

Report by the Broadcasting Commission of Ireland (BCI) to the Minister for Communications, Energy and Natural Resources in relation to the performance of its functions under Section 19(10) of the Broadcasting Act, 2001 – Statutory Review of the BCI Children’s Advertising Code.

September 2008



Broadcasting Commission of Ireland
Coimisiún Craolacháin na hÉireann

Introduction

Section 19(1)(c) of the Broadcasting Act, 2001 (“the 2001 Act”) requires the Broadcasting Commission of Ireland (“the Commission”) to develop a Code in respect of advertising and other forms of commercial communications of direct and indirect interest to children. This provision states:-

19.—(1) The Commission shall, upon being directed by the Minister to do so and in accordance with the provisions of this section, prepare—

(c) a code specifying standards to be complied with, and rules and practices to be observed, in respect of advertising, teleshopping material, sponsorship and other forms of commercial promotion employed in any broadcasting service or sound broadcasting service, being advertising and other activities as aforesaid which relate to matters likely to be of direct or indirect interest to children.

This Code has been in effect since January 2005 and all radio and television broadcasters licensed in the State and those making use of a frequency or satellite capacity or uplink are required to ensure that all relevant broadcast material complies with the provisions of this Code.

Section 19(10) of the 2001 Act requires that the Commission undertakes a statutory review of the effect of the Code every three years following its commencement and prepare a report for the Minister for Communications, Energy and Natural Resources (“the Minister”) on the outcomes of this review. In this context, a review of the Code took place between June 2007 and May 2008.

Following completion of this statutory review and in accordance with the aforementioned provisions of the 2001 Act, the Commission hereby submits its report to the Minister in relation to the review of the Code developed further to Section 19(1)(c) of the 2001 Act.

This report presents the outcomes of a range of activities undertaken by the Commission to inform the review as well as indicating those areas of the Code which will, on foot of the statutory review, be considered further as part of a second-stage review of the Code to be undertaken in 2009. The report is structured as follows -

1. Overview of the Code
2. Executive Summary
3. Approach to Review
4. Review Outcomes

1. Overview of the BCI Children’s Advertising Code

The BCI Children’s Advertising Code (“the Code”) was the first code to be developed further to the requirements of the 2001 Act and it has been in effect since January 2005. It was developed over three phases of consultation and was informed by qualitative and quantitative research.

The objectives of the Code are:

- To offer protection for children from inappropriate and harmful advertising;
- To ensure that Children’s Advertising acknowledges the special susceptibilities of children and does not exploit these susceptibilities;
- To ensure that Children’s Advertising is fair and presents the product or service advertised in a way that is easily interpreted by children and does not raise unrealistic expectations of the capabilities or characteristics of the product or service being advertised, and;
- To provide unambiguous guidelines to broadcasters, advertisers, parents, guardians and children on the standards they can expect from Children’s Advertising on Irish broadcasting services.

It is worth noting that the Code does not have as an objective a reduction in the volume of Children’s Advertising or indeed a reduction of particular types of Children’s Advertising that are permitted under the Code.

1.1 Structure of the Code

The Code sets out rules under twelve headings as follows:

- Social Values;
- Inexperience and Credulity;
- Undue Pressure;
- Special Protection for Children in Advertising;
- General Safety;
- Violence;
- Diet and Nutrition;
- Parental Responsibility;
- Programme Characters;
- Product Prohibitions and Restrictions;
- Identification and Separation, and ;
- Insertion of Advertising.

In addition, the Code also contains guidance on Scheduling, Indicative Scheduling Guidelines, Assessment Criteria and a number of Definitions, namely definitions of a ‘Child’, ‘Children’s Advertising’ and ‘Children’s Programmes’. An outline of the jurisdiction of the Code is also provided.

Radio and television broadcasters are required to ensure compliance with each rule under the twelve headings when broadcasting Children's Advertising. For the purposes of the Code:

Children's Advertising is defined as:-

Advertising that promotes products, services or activities that are deemed to be of particular interest to children and/or are broadcast during and between children's programmes;

Children's Programmes are defined as:-

Programmes that are commonly referred to as such and/or have an audience profile of which over 50% are under 18 years of age.¹

For the purpose of this Code a 'Child' is defined as a person under 18 years of age. Any advert that does not fall within this definition is required to comply with the BCI General Advertising Code.

¹ This means that advertisements broadcast during any programme where over 50% of the audience watching are under 18 years of age must comply with the BCI Children's Advertising Code.

2. Executive Summary

- The Broadcasting Commission of Ireland (“the Commission”) has developed the BCI Children’s Advertising Code (“the Code”) further to the requirements of Section 19(1)(c) of the Broadcasting Act, 2001 (“the 2001 Act”). This Code came into effect on January 1st 2005. Section 19(10) of the 2001 Act requires the Commission to conduct a statutory review of the Code every three years and prepare a report for the Minister for Communications, Energy and Natural Resources. This document fulfils this statutory requirement and details the outcomes of the review of the Code undertaken by the Commission between June 2007 and May 2008.
- The approach taken to the review was grounded in the statute and the Commission’s Regulatory Principles and involved a range of quantitative and qualitative activities, namely: a national attitudinal survey; a stakeholder consultation; a jurisdictional review; a review of compliance with the Code; a consideration of whether the introduction of the BCI General Advertising Code raises any issues; a review of complaints received by the Broadcasting Complaints Commission (BCC), and; a study of advertising trends.
- The review examined each aspect of the Code to ascertain:
 - whether any legal or regulatory changes at an Irish or European level had implications for the Code, e.g. the forthcoming transposition of the Audio Visual Media Services Directive (AVMS);
 - whether, in the case of key substantive issues which had attracted considerable debate and controversy in 2003/04 and were raised again within the statutory review, any new information was presented that would suggest that a reconsideration of these issues was warranted;
 - whether any significant implementation issues had arisen in respect of any of the rules contained in the Code as well as the specific nature of issues arising;
 - whether any significant compliance issues had arisen in respect of any of the rules contained in the Code as well as the specific nature of these issue; and
 - whether a rule or rules had operated satisfactorily such that the rule or rules required no further consideration at this time.
- The report of the review identifies those areas of the Code that are working well and those areas which require further review and possible revision in the context of a second stage review of the Code. The next stage of review will commence in 2009.
- Following consideration of the results of the statutory review, the Commission has reached the following decisions in respect of each element of the Code.

Definition of ‘Child’

The current **definition** of a ‘Child’ as a person under 18 years of age will be retained. In addition, the **Principle of Age Differentiation** i.e. the application of different age categories to different rules in the Code will also be retained.² However, the manner in which the Principle of Age Differentiation is applied to **specific** rules contained in the Code will be subject to further review.

Definition of ‘Children’s Advertising’

The elements of the definition of Children’s Advertising that relates to *advertises for products and services of particular interest to children* **and** *advertises broadcast during and between Children’s Programmes commonly referred to as such*, remain suitable and will not be subject to further review.

Further consideration will be given to the desirability or otherwise of lowering the over-50% audience profile element of the definition of Children’s Advertising in the case of adverts for specific products and services seen/heard by children that are of public concern.

Jurisdiction

The jurisdictional provisions contained in the Code will not be subject to further review at this time.

Scheduling

The content of this section of the Code remains suitable and will not be subject to further review at this time.

Assessment

The content of this section of the Code, including the contextual factors detailed, remain suitable and will not be subject to further review at this time.

Social Values

The rule under the heading Social Values remains suitable and will not be subject to further review at this time.

Guidance will be provided so as to assist the interpretation of this rule.

² Different rules apply to advertisements seen by/targeting:- all children Under -18, those under-15 and those under-6 years of age

Inexperience and Credulity

The rules under the heading Inexperience and Credulity in respect of the use of on-screen messages will be subject to further consideration as part of a second stage review.

Undue Pressure

The rules pertaining to Undue Pressure remain suitable and will not be subject to further review at this time.

Research on the issue of undue pressure will be undertaken in the interest of increasing public knowledge and understanding of this issue.

Special Protection for Children in Advertising

The rules under the heading Special Protection for Children in Advertising remain suitable and will not be subject to further review at this time.

General Safety

The rules under the heading General Safety remain suitable and will not be subject to further review at this time.

Advice in respect of Rule 5.4 will be provided in Guidance Notes to be developed to accompany the Code.

Violence

The rules under this heading remain suitable and will not be subject to further review at this time.

Diet and Nutrition

Taking into account the ongoing concern about advertising of this nature, the findings of the review and also the requirement contained within the Broadcasting Bill 2008 in respect of particular classes of food and beverages e.g. foods high in fat, salt and sugar (HFSS), the rules under the heading Diet and Nutrition will be subject to further consideration as part of a second stage review.

Parental Responsibility

The rule under the heading Parental Responsibility remains suitable and will not be subject to further review at this time

Programme Characters

Further consideration will be given as part as of a second stage review of the Code as to whether the rule under this heading should be extended so that characters from new or current movies would be subject to regulation under the Code.

Clarification will be provided via Guidance Notes on the implementation of the requirement regarding ‘broadcast seasons’ in the context of Rule 9.1.

Product Prohibitions and Restrictions

Prohibitions on adverts for products and services specifically referenced in the Code will not be subject to further consideration as part of a second stage review of the Code.

Further consideration will be given as part of a second stage review as to whether additional prohibitions and restrictions on specific products and services should be introduced into the Code.

Identification and Separation

Rules under the heading Identification and Separation will be subject to further consideration as part of a second stage review of the Code on account of the expected transposition of the European Audio Visual Media Services Directive (“AVMS Directive”)

Insertion of Advertising

The rules under this heading will be updated to reflect minor changes in ‘insertion’ rules introduced by the AVMS Directive. The rules under this heading will not be subject to further consideration as part of a second stage review of the Code at this time.

Commercial Communications

The introduction of the term ‘Commercial Communications’ into the Code will be the subject of further consideration as part of a second stage review of the Code.

Awareness

The Commission’s future communications planning will address issues highlighted by the review in respect of awareness and familiarity with the Code amongst the public and other key stakeholders, including health and children’s interest groups.

3. Approach to Review

The Commission's approach to the review of the Code was designed to meet the statutory requirement but also to enable the identification of issues and areas of the Code that may require revision in order to make the Code more effective and/or to address new concerns/issues not currently addressed by the current Code. The Commission decided that the review would be undertaken in two stages. Stage One (the statutory review) was undertaken between June 2007 and May 2008 and this report details the outcomes of this stage of the review. The Stage Two review will be undertaken in 2009 and will entail public consultation regarding issues arising from the first stage review and any proposed changes to the Code.

A range of activities were undertaken as part of the **Stage One** review. These activities endeavoured to provide information on: public and industry awareness of the Code; implementation and interpretation issues; issues of compliance by broadcasters; gaps (if any) in the current Code; the perceived and actual effect of the Code, and; advertising impacted by the Code. These activities also provided information regarding changes in the regulatory, legal and social environment, with a view to highlighting where the Code may need to be updated in light of these changes. Activities undertaken included a mix of quantitative and qualitative research, namely:-

- i) A **national attitudinal survey** examining awareness of the Code and attitudes to the regulation of advertising seen or heard by children. Ipsos Mori were contracted to conduct this activity. A total of **1,209 'in-home' interviews** were conducted throughout the Republic of Ireland. 955 interviews were conducted with adults and 254 interviews were conducted with children (those under the age of 18). The purpose of the survey was to assess whether the current Code and the approach taken in the Code adequately reflects the concerns of the Irish public (including children) about advertising seen and heard by children and the type of regulation the public would like to see in place to address these concerns.
- ii) A **review of policies, practices and legislation** governing advertising to children in other jurisdictions. This research was conducted by regulatory expert Deirdre Kevin. International and European comparisons of approaches to the regulation of Children's Advertising were undertaken as part of this research. In particular, the research examined trends in the statutory and non-statutory regulation of Children's Advertising in a range of jurisdictions for the 2003 to 2007 period. In addition to developments in Europe, the review examined developments in the USA, Canada, New Zealand and the United Kingdom.
- iii) A **stakeholder consultation** with key stakeholders concerning the Code. This research, also undertaken by Ipsos Mori, involved consultation with industry, health and consumer bodies, children, parents and governmental bodies. The research was intended to elicit the views of these stakeholders concerning: awareness of the Code; satisfaction or dissatisfaction with any provisions of the Code; recommendations/suggestions to address issues arising and/or perceived gaps in the Code, and; implementation issues associated with the Code.

In total, eight in-depth interviews and three mini-discussion groups were conducted with ‘expert’ stakeholders, three discussion groups were conducted with children, one discussion group was conducted with parents and four paired in-depth interviews were conducted with parents and very young children.

The following ‘expert’ stakeholders were interviewed: National Heart Alliance; Dental Health Foundation; Irish Nutrition and Dietetic Institute; safe food; Irish Heart Foundation; National Youth Council of Ireland; Children’s Rights Alliance; Health Promotion Unit, HSE; RTÉ; TV3; TG4; Today FM; Institute of Advertising Practitioners Ireland (IAPI); Association of Advertisers (AAI); Advertising Standards Authority of Ireland (ASAI); Central Copy Clearance Ireland; Irish Business and Employers Confederation (IBEC);

- iv) A report on **advertising trends**, detailing the types and volumes of advertising seen by children examining any apparent trends/changes in the period.³ This research was conducted by Insight Statistical Consulting and examined year-on-year trends in television advertising viewed by adults and children, including advertising broadcast during programmes where over 50% of the audience was under 18 years of age. This was supplemented by in-house research that examined television audience profiles;⁴
- v) **Research and compliance monitoring** which reviewed the outcomes of monitoring undertaken by the Commission over the past three years as well as a specific piece of monitoring undertaken for the purposes of this review;⁵
- vi) A review of compliance examining complaints to the **BCC**, and;
- vii) An examination of issues arising from the introduction of the BCI General Advertising Code to ascertain whether any incongruence exists in the regulation of general advertising and advertising to children.

3.1 Approach to Outcomes of Review

In determining the parts of the Code that should be subject to further consideration as part of the Stage Two review and those that should not, the Commission had regard to the outcomes of the research undertaken and the outcomes of the other activities undertaken as part of the statutory review. In particular, the following was considered:

- Whether the statutory review highlighted any legal or regulatory changes at an Irish or European level and the implications of these changes for the Code, e.g. the introduction of the Audio Visual Media Services Directive (AVMS), and the Broadcasting Bill, 2008;

³ Information in this regard was derived from data provided by AGB Nielsen Media Research.

⁴ Information in this regard was also derived from data provided by AGB Nielsen Media Research.

⁵ The Research Monitoring examined three days of output across seven radio and television services.

- Whether, in the case of key substantive issues which had attracted considerable debate and controversy in 2003/04 and were raised again within the statutory review, any new information was presented that would suggest that a reconsideration of these issues was warranted e.g. rules on diet and nutrition.
- Whether any significant implementation issues had arisen in respect of any of the rules contained in the Code as well as the specific nature of these issues;
- Whether any significant compliance issues in respect of any of the rules contained has arisen in the Code as well as the specific nature of these issues, and;
- Whether a rule or rules had operated satisfactorily such that the rule or rules required no further consideration at this time.

The review resulted in the identification of a range of issues which were categorised as follows:-

- **Interpretation issues** - these did not relate to the substance of the rule and could be addressed by the issuance of Guidance Notes e.g. what constitutes 'mealtime' in the context of Rule 7.2?
- **Implementation issues** – these did not relate to the substance of the rule but rather the manner in which it was implemented e.g. there was general agreement as to the merits of on-screen messages, but dissatisfaction with the wording/size/placement of such messages.
- **Substantive issues** - these related to the substance of the rule e.g. should specific rules exist within Section 7 (Diet and Nutrition) that address foods that are high salt/fat/sugar?

The Commission has determined that **interpretation issues** and some **minor implementation issues** will be addressed via the provision of published Guidance Notes to assist broadcasters, the public, advertisers and other stakeholders in their understanding and interpretation of the Code.

More **substantial implementation** issues and those issues relating to the **substance of the rules** have influenced decisions regarding areas of the Code which will be subject to further consideration as part of a second stage review of the Code to be undertaken in 2009.

4. Review Outcomes

4.1 Definitions

The *Children's Advertising Code* contains a number of definitions. These are as follows:

'*Child*' refers to any person under 18 years of age. In addition, the Code includes rules in respect of three different age categories (Under-18, Under-15 & Under-6);

'*Children's Advertising*' refers to advertising that promotes products, services or activities that are deemed to be of particular interest to children and/or are broadcast during and between children's programmes;

'*Children's Programmes*' are programmes that are commonly referred to as such and/or have an audience profile of which over 50% are under 18 years of age.

Decisions reached in respect of each of these definitions are now outlined.

4.1.1 Child

i) Introduction

In determining the definition of a 'Child' to be included in the Code, the Commission accepted the arguments presented during the consultation that Ireland, as a State party to the UN Convention on the Rights of the Child, has a duty of protection and care for all children and young people under the age of 18. The National Children's Strategy and the Age of Majority Act, 1985 also define the child as a person under 18 years of age. In addition, the Commission also decided that it would be appropriate that the rules contained in the Code would recognise the need to provide different levels of protection on account of the differing levels of maturity, cognitive ability and circumstances prevalent amongst children of different ages i.e. **the Principle of Age Differentiation**.

This approach was taken in order to ensure that the Code contained a workable definition of what constitutes a 'Child', one that would balance the interests of all stakeholders impacted by the Code, including children. In practice, this means that broadcasters are required to have regard to the age group that the advert is targeting and/or the age group watching programmes when the advert is scheduled in or between such programmes. There are therefore rules applying to all adverts targeting or broadcast in programmes for children under 18 years of age and additional rules in respect of children under 15 and under 6 years of age respectively.

ii) **Review Outcomes**

The statutory review examined the under-18 age limit established by this definition of a ‘Child’ and the practical implementation of the definition in the context of the rules i.e. the Principle of Age Differentiation.

With regard to the **under-18 age limit** specified in the Code; the Commission has decided to retain this limit on the grounds that the review highlighted no significant issues that would suggest a reconsideration of this age limit is warranted. In particular, the review indicated that this age limit continues to reflect current statutory definitions of a ‘Child’ (including the definition of a ‘Child’ set down in the Broadcasting Bill, 2008).

Furthermore, no implementation issues have arisen with the age limit in place and requests to amend the definition did not, in the Commission’s opinion, warrant a reconsideration of the current age limit. For example, while some stakeholders interviewed proposed lowering the age limit to under-16 or under-12 in order to reflect marketing definitions of a ‘Child’ in this and other jurisdictions, such proposals reflected those made during the initial consultation period during which the Code was developed. These proposals were not adopted by the Commission at that time and no strong arguments were presented this time that would indicate a lowering of the age limit in this manner was warranted. This decision has also been informed by the findings of the public survey which suggested that the public considers a ‘child’ to be a person up to 18 years of age.

With regard to the **Principle of Age Differentiation**, the Commission has decided to maintain this principle on the grounds that the review has indicated that this approach is broadly supported and because no implementation issues have arisen. Furthermore, the Commission is satisfied that this principle remains suitable as a workable means of recognising childhood as a spectrum along which children with differing levels of maturity, cognitive ability and circumstances reside and the need to ensure the Code regulates advertising in a manner that accommodates this spectrum. This view was evident in the outcomes of both the stakeholder consultation and the national survey. The Commission is also satisfied that the Principle of Age Differentiation is well understood by those responsible for its implementation (broadcasters and advertisers) and considers this further reason to maintain the principle.

However, the Commission also noted the review finding that while older children (15-17) are generally believed to require less protection than children under 15 years of age, a relationship exists between the levels of protection considered necessary for certain age groups and the type of products and services seen and heard by children of different ages. The results of the public survey usefully illustrate this point. For example, survey respondents were more concerned about those under 6 years of age seeing or hearing adverts for *fast food, confectionary* and *fizzy/soft drinks* than any other age group but also concerned about 6-14 year olds in particular seeing/hearing adverts for *alcohol, premium rate telephone and text services and computer games* and 15-17 year olds seeing/hearing adverts for *alcohol, slimming, adult chat services and betting services*.

The review has provided new evidence and insights in respect of the type of products and services that the public are concerned about children of different ages seeing and hearing and it is the Commission's view that further consideration of the *application* of the Principle of Age Differentiation to the specific rules in the current Code as part of a second stage review of the Code is therefore warranted. This will entail an examination of whether the application of the under-18, under-15 and under-6 age limits in respect of the specific rules in the Code remain suitable in each case.

Outcomes

Following consideration of the review outcomes the Commission has decided to retain the current **definition** of a 'Child' as a person under 18 years of age.

In addition, **the Principle of Age Differentiation** will also be retained i.e. the application of different age categories to different rules in the Code.⁶

However, the Commission has decided that the **application** of the Principle of Age Differentiation to **specific** rules contained in the Code will be subject to further consideration as part of a second stage review of the Code.

4.1.2 Children's Advertising

i) Introduction

The BCI Children's Advertising Code defines 'Children's Advertising' as:

- *Advertising that promotes products, services or activities that are deemed to be of particular interest to children and/or;*
- *Advertising broadcast during and between Children's Programmes.*

In this context, 'Children's Programmes' are programmes that are commonly referred to as such and/or have an audience profile of which over 50% of the audience are under 18 years of age. Further to the statutory requirement to develop the Code, the intent of this definition of Children's Advertising is to ensure that advertising that is of direct and indirect interest to children is regulated by this Code. In the case of the over-50% audience profile element, this is intended to capture non-traditional Children's Programmes that have significant child audiences.

In determining what constitutes a significant child audience, the Commission decided that programmes where the majority of the audience is under 18 years of age should be considered Children's Programmes.

⁶ Under -18, under-15, under-6

ii) Review Outcomes

The review examined the three elements used to determine whether an advertisement broadcast constitutes Children’s Advertising and should comply with the rules of the Code. The Commission’s decisions in respect of these three elements are now detailed.

With regard to two of the three elements (*advertising for products of particular interest to children and advertising broadcast during and between Children’s Programmes commonly referred to as such*), the Commission has decided that these two elements remain suitable on the grounds that the review highlighted no significant issues that would suggest otherwise.

With regard to the third element of the definition (*advertising during and between children’s programmes defined as those whose audience consists of over 50% of those under 18 years of age*), the Commission has decided that this element should be subject to further consideration as part of a second stage review of the Code. Specifically, while the Commission was satisfied that the over-50% criteria remains appropriate, the Commission will examine the desirability or otherwise of applying lower audience profiling in the case of adverts for particular products and services seen or heard by children that are of particular public concern e.g. food and drink high in fat, salt and sugar (HFSS).

In reaching its decision in respect of each of these three elements of the definition, the Commission considered, but did not adopt, a number of proposals to amend them. These included proposals:

- To broaden the definition in a wholesale manner whereby Children’s Advertising would include **all** advertising broadcast during family viewing time;
- To include all adverts seen by children up to 9pm within the scope of the Code;
- To prohibit all advertising up to 9pm, and;
- To prohibit adverts targeting under 12 year olds.

A number of these proposals were considered in the context of the initial consultation used to develop the Code. At that time, the Commission proposed a range of elements to be included within the definition of Children’s Advertising. In addition to the current elements, consideration was also given to proposals to define Children’s Advertising with reference to ‘time of broadcast’ and whether ‘all adverts seen by children’ should be included within the remit of the Code. Consideration was also given to blanket prohibitions.

Proposals in respect of ‘time limits’ and the inclusion of ‘all adverts’ seen by children within the scope of the Code were ruled out by the Commission on the grounds that they were disproportionate and on the grounds that the BCI General Advertising Code, once introduced, would be the appropriate mechanism to regulate general advertising (all adverts outside the scope of the children’s Code). Furthermore, requests for prohibitions on all adverts were also considered disproportionate and not in line with the legislative provisions empowering the Commission to develop the Code. No arguments were presented in the context of the current review that would, in the Commission’s opinion, warrant a review of the initial position taken in respect of these proposals.

The Commission is satisfied that the three elements of the definition of Children’s Advertising provide comprehensive protection for children in that they cover: all adverts aired during Children’s Programmes commonly referred to as such (up to 9pm);⁷ all adverts for products and services of particular interest to children (regardless of when such adverts are scheduled), and; all adverts broadcast during programmes with a significant child audience (over 50%). Adverts not covered by the Code are regulated by the BCI General Advertising Code which includes rules regarding advertising and children as well as a detailed range of other rules with which all adverts covered by the general code are required to comply. In this context, it is the Commission’s view that the adoption of any of the proposed changes to the scope of the Code set out above would have to be merited and proportionate and address an identified serious concern in relation to advertising seen or heard by children. There is no evidence to suggest that a *wholesale* adoption of the entire children’s Code in this regard is warranted.

However, the Commission has decided that the review outcomes warrant investigation as to whether further consideration should be given to the desirability or otherwise of lowering the audience profile threshold in limited circumstances with a view to addressing public concerns in respect of adverts for particular products or services. In particular, the decision has been informed by the Commission’s observation of trends in the regulation of adverts for specific products and services in the context of public policy concerns for the wellbeing of children. For example, the voluntary Code of Practice for alcohol marketing approved by the Department of Health and Children sets a precedent for the lowering of the audience profile figure in terms of alcohol advertising in that it establishes a 25% profile figure. A similar approach in the context of the BCI’s Children’s Advertising Code may also be a suitable manner to implement any decision to restrict adverts for HFSS foods further to the Broadcasting Bill 2008 as well as any decision to restrict adverts for other categories of advertising.

⁷ There is one caveat in this regard whereby broadcasters should schedule cautiously adverts broadcast during a changeover period between 9pm and 10pm since children do not abruptly cease watching television after 9pm.

Outcomes

Following consideration of the outcomes of the review, the Commission has decided that the elements of the definition of Children's Advertising that relate to *adverts for products and services of particular interest to children* **and** *adverts broadcast during and between Children's Programmes commonly referred to as such*, remain suitable and will not be the subject of further review as part of a second stage review of the Code.

The Commission has also decided that further consideration should be given as to the desirability or otherwise of lowering the over-50% audience profile element of the definition of Children's Advertising in the case of adverts for specific products and services seen/heard by children that are of public concern.

4.2 Jurisdiction

i) Introduction

The Code, in common with other BCI Codes and Rules, states that the rules contained therein only apply to services licensed in the Republic of Ireland (including those services utilising a frequency or satellite capacity or uplink in the State). Adverts broadcast on other channels receivable in the Republic but licensed in another jurisdiction are subject to the rules in place in the country where such channels are licensed (the Country of Origin principle).

ii) Review Outcome

The jurisdiction of BCI Codes and Rules is limited by the Country of Origin principle contained in the TWF Directive, a principle retained in the successor to this Directive, the Audio Visual Media Services Directive (AVMS). As such, it is not within the remit of the Commission to extend or amend the jurisdictional limit of the Children's Advertising Code at this time.

Outcome

The jurisdictional provisions contained in the Code will not be subject to further review at this time.

4.3 Scheduling

i) Introduction

This heading details the approach to be taken to the scheduling of adverts and in this regard provides indicative scheduling guidelines for broadcasters. It highlights the role of parental/guardian responsibility and sets a limit of 9pm as the time after which programmes will generally not be considered Children's Programmes and after which the parent or guardian has primary responsibility.

There is one caveat in this regard whereby broadcasters must cautiously schedule adverts broadcast during a changeover period between 9pm and 10pm where a programme broadcast during this period has a majority of children watching. Such a programme should be considered Children's Programming and the rules of the Code will apply. This approach is intended to recognise that children do not abruptly cease watching television after 9pm.

ii) Review Outcome

The review indicates that this section of the Code remains suitable and is readily understood by those responsible for implementing it (broadcasters and advertisers). Furthermore, no implementation issues have arisen. There were limited concerns regarding the perceived potential for the 9-10pm changeover period to cause audience confusion and unnecessary complaints. However, the Commission found no evidence to suggest that this has been the case. The review also highlighted broader issues relating to the television viewing times of children (including unmonitored viewing) and issues of parental responsibility. These issues are discussed elsewhere in this report.

Outcome

Following consideration of the review outcomes the Commission has decided that the section of the Code that addresses Scheduling remain suitable and will not be subject to further review at this time.

4.4 Assessment

i) Introduction

The Code includes a number of contextual factors that are used by the Commission and the BCC when assessing compliance with the Code. These are also intended to provide guidance to broadcasters and the public regarding the role of 'context' in any assessment of compliance. This section of the Code states that each advert will be assessed on its own merit based on its content and the context in which it is broadcast. Four contextual factors are detailed: the time an advert is broadcast; the type of programme during which the advert is broadcast; the likely profile of the audience watching when the advert is broadcast, and; the target audience for the product advertised.

ii) Review Outcome

The review highlighted no issues in respect of the approach taken in the Code to assessment.

Outcome

Following consideration of the review outcomes, the Commission has decided that this section of the Code remains suitable and will not be subject to further review at this time.

4.5 Social Values

i) Introduction

The Code contains a rule requiring broadcasters to ensure that Children's Advertising does not reflect a range of values which are inconsistent with the moral or ethical standards or diversity of contemporary society. An indicative list of social values is detailed under this rule, including a requirement that such advertising does not support discrimination or prejudice human dignity. This rule was included in order to reflect the influence of advertising on social values.

ii) Review Outcomes

The review highlighted broad support for this rule. Furthermore, no issues have arisen regarding its implementation. Compliance and research monitoring highlighted no breaches while the BCC has not upheld any complaints in respect of this rule. Limited concerns were raised regarding the practical application of this rule, specifically, a perceived view that these social values were 'nebulous' and would accommodate vexatious complaints. However, the review highlighted no evidence to support this concern. Social values in a society are, by their very nature, fluid and subject to change over time and the Commission is satisfied that the current rule adequately reflects this dynamic while also recognising the role of social values and the need to ensure that advertising respects such values. However, in order to assist in the interpretation of this rule, guidance on the rule under this heading will be provided in Guidance Notes to be developed.

Outcomes

Following consideration of the review outcomes the Commission has decided that the rule pertaining to Social Values remains suitable and will not be subject to further review at this time.

In order to assist in the interpretation of this rule, the Commission has decided that guidance on the rule under this heading will be provided.

4.6 Inexperience and Credulity

i) Introduction

The rules under this heading address the issue of misleading advertising to children and introduce measures requiring Children's Advertising to take cognisance of children's capacity to interpret and understand advertising. The initial consultation process highlighted an overarching concern on the part of adults and children regarding the accuracy of advertising to children and the rules are intended to reflect this concern. Furthermore, the rules also incorporate the prohibition contained in the Television Without Frontiers Directive (TWF) on advertising that exploits the inexperience and credulity of minors. While the Commission was required to incorporate this element of the TWF Directive, it decided to include stronger measures in the Code on account of the responses received to the initial consultation.

This section also includes requirements in respect of on-screen messages e.g. ‘batteries not included’, and a general stipulation that the use of on-screen messages and small print should be clear, simple and legible and remain on screen for a sufficient length of time to enable a child to read it. This applies to all adverts targeting under 15 year olds with an additional requirement that on-screen messages be spoken in adverts targeting those under 6 years of age or scheduled in programmes of interest to those under 6 years of age.⁸ Other rules that are given effect by on-screen messages include: those requiring adverts to indicate if the price of a product advertised is dependent on the purchase of another product, and; the requirement to clearly indicate the price of the product advertised when this product is featured alongside other products in the advert. This latter rule is included so that a child does not get the impression that the price indicated in an advert covers all items that appear in the advert.

ii) Review Outcomes

The review highlighted broad support for the rules included under this heading of the Code. However, the review also suggests a number of implementation issues in respect of on-screen messages. For this reason, the Commission has decided that the rules under this heading in respect of the use of on-screen messages should be subject to further consideration as part of a second stage review of the Code.

To elaborate, research monitoring undertaken, for example, highlighted a consistent failure to include spoken on-screen messages during adverts targeting under-6 year olds, as required by the Code, as well as issues in some instances with the legibility of messages and their duration on screen. These findings were broadly supported by feedback from parents and children interviewed. In addition, the review also highlighted issues regarding the perceived suitability of the language used during on-screen messages for younger children and issues regarding adverts for children’s products and services perceived as unclear in terms of information provided regarding whether assembly was needed and the age suitability of products or services advertised.

The review also suggested more general issues regarding the effectiveness of the rules under this heading in addressing the needs of those under 6 years of age. For example, the national public survey addressed the effectiveness of on-screen messages and while the majority of those surveyed, including children, were familiar with various messages used on-screen, younger children were noticeably less familiar. In addition, children’s perceptions of the effectiveness of such messages were also lower than that of parents.

⁸ These rules also apply to the implementation of on-screen messages for fast food and confectionary stipulated in Section 7 of the Code.

Outcome

Following consideration of the outcomes of the review, the Commission has decided that the rules under this heading in respect of the use of on-screen messages should be subject to further consideration as part of a second stage review of the Code.

4.7 Undue Pressure

i) Introduction

Undue Pressure, including so-called ‘Pester Power’, was a significant issue during the development of the Code. In line with the rules contained in the TWF Directive and the demand that the Code include rules in respect of ‘pester power’, the Commission decided to include a range of rules under the heading of *Undue Pressure*. The rules include a prohibition on adverts that directly encourage children to purchase products or services and prohibitions on adverts that make children feel inferior, disloyal or doubtful about their self-image.

It is not the intent of these rules to eliminate ‘pester power’ since an objective of this nature is outside the scope of the Code and the remit of the Commission. Rather, the objective of these rules is to ensure that appropriate standards are established for the Irish broadcast media.

ii) Review Outcomes

With regard to the rules under this heading, the Commission has decided that the rules remain appropriate and will not be subject to further consideration as part of the second stage review of the Code. In reaching these decisions the Commission took into account a number of outcomes from the review. This included broad satisfaction with the rules on the part of those interviewed as part of the review as well as the absence of compliance or implementation difficulties with the rules under this heading.

The Commission also noted the review finding that the issue of Undue Pressure is of continuing relevance to parents and the public and in this context has decided, in the interest of increasing public knowledge and understanding, to commission research on the issue of undue pressure, including ‘pester power’.

Outcomes

Taking into account the review outcomes, in particular the general support for, and compliance with, the rules, as well as the scope and limits of the Code and the Commission’s remit, the Commission has decided that this section of the Code will not be subject to further review at this time.

However, the Commission has also decided that research on the issue of undue pressure will be undertaken in the interest of increasing public knowledge and understanding of this issue.

4.8 Special Protection for Children

i) Introduction

The rules under this heading cover a range of issues that concern children not only as viewers and listeners but the manner in which they are represented and portrayed in advertising. In particular, these rules address the appropriateness of children endorsing products and services; prohibit adverts that portray children in a sexually provocative manner; restrict children providing personal information to third parties and restrict, in the interest of the dignity of children, the use of adults pretending to be children during Children's Advertising.

ii) Review Outcomes

With regard to the rules under this heading, the Commission has decided that they will not be subject to further consideration as part of a second stage review of the Code. This decision has been made on the grounds that the review outcomes indicated broad support for the rules and because research and compliance monitoring has highlighted no significant implementation issues with these rules. Furthermore, the review also indicated that the rules under this section reflect stakeholder concerns.

The Commission considered, but did not adopt, proposals to remove the rules that restrict the use of children in Children's Advertising to endorse products that they would not usually be interested in (Rule 4.1) and the rule that prohibits the use of adults pretending to be children during Children's Advertising (Rule 4.4). The Commission does not believe that these rules entail, as argued by some participants in the statutory review, an unwarranted restriction on the creativity and the commercial rights of advertisers respectively. Furthermore, some of the opposition to these rules appeared in part to be informed by a mistaken view that the restrictions applied to **all** advertisements rather than just Children's Advertising. In this context, the Commission has also decided to provide greater clarity on the rules under this heading by way of Guidance Notes to be issued. In this regard, the Commission also noted the findings of the national public survey undertaken insofar as the results suggest that the rules under this heading reflect the concerns of the public, including parents and children. Of particular note here is that nearly 60% of children interviewed stated that children are more likely to buy something if there are children in the advertisement.

The Commission also noted the views of parents and children regarding the role of advertising and the sexualisation of children. While supportive of Rule 4.2 under this heading (*Sexualisation of Children*), they remain concerned with the sexualisation of children at what they believe is an early age. Some recognised this as a broader social issue rather than something that is generic to the Code. In framing the rule on the sexualisation of children, the Commission was mindful that this issue was a subjective one and decided that the rule should focus on the outcome or overall impression given by an advert rather than trying to define or specify in detail the type of content that would be prohibited.

Consequently, the rule prohibits adverts that portray children in a sexually provocative manner or provoke anxiety in children over their bodily appearance. The Commission is satisfied, following consideration of the outcomes of the review that the rule entitled *Sexualisation of Children* remains relevant and continues to address concerns relating to this topic.

Outcome

The Commission has decided that the rules under this heading will not be subject to further consideration as part of a second stage review of the Code.

4.9 General Safety

i) Introduction

The rules under this heading address the issue of advertising and safety. They include the requirement that Children's Advertising should not encourage children to talk to strangers or to enter unsafe situations and they should not show children in morally or physically dangerous situations. The rules also require the use of safety equipment by children in appropriate circumstances e.g. during depictions of skateboarding, and a requirement that children should not be shown during Children's Advertising using the internet unaccompanied (Rule 5.4).

In addition, Children's Advertising shall not encourage children to engage in or be portrayed engaging in anti-social behaviour and should not disparage education or condone aggression or greed as admirable qualities. Finally, in addition to safety, these rules are concerned with the influence of advertising on children's behaviour and the importance of setting an appropriate example for children watching such advertising.

ii) Review Outcomes

With regard to the rules under this heading, the Commission has decided that these remain suitable and will not be subject to further consideration as part of a second stage review of the Code. The Commission's decision has been informed by a range of factors. While clarification was requested in respect of Rule 5.4, the review indicates support for, as well as a good understanding of, the rules amongst those responsible for implementing the Code (broadcasters and advertisers). Both compliance and research monitoring undertaken highlighted no issues arising in respect of compliance or implementation of the rules.

The outcomes of the review also indicate that the rules continue to be relevant to the public. For example, the national survey undertaken suggests that the view informing the rules, namely, the need to regulate in a manner that recognises the impact of advertising on children’s behaviour, remains valid. In this regard, a large majority of adults surveyed agreed with the statement – *Children will always copy behaviour they see or hear on radio or television whether it is positive or negative*. Similarly a large majority disagreed with the statement that *Children are not easily influenced by what they seen television or hear on radio*.

Outcome

Taking into account the outcomes of the review, the Commission has decided that the rules under the heading General Safety remain suitable and will not be subject to further consideration as part of a second stage review of the Code.

Advice in respect of Rule 5.4 will be provided in Guidance Notes to be developed to accompany the Code.

4.10 Violence

i) Introduction

In developing the rules under this heading the Commission agreed to prohibit, in principle, most Children’s Advertising which included violence or scenes that might cause distress to children, but permitted some exceptions in a relevant context where the portrayal of violence was necessary as part of a public service message or in order to demonstrate the product or service promoted. These exceptions are permitted once appropriately scheduled so as to avoid harm to those under 6 years of age.

ii) Review Outcomes

The Commission has decided that the rules under this heading remain satisfactory and will therefore not be the subject of further review. While the review highlighted concerns in respect of advertisements for movie trailers and adverts against drink driving, the rules under this heading currently regulate advertising of this nature and compliance and research monitoring highlighted no specific or general issues in this regard.

However, the review highlighted a broader concern regarding adverts for violent computer games and this concern is addressed below in the report under the heading Product Prohibitions and Restrictions.

Outcome

The Commission has decided, following consideration of the outcomes of the review that the rules under this heading will not be subject to further consideration at this time.

4.11 Diet and Nutrition

i) Introduction

The topic of food and drink advertising was the most contentious issue during the consultation process used to develop the Code. Two distinct views were evident at that time, namely the view expressed predominantly by broadcasters and advertising interests that there was no link between health and food advertising and the view expressed predominantly by health and children's interest groups that such a link existed and that food and drink advertising should be heavily regulated as a result.

Following consideration of the issues arising, the Commission took the view that the issue of children's health and the influence that advertising plays is very complex. In acknowledgement of this complexity, the Commission decided not to introduce any prohibitions on particular foods being advertised to children at that time and introduced instead a range of additional rules specifically regulating this type of advertising. The Commission also reserved its right to introduce stricter measures following completion of the statutory review of the Code.

The rules are intended to encourage responsible food and drink advertising to children and to raise awareness about the moderate consumption of 'fast food' and confectionary. In the context of the inexperience and credulity of children this section also includes a rule prohibiting celebrities from advertising food and drink during Children's Advertising.

Furthermore, this section of the Code also requires broadcasters to include specified on-screen messages when children's advertising for fast food and confectionary are broadcast. In the case of fast food, the required on-screen message is "*Should be eaten in moderation*". In the case of confectionary food and drinks, the message is "*Snacking on sugary food and drinks damages teeth*". Both messages were included in order to raise awareness about the need for care in the consumption of these categories of foodstuffs.

ii) Review Outcomes

Following consideration of the outcomes of the review, the Commission has decided that the rules under this heading will be subject to further consideration as part of a second stage review of the Code. In reaching this decision, the Commission took into account changes in the legal and regulatory environment, compliance issues in relation to on-screen messages and a commitment given at the time of the development of the Code to review this area again.

With regard to legal and regulatory changes, the Commission's decision was guided by changes proposed in Irish legislation and changes introduced in other jurisdictions, most notably, changes in the UK. Key legal changes include the introduction by Ofcom in the UK of regulations covering adverts for food and drink high in fat, salt and sugar (HFSS). This change is of significance given the amount of viewing by Irish audiences to UK television services as well as the shared advertising market. The Ofcom rules restrict adverts for HFSS foods on dedicated children's channels and during programmes where 20% of the viewing audience is under 16 years of age. A number of rules similar to those contained in the Commission's Code have also been introduced.

In terms of Irish legislation, the Broadcasting Bill 2008 includes a provision in respect of HFSS food and drink. This requires the BAI (the body that will supersede the BCI) to examine the desirability of introducing specific regulations in respect of these foods including the power to consider a prohibition of such foods. As the BAI will assume responsibility for the BCI Children's Advertising Code, the Commission believes it appropriate to review this section of the Code in this context. This decision has also been informed by the introduction of the Health and Nutrition Claims Directive at European level. This is relevant insofar as it establishes rules regarding acceptable health and nutritional claims for food and drink advertising.

However, even without these regulatory changes (or a prior commitment to review the rules under this heading), the Commission is of the view that a review of these rules would be merited. In this regard, the continued prevalence of opposing views highlighted during the initial development of the Code was noted. Health and children's interest groups maintained that the body of evidence in support of the view that advertising to children has a negative impact on health has increased significantly since the Code was developed. In this context, they asked the Commission to introduce strong restrictions on the advertisement of HFSS foods. On the other hand, broadcasters and advertising interests maintained that there is no established link between food advertising and children's health with some requesting the maintenance of the status quo and in some instances a loosening of the existing rules.

The Commission also noted a number of compliance and implementation issues with this section of the Code. Compliance issues in respect of on-screen messages (highlighted above in the Section on Incredulity and Inexperience) are relevant in the context of rules under this heading and consequently require review (in particular the suitability for under-6 year olds of on-screen messages required under this heading). The manner in which the rules are to be implemented has also caused some confusion to advertising and broadcast interests and this suggests that guidance may be required and/or the wording and approach of some of the rules may require reconsideration. For example, some industry stakeholders were unclear regarding the meaning of '*mealtime*' in the context of Rule 7.2 and the restrictions imposed by this rule.

Other issues included a perception that Rule 7.3 prohibited advertising for drinks intended to supplement the recommended 5-a-day fruit and vegetable intake.

The Commission also noted public concern regarding the issue of obesity, children's health and advertising but also the complex nature of this issue. Not surprisingly the large majority of those interviewed as part of the national survey (87%) believe the issue of obesity is a significant social problem. However, a range of influences were identified with family, peer and school relationships cited as the most significant perceived influences on children's health with advertising identified as a significant but lesser influence along with the availability of low cost 'fast food'. In general, those surveyed felt that there was not enough dietary or nutritional information about food in food advertising and agreed that if unhealthy foods were not advertised children's eating habits would improve. Having said this, the majority also agreed that food advertising helps improve public knowledge of food.

Finally, the Commission also noted the continued presence of food advertising seen by children. Research into advertising trends undertaken examined the volume and category of television advertising broadcast during children's programmes on Irish television services where the audience consists of over 50% of those under 18 years of age. This highlighted a number of trends including a notable decline in certain forms of food and drink advertising. In this regard, there were significant drops in Children's Advertising for soft drinks, chain restaurants (fast food restaurants) and confectionary. Notwithstanding these declines, the number of adverts for food seen by children since the introduction of the Code has remained relatively constant. In terms of the total broadcast day, adverts for fast food outlets and confectionary moved into the post 9pm period. The other notable trend was a marked increase in adverts for ready-to-eat cereals after the 6pm period.

Outcome

Taking into account the ongoing concern about advertising of this nature, the findings of the review and also the requirement for the BAI to consider advertising for HFSS foods, the Commission has decided that this section of the Code will be subject to further consideration as part of a second stage review of the Code.

4.12 Parental Responsibility

i) Introduction

There was unanimity during the initial consultation process among parents, children, advertisers and broadcasters for the inclusion of this topic within the Code. Broadcasters were anxious that the Code would acknowledge what they saw as the primary responsibility of parents/guardians, while parents and guardians were anxious that advertisers and broadcasters would acknowledge that they also have a responsibility for the welfare of the child.

The Commission shared the view expressed by many of those responding to the initial consultation that parents or guardians have primary responsibility for children but that advertisers and broadcasters should support the parent/guardian-child relationship and should not undermine that relationship. The current rule under this heading is intended to reflect this view.

ii) Review Outcomes

Following consideration of the outcomes of the review, the Commission has decided that the rule under this heading remains suitable and will not be subject to further consideration at this time. While, there was a range of views about where the weight of responsibility should lie for what children see and hear, the predominant view emerging was that parents and guardians are primarily responsible for children but need the support of broadcasters to achieve this successfully. For example, 90% of adults interviewed as part of the public survey were of the view that it is up to parents/guardians to make sure that children know what are good and bad influences. Furthermore, 77% of children surveyed agreed with the statement that *parents should ensure that their children are not watching television when they are not supposed to*.

Outcome

Following consideration of the outcomes of the review, the Commission has decided that the rule under this heading will not be subject to further review at this time

4.13 Programme Characters

i) Introduction

The rule under this heading recognises the special loyalty that children can have for programme presenters or characters but also distinguishes between characters created solely for adverts and which are not prohibited e.g. “Tony the Tiger”, and programme presenters and characters that are known to children because of their appearance in programmes. The rule under this heading prohibits characters and personalities from Children’s Programmes currently broadcast on **indigenous** services from appearing in Children’s Advertising for products, services and events not directly related to the programme. In this instance, ‘currently’ includes regular programming due for return in the next broadcast season. Adverts for products, services and events directly associated with a Children’s Programme may feature the presenters/characters once it is scheduled two hours prior to, or after, the programme in question.

ii) Review Outcomes

The Commission has decided, following consideration of the outcomes of the review that the rule under this heading remains satisfactory and should not be subject to further review. However, the Commission has decided that further consideration should be given as to whether the rule should be extended so that it applies to characters from new and current movies featuring in Children’s Advertising.

With regard to the current rule, no compliance or implementation issues have been highlighted by research and compliance monitoring undertaken. There was some dissatisfaction amongst broadcaster and advertiser interests with this rule with some commenting that the rule unnecessarily restricted advertisers while others commented that the 2-hour moratorium period specified in the Code constituted, in their opinion, a ban on such adverts. A number of stakeholders representing broadcaster interests also had questions regarding the implementation of this rule. In this regard, they stated that the reference in this rule to the requirement to appropriately schedule adverts of this nature in advance of the next ‘broadcast season’ was difficult to implement because broadcasters are often not clear what is in the schedule for the next broadcast season.

While the Commission noted these issues, it was not satisfied that compelling reasons had been presented that would warrant limiting the current rule. Furthermore, issues regarding the implementation of the rule and matters relating to ‘broadcast seasons’ will be dealt with via Guidance Notes.

In terms of public opinion, the review suggests that the rule reflects public concern regarding the influence of programme characters on children. For example, 64% of adults interviewed as part of the national survey were of the view that advertising of this nature should be the subject of regulation, while 82% of children surveyed were of the view that children would be more likely to buy something if there are characters or people from children’s programmes in the advertisement. However, the research undertaken as part of the review did highlight a view that characters from new or current movies would have equal influence on what a child may buy. Consequently, the Commission believes advertising with such characters requires investigation.

Outcome
The Commission has decided that further consideration will be given as part as of a second stage review of the Code as to whether the rule under this heading should be extended so that characters from new or current movies would be subject to regulation under the Code.

The Commission has also decided that clarification will be provided via Guidance Notes on the implementation of the requirement regarding ‘broadcast seasons.’

4.14 Product Prohibitions and Restrictions

i) Introduction

The current Code contains a range of restrictions and prohibitions related to particular types of advertising. Prohibitions on products and services specified in the Code include advertising for: Betting and Gaming Services (except the National Lottery); Slimming products, services, treatments or establishments; Introduction and dating services, and; Services of a Sexual Nature. In addition, the Code adopted prohibitions and restrictions contained in the *Codes of Standards, Practice and Prohibitions in Advertising, Sponsorship and other forms of Commercial Promotion in Broadcasting Services* (superseded on 10th April 2007 by the BCI General Advertising Code).

ii) Review Outcomes

Following consideration of the review outcomes, the Commission has decided that the specific prohibitions listed in the current Code remain valid and will not be subject to further consideration at this time. The Commission has also decided that further consideration should be given to the desirability of introducing into the Code additional prohibitions and restrictions.

With regard to the decision to maintain current prohibitions, the Commission is satisfied that the outcomes of the review support the continued inclusion of these prohibitions insofar as they would appear to reflect areas of particular public concern. For example, when directly asked about the regulation to be applied to the specific products and services restricted by the Code, 61% of the public surveyed stated a preference that commercial promotions for adult phone and chat services should not be broadcast, while figures in favour of prohibitions on the promotion of betting and slimming services were 54% and 36% respectively. Furthermore, no issues have been highlighted by the review to suggest that these prohibitions are problematic and no implementation issues have arisen in respect of these prohibitions.

With regard to the decision to consider the desirability or otherwise of introducing additional prohibitions and restrictions, this has been informed by feedback from the review and also regulatory changes arising from the introduction of the BCI General Advertising Code. In this regard, the Commission noted that the commercial promotion of a number of categories of products and services not **directly** regulated in the current Code are of public concern.⁹ These products and services include alcohol, certain phone services (including psychic and tarot services) as well as violent computer games. Consequently, it is the Commission's opinion that the promotion of these products and services, including the potential for restrictions, merits further consideration in the context of a second stage review of the Code.

⁹ With a number of exceptions e.g. food, including fast food & confectionary and the section on Production Prohibitions and Restrictions, the Code does not attempt to *specifically* regulate certain products and services. Rather, the Code establishes a range of principles against which all adverts are required to comply (including those specifically restricted). In addition, all existing legal prohibitions and restrictions apply to Children's Advertising. For example, the Code does not specifically prohibit adverts for tobacco but such adverts are not legally permitted.

The introduction of the BCI General Advertising Code in April 2007 has also informed the Commission's decision. As noted, the children's Code was developed when the predecessor to the BCI General Advertising Code had been in effect (*the Code of Standards, Practice and Prohibitions in Advertising, Sponsorship and other forms of Commercial Promotion in Broadcasting Services*). As such, up until the *Code of Standards* was superseded by the new BCI General Advertising Code in April 2007, Children's Advertising was regulated **generally** by the *Codes of Standards* and **specifically** by the BCI Children's Advertising Code. However, following the introduction of the new BCI General Advertising Code, the general protection afforded by the *Codes of Standards* ceased.¹⁰

While this change has not opened any regulatory gaps, the BCI General Advertising Code introduced new restrictions which are not *specifically* reflected in the children's Code. This includes the introduction of general principles that apply to all commercial promotions and restrictions on the promotions for, among others, medicines, medical treatments and services, alcohol, cosmetic treatments and service, hypnotherapy, psychology, premium rate telecommunication services, fortune teller and psychic services and different types of new advertising techniques.¹¹ As such, there is now a degree of incongruence between both advertising Codes.

Taking into account public concerns in respect of advertising for specific products and services and the elements of incongruence between the BCI Children's Advertising Code and the BCI General Advertising Code, it is the Commission's opinion that further consideration should be given to whether additional prohibitions and restrictions should be introduced into the children's Code.

Outcomes

Prohibitions on adverts for products and services specifically referenced in the Code will not be subject to further consideration as part of a second stage review of the Code.

Following consideration of the outcomes of the review, the Commission has decided that further consideration should be given to whether additional prohibitions and restrictions should be introduced into the children's Code.

¹⁰ Legislation stipulating the requirement to develop the BCI General Advertising Code explicitly excludes the application of the rules of this general code to adverts regulated by the BCI Children's Advertising Code.

¹¹ These services are regulated broadly by the rules contained in the BCI Children's Advertising Code and specifically regulated by Irish and European statutory regulation applying to all advertising and to specific types of advertising including medicines and premium rate service etc., as well as voluntary codes approved by the Department of Health (in the case of alcohol).

4.15 Identification & Separation

i) Introduction

The rules under this heading reflect the requirements of the European Television Without Frontiers Directive (TWF Directive) but also reflect concerns expressed as part of the consultation process used to develop the Code. In particular, this section of the Code requires that Children's Advertising must be clearly distinguishable and that particular care is required so that the boundaries between programming and advertising content is not blurred.

Furthermore, advertising shall be clearly separated from programme content whereby a visual or audio cue containing no advertising material must be used to indicate that a commercial break is starting or ending.

ii) Review Outcome

The review highlighted no implementation or compliance issues in respect of the rules under this heading. Other than a development in European regulation, no other issues have arisen during the review that suggests the rules under this heading require further consideration at this time.

The new Audio Visual Media Services Directive (AVMS Directive), the successor to the TWF Directive makes a notable change in respect of identification and separation rules to be applied to television advertising across the EU. While European regulations currently require all advertising to be 'separate' from programme content, the AVMS Directive will amend this requirement with one that requires advertising to be 'distinct' rather than separate from programme content. This change has been introduced into the AVMS Directive because new advertising techniques such as virtual or split-screen advertising make it impossible to keep such advertising 'separate' from programme content since they occur alongside programme content.

The issue of new advertising techniques such as split-screen advertising was discussed when the Code was initially developed but it was decided that additional rules were not necessary at that time and the matter would be reconsidered in the context of the review of the Code. Taking into account the change introduced by the AVMS Directive and the earlier commitment to examine this issue again, the Commission has decided that this section of the Code will be the subject of further consideration as part of a second stage review of the Code.

Outcome

Rules under the heading Identification and Separation will be subject to further consideration as part of a second stage review of the Code on account of the expected transposition of the European Audio Visual Media Services Directive ("AVMS Directive").

4.16 Insertion of Advertising

i) Introduction

Section 12 of the Code includes two rules in respect of the insertion of adverts. The first prohibits Christmas-themed Children's Advertising prior to 1st of November while the second rule incorporates insertion rules in place in the Television Without Frontiers Directive (TWF Directive).

ii) Review Outcome

As with the rules in respect of identification and separation, the review has highlighted no issues in respect of rules under this heading. With regard to European regulation, the AVMS Directive will introduce a number of minor changes in respect of rules for the insertion of advertising. As these changes are minor, the Commission has decided that this section of the Code does not warrant further consideration as part of a second stage review of the Code.

Outcome

The rules under this heading will be updated to reflect minor changes in insertion rules introduced by the AVMS Directive once these changes are incorporated into Irish law. The rules under this heading will not be subject to further consideration as part of a second stage review of the Code at this time.

4.17 Commercial Communications

i) Introduction

While the legislation requiring the Commission to develop the Code requires a code covering all types of commercial promotion of direct and indirect interest to children, the current wording of the Code places a predominant emphasis on advertising as a form of commercial activity.

ii) Review Outcome

The review highlighted requests for greater clarification as to the scope of the Code and highlighted erroneous views that the Code did not cover sponsorship and other forms of commercial promotion (including product placement).

In view of the issues highlighted, the Commission has decided that the application and understanding of the Code would be improved if the term "Commercial Communications" is used in the Code in addition to the term "Advertising". This broader term, used in the BCI General Advertising Code and at a European level, is an all encompassing term covering advertising, sponsorship (including competitions) and other forms of commercial communications.

Outcome

The Commission has decided that the introduction of the term Commercial Communications in the Code will be the subject of further consideration as part of a second stage review of the Code.

4.18 Awareness of the Code

i) Introduction

In determining the parameters of the review of the children's Code to be undertaken, the Commission agreed to examine awareness and familiarity with the Code amongst key stakeholders and the public.

ii) Review Outcome

While the review highlighted strong awareness of the Code, including its provisions amongst broadcasters and advertisers, awareness levels amongst the general public and certain stakeholder groups (including those representing health and children) was lower. Consequently, the Commission has decided to address awareness issues highlighted as part of its future communications planning.

The review findings are not, in the Commission's opinion, surprising given that the Code has only been in existence since 2005 and given the necessary prioritisation of awareness-raising activities amongst those responsible for the implementation of the Code (broadcasters and advertisers). Overall, a range of activities were undertaken following the introduction of the Code with a view to promoting it. These included a formal launch of the Code, interviews on radio, television and the press, attendances at conferences and briefings with organisations. In terms of public awareness, the Commission has broadcast a public notice about the Code twice yearly since 2006. On each occasion a co-ordinated radio and television campaign was undertaken with the public notice airing on all broadcasters throughout the Republic for over a week. Furthermore, information on the Code was also distributed to secondary schools throughout the country via inclusion of a case study in an Irish Times business publication.

However, the review highlighted the need for ongoing promotion amongst the public and those stakeholders outside the broadcast and advertising industries. For example, while there was general public and stakeholder awareness that advertising seen and heard by children was regulated (57% of those surveyed were aware that regulation existed) there was low public awareness of the Code itself (24% were aware of the children's Code) and little awareness of the provisions of the Code. Other issues highlighted included a lack of public and stakeholder familiarity with mechanisms used to assess compliance with the Code (monitoring and the BCC complaints process) and a lack of awareness of the purpose/objectives of the Code.

Outcome

On foot of the review, the Commission has decided that the organisations future communications planning will address issues highlighted by the review in respect of awareness and familiarity with the Code amongst the public and other key stakeholders, including health and children's interest groups.