivable in the other non-signatories EU Member States.

33. As the UK is signatory to the European Convention on Transfrontier Television (ECTT), UK productions and programming will still be regarded as "European Works" and therefore should not be subject to quotas. However, EU Member States will be able to apply restrictions on reception of and retransmission of UK broadcasters within the limits of the European

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<sup>3</sup> <https://www.gov.uk/guidance/broadcasting-and-video-on-demand-if-theres-no-brexit-deal>

Convention on Transfrontier Television (ECTT). Moreover, these restrictions could be applied unevenly across the European Union because only 204 of the EU-27 are signatories to the Convention<sup>5</sup>.

34. It is also worth highlighting that the revised AVMSD<sup>6</sup> allows for a potential limit of 20% of daily transmission time devoted to advertising, however the ECTT only allows for a maximum of 15%. Moreover, as the ECTT has not been updated in a long time it does not contain any rules on Audio Video-on-Demand (AVOD) or Video-Sharing Platforms (VSPs). The UK negotiating text attempts to address this in its negotiating text.

**Question 7: What implications could the trade in goods provisions of a future**

**UK/EU agreement have on trade in non-financial services? How might the provisions on non-financial services impact upon trade in goods? To what extent are the two linked?**

35. For advertising, goods and services interact in three core areas: the advertising of products and brands; the temporary importation of equipment to film or produce advertising campaigns on location; and the use of the commodity newsprint by the publishing industry.

a) Whilst in principle it is possible to build a brand or entering a foreign market without spending on advertising, in reality it is not straightforward. Brands typically compete on the mental and physical availability of a product<sup>7</sup>, and foreign brands will invariably need to compete with local brands too. Research suggests that advertising has an important role in the initial launch of a new brand<sup>8</sup> and that it has a pronounced effect on short term sales<sup>9</sup>. This would imply that advertising can play an important role in increasing the sense of mental availability in a local market. Hence, restrictions on the distribution and placement of advertising services in third markets could delay the introduction of a company's commercial message, and hence impact the introduction of new goods or services to that market.

b) Advertising production crews often require temporary import permits in order to bring their equipment to film on location. Therefore, it would important to them to have provisions for the duty-free temporary admission of goods, regardless of their origin to cover the following categories:

- i. professional equipment, including equipment for the press or television, software,
- ii. and broadcasting and cinematographic equipment;

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<sup>4</sup> [https://www.coe.int/en/web/conventions/search-on-treaties/-/conventions/treaty/132/signatures?p\\_auth=tz6iBcme](https://www.coe.int/en/web/conventions/search-on-treaties/-/conventions/treaty/132/signatures?p_auth=tz6iBcme)

<sup>5</sup> <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/132>

<sup>6</sup> <https://eur-lex.europa.eu/eli/dir/2018/1808/oj>

<sup>7</sup> B Sharp. How Brands Grow: What Marketers Don't Know 2010 p180

<sup>8</sup> S King. Advertising as a Barrier to Market Entry. The Advertising Association 1980.

<sup>9</sup> L Wood. Short-Term Effects of Advertising: Some Well-Established Empirical Law-Like Patterns 2009 p 186- 192.

iii. goods intended for display or demonstration;

iv. commercial samples and advertising films and recordings;

c) The UK publishing industry is a net importer of newsprint which is used

in the production of print newspapers, other publications and advertising material. The majority of the UK demand deficit is supplied by EU/EFTA paper mills. Currently this is imported tariff free from the EU and non-EU sources. Post Brexit, the industry is keen to maintain this current tariff schedule otherwise it would significantly affect its overall price competitiveness. Moreover, it is important to the industry that these goods are not subjected to additional bureaucracy or customs clearance procedures that would delay delivery to the production supply chain. UK demand for newsprint in 2017 was 900,000 tonnes. Currently the maximum domestic production available is 525,000 tonnes and of this approximately 10% is nonstandard newsprint grades which leaves around 470,000 tonnes of standard newsprint production; meaning that the UK is only around 50% self-sufficient. Hence the UK is a net importer of newsprint.

**Question 8: Could you sketch out a possible compromise between the UK and the EU on trade in non-financial services and how it might be achieved?**

36. Not answered.

**Question 9: Based on the parameters set out by the UK and EU draft legal texts, could reaching an agreement with the EU restrict the UK's ability to pursue a free trade agreement covering trade in non-financial services with third countries? If so, how?**

37. The answer to this question largely depends on the Most-Favoured Nation (MFN) clauses negotiated in the final text. The MFN clauses could theoretically reduce the amount of flexibility that the UK has to negotiate FTAs covering trade in services with third countries. Such MFN clauses would typically include language such as:

*"Each Party shall accord to service suppliers and services of the other Party treatment no less favourable than that it accords, in like situations, to service suppliers and services of a third country."*

This would mean that future liberalisation accorded to a third party would automatically apply to the parties of this agreement.

38. Another scenario whereby UK flexibility to negotiate FTAs would be if it decided to adopt a dynamic alignment framework whereby its regulations would automatically track the EU's. This would reduce long term regulatory certainty from the UK's point of view and could create a tension between maintaining alignment and liberalising trade with third countries. At this moment this option does not appear to be on the cards.

**Question 10: How might the new immigration regime impact the non-financial services sector? To what extent might any risks and opportunities be influenced by the labour mobility provisions envisaged in the UK and EU's negotiating positions?**

39. UK-EU mobility arrangements will be largely dictated by reciprocity. It is therefore important that the UK's immigration system facilitates temporary mobility for short term professional/business travel (ideally, visa-free or with very little administrative burden). We also hope that the UK's points-based immigration system is fit for purpose by the time the transition period ends.

**Question 11: What would happen if agreement was not reached between the UK and the EU on non-financial services? What would be the international legal baseline they would fall back on?**

40. If the UK and EU failed to reach an agreement on non-financial services, then default position would be GATS rules under the WTO. Relying on GATS rules would significantly reduce the level of EU market access for UK companies.
41. UK advertising and marketing professionals could face significant barriers under WTO terms compared to the EU Single Market rules on freedom of establishment and the provision of services under which they currently operate.
42. Under GATS
- In the absence of an FTA, UK providers would have to abide by host state rules and abide by local regulations of each Member State.
  - Whereas FTAs allow for special or enhanced treatment between two or more bilateral trading partners, under GATS both sides would have to abide by GATS Most-Favoured Nation (MFN) clauses, in other words whatever liberalisation is offered under GATS must be offered to all WTO Members. This tends to drive Member countries towards the minimum level of liberalisation at the WTO so as to increase bargaining capacity at a bilateral level. This is despite the aims of the WTO to achieve progressively higher levels of liberalisation.
  - EU Member States have a number of reservations listed against the EU's WTO GATS commitments. For some EU Member States they require economic needs test for advertising and market research service providers delivered via professionals working in-market (Mode 4). Some EU Member States have nationality requirements on the ownership of media.
43. It is important to note that the GATS does not have any provisions on digital

trade, data or e-commerce. Although discussions have started on a WTO level e-commerce agreement, this is at a very preliminary stage and is some way off from becoming a formalised agreement. Hence, if the EU does not grant the UK data adequacy, there is no international baseline to fall back on.

44. The Government Procurement Agreement (GPA) would be the baseline for public procurement but the UK does not yet have its commitment schedule approved although this should be a formality.
45. Some consideration must be given to the fact that the WTO's Appellate Body is not functioning at the moment, due to US objections, and this has undermined the WTO negotiating process and dispute resolution.
46. For audio-visual services the European Convention on Trans-frontier Television (ECTT) would be the baseline.

**Question 12: Is it clear what businesses in non-financial sectors must do to prepare for the end of the transition period? How much progress have been made on preparations so far? Do SMEs face any additional challenges?**

47. A number of trade bodies have put out guidance ahead of previous Brexit deadlines. This advice so far has focussed on contingencies for no data adequacy decision, retaining EU/EEA staff and considering administrative requirements for the temporary import/export of film or photographic production equipment. Whilst there is no agreement in place, future guidance will probably focus on similar themes.
48. We do have a general concern that a false sense of security might have been fostered during the transition period because the general public did not experience any notable change following the formal departure of the UK from the EU on 31 January 2020. There might be a risk of complacency about the changes that will occur as the result of the UK leaving the Single Market and Customs Union at the end of the transition period. We intend to increase our messaging to encourage members and companies to prepare sufficiently. And whilst we have no clarity on whether there will be a deal or not, the assumption is that we should prepare for all outcomes.
49. Additionally, we should not underestimate the strain that COVID-19 has put on companies. We have heard via contacts that stockpiles built up in preparation of earlier Brexit deadlines have run down and that some companies are solely concerned about surviving the economic fallout

caused by the lockdown.

50. We think that SMEs are at most risk from the end of the transition period because it is difficult, even for trade bodies, to reach all SMEs across the country and provide them with the necessary advice or information they require. SMEs are likely to struggle to adapt to the new trading conditions with the EU because of their limited bandwidth.

**Question 13: What provisions exist in the Ireland/Northern Ireland Protocol on cross-border trade in non-financial services? How might the all-island economy be affected by the UK leaving the transition period with different forms of UK/EU future relationship?**

51. Not answered.

***July 2020***



# Committee on the Future Relationship with the European Union

House of Commons, London, SW1A 0AA

Email: [freucom@parliament.uk](mailto:freucom@parliament.uk) Website: <https://committees.parliament.uk/committee/366/committee-on-the-future-relationship-with-the-european-union/>

25 June 2020

Stephen Woodford  
Chief Executive  
Advertising Association

Dear Mr Woodford,

The House of Commons Committee on the Future Relationship with the European Union is inquiring into the progress of the negotiations between the UK and the EU. Under normal circumstances, the Committee holds regular oral evidence sessions in Westminster. However, measures to prevent the spread of the coronavirus make this difficult.

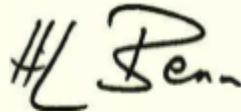
The Committee is keen to gather as much evidence as possible to inform its deliberations so I am writing to you to ask whether you would be willing to help us with our work by making a written submission. We welcome general responses to our [call for evidence](#), which was published on 4 March. We also hope that you would be willing to answer some of the more specific questions set out below on issues that fall within your area of expertise. Submissions need not address every bullet point and can include other matters that you think are relevant to the negotiations and should be drawn to the attention of the Committee.

- What are the key priorities of the various non-financial services sectors in the negotiations? What particular concerns are there in the advertising industry? Has the Covid-19 pandemic changed any of these priorities? What might be the consequences of a deal which does not meet these priorities?
- To what extent did the UK Government consult these sectors before publishing its negotiating aims and draft texts? How well does what the Government has proposed meet their needs? What further provisions would you have advised the Government to seek?
- How do the UK and the EU's positions in the negotiations compare with regard to non-financial services? On which areas are the UK and EU's aims farthest apart? Where do their positions align? What is your assessment of the level of technical detail the negotiators have grappled with on this topic to date?
- How does the EU's position on non-financial services compare to that which it held in negotiations on CETA with Canada and the EU-Japan FTA? To what extent are these FTAs suitable precedents for a UK/EU deal?
- To what extent is the UK seeking provisions on non-financial services unprecedented in existing FTAs (for example on the mutual recognition of professional qualifications)? What would be the advantages and disadvantages of agreeing these provisions for each party? Why might agreeing such provisions prove difficult?
- Why do you think the EU does not want to include audio-visual services in any agreement? How might the EU's reluctance to consider audio-visual services in the negotiations affect the UK broadcasting sector?
- What implications could the trade in goods provisions of a future UK/EU agreement have on trade in non-financial services? How might the provisions on non-financial services impact upon trade in goods? To what extent are the two linked?
- Could you sketch out a possible compromise between the UK and the EU on trade in non-financial services and how it might be achieved?
- Based on the parameters set out by the UK and EU draft legal texts, could reaching an agreement with the EU restrict the UK's ability to pursue a free trade agreement covering trade in non-financial services with third countries? If so, how?

- How might the new immigration regime impact the non-financial services sector? To what extent might any risks and opportunities be influenced by the labour mobility provisions envisaged in the UK and EU's negotiating positions?
- What would happen if agreement was not reached between the UK and the EU on non-financial services? What would be the international legal baseline they would fall back on?
- Is it clear what businesses in non-financial sectors must do to prepare for the end of the transition period? How much progress have been made on preparations so far? Do SMEs face any additional challenges?
- What provisions exist in the Ireland/Northern Ireland Protocol on cross-border trade in non-financial services? How might the all-island economy be affected by the UK leaving the transition period with different forms of UK/EU future relationship?

The Committee staff will be happy to discuss the inquiry, any issues raised, or the process for submitting written evidence. You can contact them at [freucom@parliament.uk](mailto:freucom@parliament.uk).

Yours,

A handwritten signature in black ink, appearing to read 'H/ Benn'.

**Hilary Benn**  
Chair of the Committee