

The General Advertising Code

PHASE TWO CONSULTATION DOCUMENT



Broadcasting Commission of Ireland
Coimisiún Craolacháin na hÉireann

CONTENTS

1. How can you comment on the Draft BCI General Advertising Code for broadcasting services?	2
2. Draft BCI General Advertising Code.	4
3. Why we have included the objectives, principles and rules.	19
4. Background to the development of the Draft BCI General Advertising Code.	28
5. Summary of Questions Asked.	32

1. HOW CAN YOU COMMENT ON THE DRAFT BCI GENERAL ADVERTISING CODE FOR BROADCASTING SERVICES?

1.1 Introduction

This is Phase 2 of the development by the Broadcasting Commission of Ireland (“BCI” or “the Commission”) of a new *General Advertising Code*. In this document, and further to our obligations under Sections 19(5) and 19(6) of the Broadcasting Act, 2001, we present the *Draft BCI General Advertising Code*. We have developed this draft code based on the submissions received from the public, broadcasters, advertisers, government bodies and other interested parties during Phase 1 of the consultation process. The draft code has also been informed by the current *Ministerial Advertising Code*, Irish and European legislation and research carried out by the Commission.

The draft code details the objectives which have guided the development of the code and rules and principles pertaining to commercial communications (i.e. advertising, sponsorship and teleshopping) with which broadcasters will have to comply when the code is finalised.

1.2 How can you comment on the draft code?

We would like you to read the draft code and to consider the proposals contained within it. We have provided some notes in Section 3 that explain the rationale for the proposals in the draft code. We would like you to tell us which proposals you support and wish to endorse and if there are any with which you disagree. It is important that you give reasons for your views so that we can consider and compare all the views received and understand the arguments being presented. Please try to be as specific as possible in your responses so that it is clear to which principle or rule your comments refer.

The code will be finalised after we consider the submissions received in response to this final phase of the consultation process.

The Commission encourages you to answer all of the questions raised. However, in going through the document you may decide that you only wish to respond to some of the questions posed and the document is designed to allow you to do this.

The Commission welcomes your views on any or all of the questions.

You can comment on the draft code by writing to us at:

**BCI General Advertising Code
The Broadcasting Commission of Ireland
2-5 Warrington Place
Dublin 2
email: codes@bci.ie**

All responses should reach the Commission on or before 5pm, Monday 25th September 2006.

1.3 Document Structure

This document has a number of sections:

Section 2 presents the *Draft BCI General Advertising Code*.

Section 3 provides the rationale for the inclusion of the proposed objectives, principles and rules in the draft code.

Section 4 explains the work of the BCI and the process that has been used to develop this draft code. For those of you who have not been involved in Phase 1 of the consultation process, it explains how we have developed the *Draft BCI General Advertising Code* and why we have adopted this approach.

1.4 Document Dissemination

The Commission wants to encourage participation by the public, broadcasters, advertisers and other interested parties in the consultation process and is undertaking a number of activities in order to promote it.

- The document is available from the Commission's offices and on its website - **www.bci.ie**.
- The document is being circulated to a wide range of individuals, groups and organisations.
- A notice promoting this consultation will be placed in the national press and on radio and television.
- Copies of the document are available in Irish, Braille and on audio-tape.

1.5 Freedom of Information

This is a public consultation process and following consideration of submissions by the Board of the Commission, all information submitted will be publicly available on request. However, there may be aspects of your submission which you may wish to submit in confidence. If this is the case, when making the submission please identify any information which you do not wish to be publicly disclosed and specify the reasons for its sensitivity.

Agreements between the Commission and respondents to the consultation regarding confidential information, are without prejudice to the Commission's obligations under the Freedom of Information Act, 1997 and the Freedom of Information (Amendment) Act, 2003. If the Commission receives a request for information submitted in confidence, you will be consulted before any decision is made.

2. DRAFT BCI GENERAL ADVERTISING CODE.

This section of the document presents the Draft BCI General Advertising Code. The code contains an introduction and ten sections. These sections detail the objectives of the draft code, definitions for key terms used in the draft code as well as principles and rules applying to commercial communications. An appendix listing applicable legislation is also included in the draft code.

Introduction

Legislation

Section 19(1)(b) of the Broadcasting Act, 2001, provides that:

The Commission shall, upon being directed by the Minister to do so and in accordance with the provisions of this section prepare 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 (other than advertising and other activities as aforesaid falling within paragraph (c) (children's advertising).

The *BCI General Advertising Code* has been developed in accordance with this provision following consultation with a wide range of individuals, industry, government and public bodies. This code will replace the *Codes of Standards, practice and prohibitions in advertising, sponsorship and other forms of commercial promotion in broadcasting services* as drawn up by the Minister for Arts, Culture and the Gaeltacht in the exercise of his powers under Section 4 of the *Broadcasting Act, 1990*.

Jurisdiction

The *BCI General Advertising Code* will apply to broadcasters in the jurisdiction of the Republic of Ireland or those who make use of a frequency or satellite capacity or up-link situated in the Republic of Ireland. In practical terms, the code will apply to RTÉ radio and television services, TG4 and local, community and national radio and television services licensed under the *Radio and Television Act, 1988* and under the *Broadcasting Act, 2001*; for example, TV3, Today FM and Channel 6. It will not apply to other services commonly received in this country; for example, ITV or BSkyB services. Commercial

communications on these services is governed by the Television Without Frontiers Directive (TWF Directive) and the OFCOM Broadcasting Code.

Guidance

The BCI will provide guidance to broadcasters, advertisers and members of the general public concerning commercial communications coming within the scope of this code. General queries can be directed to the Commission in writing or by phone. Interested parties seeking guidance about specific scripts for adverts, sponsorship announcements or other commercial communications are asked to outline their query in writing citing the relevant section of the *BCI General Advertising Code*. Relevant documentation, such as the script should accompany the written query.

The Commission will provide a timely response to any query that it receives. However, the time required to process it may vary depending on the nature and complexity of the query.

Please note that the Commission does not provide a copy clearance service for commercial communications. This service is provided by broadcasters, *Copy Clearance Ireland*, a body established by the advertising industry, and by other bodies. The BCI acknowledges the role that broadcasters and copy clearance bodies have played to date and welcomes any future developments in this area.

1. Objectives of the BCI General Advertising Code

- To ensure that the Citizen and Consumer can be confident that commercial communication (i.e. advertising, sponsorship and teleshopping) is legal, honest, truthful and decent;
- To ensure that commercial communication does not impinge on the editorial integrity of broadcasts;

- To provide clear guidance to broadcasters as to the standards which commercial communication must adhere to;
- To provide guidance to the general public on the standards they can expect from commercial communication on broadcasting services;
- To provide broadcasters with a simple, flexible and comprehensive code that will not impede their right to communicate commercial messages in an unwarranted manner.

2. Definitions

Commercial Communication

Any form of announcement on radio and television coming within the recognised character of advertising, sponsorship and teleshopping.

Advertising

Any form of announcement broadcast in return for payment or for similar consideration by a public or private undertaking in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, or rights and obligations.

Sponsorship

Any contribution made by a public or private undertaking not engaged in television and/or radio broadcasting activities or in the production of audio visual works, to the financing of television and/or radio programmes with a view to promoting its name, its trademark, its image, its activities or its products.

Misleading advertising

Advertising which contains any element of spoken or visual presentation which is calculated to mislead either directly or by implication, with regard to the merits of the product or service advertised or its suitability for the purpose recommended.

Comparative advertising

All advertising that contains an explicit or implicit identification of a competitor or goods or services offered by a competitor.

Surreptitious advertising

The representation in words or pictures of goods, services, the name, the trade mark or the activities of a producer of goods or a provider of services in programmes when such representation is intended by the broadcasters to serve advertising and might mislead the public as to its nature. Such representation is considered to be intentional, in particular if it is done in return for payment or similar consideration.

Subliminal advertising

Advertising that includes any technical device, which, by using images of very brief duration or by any other means, exploits the possibility of conveying a message to, or otherwise influencing the minds of, members of an audience without their being aware or fully aware of what has been done.

Teleshopping

Direct offers broadcast to the public with a view to the supply of goods or services, including immovable property, rights and obligations, in return for payment.

Children's Advertising

Advertising which 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 where children's programmes are those commonly referred to as such and/or have an audience of which over 50% are under 18 years of age.

Product Placement

The inclusion of, or a reference to, a product or service within a programme in return for payment or similar consideration to the programme maker or broadcaster for the specific purpose of promoting that product or service.

Virtual advertising

An advertising technique which allows broadcasters to electronically insert virtual advertising messages or sponsorship announcements into a television programme by altering the broadcast signal itself.

Interactive advertising

An advertising technique which allows the viewer to interact with television by actively choosing the advertising content to which s/he wishes to be exposed for as long as s/he wants. Interactive advertising allows the viewer to provide information directly to the broadcaster/advertiser by means of a return path, and/or participate in an interactive environment which is separate from the broadcast content.

Split screen advertising

An advertising technique which allows the simultaneous presentation of editorial content and commercial information on the same screen, divided into two or more parts.

Exclusions

- Broadcasters may make informational announcements about upcoming programmes on their services, including the date and time of transmission of the named programme(s), and including 'trailer' excerpts and a brief description of the programmes contents. This will not constitute advertising.
- Air time given free of charge to any registered charity to make appeals.
- Public service announcements including warnings about public safety and health that are not broadcast in return for payment or for similar consideration.
- Information announcements of forthcoming concerts, recitals or performances, whether intended for broadcast or not, given by the National Symphony Orchestra, the RTÉ Concert Orchestra, and other RTÉ performing groups or of any other comparable groups which are employed by or under contract to RTÉ or employed by or under contract to a sound broadcasting contractor or television programme service contract provider licensed in the state.
- Announcements of outside broadcasting events or of non-broadcast events organised in whole or in part by the broadcaster if the public are allowed entry free of charge. The broadcaster may credit the concern providing facilities, for example the commercial outlet providing the facilities for the outside broadcast, at the beginning and/or the end of the programme and at prudent intervals during the programme on an informational basis.

In the case of non-broadcast events jointly sponsored by the broadcaster and one or more commercial concerns, the broadcaster may credit the joint sponsor(s) in broadcast announcements.

In both cases, sponsorship acknowledgements must comply with the sponsorship rules contained in this Code.

3. General principles and rules applying to all commercial communications

3.1 Protecting the Citizen/Consumer

All commercial communication must be prepared with a sense of responsibility to Citizen/Consumers and to society. It must not prejudice the interest of the Citizen/Consumer. All commercial communication must be legal, honest, decent and truthful.

- 3.1.1 All commercial communications must comply with applicable Irish and European legislation. This includes, but is not restricted to, the *Broadcasting Authority Act, 1960*, the *Television Without Frontiers Directive*, the *Radio and Television Act, 1988*, the *Broadcasting Act, 2001* and codes and standards developed further to *Section 19 of the Broadcasting Act, 2001*.
- 3.1.2 Commercial communications shall not contain any element of spoken or visual presentation which is calculated to mislead either directly or by implication, with regard to the merits of the product or service being promoted or its suitability for the purpose recommended.
- 3.1.3 Commercial communications shall not contain inaccurate or deceptive claims, statements, illustrations or representations, either direct or implied, with regard to a product or service.
- 3.1.4 Commercial communications must not omit relevant information in a manner that, in the result, is deceptive. This means that all pertinent details of an offer must be clearly and understandably stated.
- 3.1.5 Disclaimers and asterisked or footnoted information must not contradict more prominent aspects of the message and

should be located and presented in such a manner as to be clearly visible and/or audible.

- 3.1.6 Commercial communications that are required to carry a tagline or on-screen message must do so in a way that is clearly visible and/or audible.
- 3.1.7 Broadcasters must be mindful of the potential for sound effects to distract and/or alarm viewers and listeners. Particular care must be taken when including in commercial communications sound effects such as sirens, horns, ringing phones and screeching tyres. They must not be included at the beginning of a commercial communication.
- 3.1.8 Commercial communications containing direct or implied comparisons with other products or services are permissible provided they respect the principles of fair competition. Points of comparison should be based on facts that can be substantiated. The basis of comparison should be the same for all the products being compared and should be clearly stated. The subject matter of a comparison should not be chosen in such a way as to confer an artificial advantage to a promoter of a service or product.

3.2. Offence, Harm and Human Dignity

Commercial Communications must not prejudice human dignity, cause harm or serious or widespread offence.

- 3.2.1 Commercial communications shall not include any discrimination on the basis of age, gender, marital status, membership of the Traveller community, family status, sexual orientation, disability, race or religion.

3.2.2 Commercial communications shall not be offensive to religious or political beliefs, or encourage behaviour prejudicial to the protection of the environment or to health or safety.

3.2.3 Commercial communications shall be appropriately scheduled with regard to the time of broadcast, type of programme, channel/service type, nature of the product or service being promoted, likely composition of the audience.

3.2.4 Individual living persons should not normally be portrayed or referred to in commercial communications without their permission. However, reference to living persons may normally be made in commercial communications for books, films, radio or television programmes, newspapers, magazines etc., which feature the persons referred to in the communication, provided it is not offensive or defamatory.

3.3 Transparency

Commercial Communication shall operate on a principle of transparency. Any commercial arrangement within programming must be identifiable as such and the listener/viewer must be made aware of such an arrangement.

3.3.1 Presenters and other on-air personnel must not advertise products or services during programme content.

3.3.2 Presenters and other on-air personnel must not promote any products or services with which they are associated during programme content.

3.3.3 Product or service endorsement by programme presenters and other on-air

personnel is prohibited during programme content.

3.3.4 Advertisers or sponsors shall not exercise any editorial influence over the content of programmes.

3.3.5 No commercial communication may contain the words 'guarantee' or 'guaranteed', 'warranty' or 'warranted', or words having the same meaning, unless the full terms of the guarantee are available for inspection by the broadcaster and are clearly set out in the commercial communication or are made available to the purchaser in writing at the point of sale or with the goods. No commercial communication may contain a direct or implied reference to a guarantee which purports to take away or diminish the statutory or common law rights of a purchaser.

3.3.6 Commercial communications may make use of testimonials. Such testimonials must however, be genuine, not more than two years old and related to the experience of the person giving it. Documentary evidence of testimonials must be furnished to broadcasters as a condition of the acceptance of the communication.

3.3.7 Commercial communications may not describe goods or samples as 'free' unless the goods or samples are supplied at no cost or no extra cost (other than actual postage or carriage) to the recipient. A trial may be described as 'free' although the customer is expected to pay the cost of returning the goods, provided that the commercial communication makes clear the customer's obligation to do so.

3.3.8 Commercial communications shall not feature persons regularly presenting news programmes, except for public service commercial communications promoting campaigns for safety, health, education, etc.

3.3.9 The practice known as product placement is prohibited.

Incidental references to products or services in a programme are legitimate where their inclusion within the programme is editorially justified. Broadcasters must ensure their inclusion does not result in undue prominence being provided to the product or service during the programme.

For television, the inclusion of products or services in a programme acquired from outside the Republic of Ireland and films made for cinema are not considered product placement provided that no broadcaster regulated in the state and involved in the broadcast of that programme or film directly benefits from the arrangement.

3.4 Assessment

3.4.1 Commercial communications will be assessed with reference to the principles and rules contained in this code. The principles are indivisible, that is, all commercial communications must conform to all of the principles.

3.4.2 Commercial communications will be assessed in whole and in context against the principles and rules contained in this code. The following contextual factors will be used:

- Time of broadcast
- Type of programme

- Channel/service type
- Nature of the product or service
- Likely composition of the audience listening to or watching the programme

3.4.3 The code is intended to be applied in the spirit as well as in the letter.

4. General rules pertaining to advertising

4.1 Advertising shall operate on a principle of separation whereby commercial content in advertising breaks between and within programming shall be separate from programme content.

4.2. The insertion of advertising must not affect the editorial integrity and value of programming. Advertising shall be inserted into programmes in such a way that takes into account the natural breaks in, and the duration and nature of the programme, while ensuring that the rights of the rights holders are not prejudiced.

4.3 In the case of feature films and films made for television, provided their scheduled duration is more than 45 minutes, they may be interrupted once for each complete period of 45 minutes. A further interruption is allowed if their scheduled duration is at least 25 minutes longer than two or more complete periods of 45 minutes.

4.4 For television programmes other than those mentioned in 4.3, 20 minutes must elapse between each successive break within the programme.

4.5 Advertising shall not be inserted in any broadcast of a religious service.

- 4.6 Advertising shall not be inserted in any television broadcast of news and current affairs programmes, documentaries or religious programmes when their scheduled duration is less than 30 minutes.
- 4.7 Isolated television advertising remains the exception.
- 4.8 Advertising breaks must be signalled by visual or audio means. Such means may not in itself contain any commercial communication.
- 4.9 Surreptitious advertising is prohibited.
- 4.10 Subliminal advertising is prohibited.
- 4.11 Broadcasters must do everything reasonably possible to ensure that advertisements do not sound louder than adjacent programming. Broadcasters should establish clear limits on the use of compression, limiting and equalisation on advertisements provided to broadcasters by third parties.

5. Rules pertaining to new advertising techniques

5.1 Split Screen Advertising

- 5.1.1 The general principles and rules applying to all commercial communications and the general rules applying to advertising will apply to split screen advertising.
- 5.1.2 Split screen advertising is permitted during natural breaks and during end credits. Split screen advertising may also be inserted during long-form sports programmes which do not have a natural break e.g. Formula 1.
- 5.1.3 Split screen advertising may not exceed 50% of screen space and only one split screen advert may appear at any given time.

- 5.1.4 Split Screen advertising is not permitted in news or current affairs programmes, children's programmes, feature films or broadcasts of religious services.

5.2 Virtual Advertising

The general principles and rules applying to all commercial communications and the general rules applying to advertising will apply to virtual advertising.

5.3 Interactive Advertising

- 5.3.1 The general principles and rules applying to all commercial communications and the general rules applying to advertising will apply to interactive advertising.
- 5.3.2 Interactive advertising must not bring the viewer immediately/directly to products or services that are advertised. Viewers must be warned by appropriate optical and acoustic means that they are about to enter a commercial interactive environment not governed by the *BCI General Advertising Code*. This should be done by means of an intermediate screen which appears at the first click, with the viewer being able to access the interactive programme *only* after a second click.
- 5.3.3 Interactive advertising cannot bring the viewer immediately/directly to products or services for which commercial communication is prohibited.
- 5.3.4 Interactive advertising is not permitted during children's advertising.

6. Rules pertaining to teleshopping

- 6.1 The general principles and rules applying to all commercial communications and the general rules pertaining to advertising will apply to teleshopping.

- 8.1.2 Broadcasters will ensure that commercial communications for alcoholic drink are not transmitted in or around programmes primarily intended for young viewers and/or listeners and shall take account of the age profile of the viewers to ensure they are communicated, so far as it is possible, to adults.
- 8.1.3 Commercial communications for alcoholic drinks shall not encourage immoderate consumption of alcohol or present abstinence or moderation in a negative light.
- 8.1.4 Commercial communications for alcoholic drinks shall not claim that alcohol has therapeutic qualities or that it is a stimulant, a sedative, tranquilizer or a means of resolving personal conflicts.
- 8.1.5 Commercial communications for alcoholic drinks shall not place emphasis on high alcohol content as being a positive quality of the beverages.
- 8.1.6 Commercial communications for alcoholic drink may not be aimed specifically at minors or, in particular, depict minors consuming these beverages.
- 8.1.7 Commercial communications for alcoholic drink should not create the impression that consumption of such beverages contributes towards sexual attraction and success or social success.
- 8.1.8 Commercial communications for alcoholic drink shall not link the consumption of alcohol to enhanced physical performance or to driving.
- 8.1.9 Commercial communications for drinks which contain alcohol content of 25% AbV and above are not permitted e.g. vodka, whiskey, tequila, etc.
- 8.1.10 Commercial communications for drinks constituted in part of drinks coming within the scope of 8.1.9 are not permitted e.g. Ready to Drink (RTD) products.
- 8.1.11 All commercial communications for alcoholic drink must comply with the Department of Health and Children's *Voluntary Code of Practice* for alcohol advertising.

8.2 Medical Treatments, Products and Services

Commercial communications for medicinal treatments, products or services must comply with relevant Irish and European legislation. They must comply with the *Summary of Product Characteristics* as issued by the *Irish Medicines Board* and with any other relevant rules, regulations and codes of practice issued by the *Irish Medicines Board*.

- 8.2.1 Presentations of doctors, dentists, pharmaceutical chemists, nurses, midwives, etc., which give the impression of professional advice or recommendation are not permitted.
- 8.2.2 Statements giving the impression of professional advice or recommendation made by persons who appear in the commercial communication and who are presented either or by implication, as being qualified to give such advice or recommendation are not permitted.

- 2.2 In the context of a broadcast which is construed as being for or similar to a service or for private or a trade or service, rights, payments, government, it should be truthfully, television, constant, problems, in other, to make, broadcast, intended, as in the, prejudice, included, race, religion, behavior, the er
- 8.2.3 Medical or veterinary professionals are not permitted to make reference to their approval of, or preference for, a treatment, product or service.
- 8.2.4 No reference may be made to a hospital test unless the medical board of the hospital concerned is prepared to vouch for its validity.
- 8.2.5 No reference may be made to doctors or hospitals, unless such reference can be used with propriety in the context of the commercial communication. No commercial communication should contain in the name of the product the term "Doctor" or "Dr" unless the product was so named prior to 1st January, 1944.
- 8.2.6 No reference to the words '*college*', '*clinic*', '*institute*', '*laboratory*' or similar terms is permitted unless a bona fide establishment corresponding to the description used does in fact exist.
- 8.2.7 Claims that a treatment, product or service will effect a cure and the indiscriminate use of such words as "safe", "without risk", "harmless", or terms of similar meaning are unacceptable. Direct or implied claims that a treatment, product or service will extirpate any ailment, illness, disease or symptom of ill health are not permitted.
- 8.2.8 Products or services for the treatment of serious diseases, complaints, conditions or symptoms which should rightly receive the attention of a registered medical practitioner are not permitted.
- 8.2.9 Offers to diagnose or treat by correspondence, any ailment, illness, disease, condition or any symptoms of ill health are not permitted.
- 8.2.10 No commercial communication should be calculated to induce fear on the part of the viewer or listener that she or he is suffering, or may without treatment suffer, or suffer more severely, from an ailment, illness or disease.
- 8.2.11 Exaggerated claims are not permitted, in particular, through the selection of testimonials or other evidence unrepresentative of the effectiveness of the treatment, product or service or claims which refer to a special property or quality which is incapable of being established e.g. through the use of the words "magic", "magical", "miracle", "miraculous".
- 8.2.12 No statement or implication should be allowed to appear in a testimonial which would not be permitted in the text of the commercial communication. In any case, no commercial communication should contain a testimonial other than one limited to the actual views of the writer and testimonials and presentations presented by a person well known in public life, sport, entertainment, etc., are not permitted.
- 8.2.13 Offers to refund money paid for a medicinal treatment, product or service, other than on appliances or therapeutic clothing, are not permitted.
- 8.2.14 References to a prize, competition or similar scheme are not permitted.
- 8.2.15 No commercial communication should falsely claim or suggest that the treatment, product or service being promoted is in the form in which it occurs in nature or that its value lies in its being a "natural" product.

- 8.2.16 Treatments, products or services for disorders or irregularities peculiar to women should not contain the following or similar expression which may imply that the product, medicine or treatment advised can be effective in inducing miscarriage: "Female pills", "not to be used in cases of pregnancy".
- 8.2.17 Claims that a treatment, product or service will promote sexual virility or be effective in treating sexual weakness, or habits associated with sexual excess or indulgence, or any ailment, illness, or disease associated with those habits, are not allowed.
- 8.2.18 No treatment, product or service for hair loss should claim or imply that it will do more than arrest the loss of hair. Claims to restore lost hair may be permitted provided that they refer only to cases of temporary baldness.
- 8.2.19 No commercial communication should state or imply that good health is likely to be endangered solely because people do not supplement their diets with vitamins.
- 8.3.20 It is accepted that the relief of pain, such as headache, may consequently ease tension or tiredness. However, no simple or compound analgesic may be promoted for the direct relief of tension or tiredness and there should be no reference to depression in commercial communications of this nature.
- 8.3.21 The unnecessary, indiscriminate or excessive use of treatments, products or services should not be encouraged either directly or indirectly.

- 8.3.22 The adoption of any unsafe practices, especially by children, should not be encouraged

8.3 Food

- 8.3.1 Commercial communications containing health and nutritional claims made for food must comply with all relevant Irish and European legislation and with rules, regulations and codes of practice issued from time to time by the competent authorities responsible for the implementation of this legislation, in particular the *Food Safety Authority of Ireland*.
- 8.3.2 Commercial communications for 'follow-on' infant formula must not suggest, either directly or by implication, the superiority of this product to breastfeeding and should clearly indicate the unsuitability of this product for infants under six months.

8.4 Cosmetics

Commercial communications for cosmetic products or treatments must comply with all relevant Irish and European legislation.

8.5 Slimming

- 8.5.1 Commercial communications should not contain any offer of a treatment, product or service for slimming (i.e. weight reduction, limitation or control) which:-
- (a) is in itself likely to lead to harmful effects;
 - (b) is not directly associated with the following of a properly designed diet;
 - (c) does not clearly state the manner in which slimming will be achieved.

8.5.2 Products presented as either a replacement for the whole of the daily diet or for one or more meals of the daily diet shall not make any reference to the rate or amount of weight loss which may result from their use, or to a reduction in the sense of hunger or an increase in the sense of satiety.

8.6 Financial Services

8.6.1 All financial commercial communications must present the financial offer or service in terms which do not mislead, whether by exaggeration, omission or in any other way.

8.6.2 All financial commercial communications must comply with relevant Irish and European legislation and with the rules, regulations and codes of practice issued from time to time by the competent authorities responsible for the implementation of this legislation, in particular *The Financial Regulator* and the *Office of the Director of Consumer Affairs*.

8.7 Betting Services

Commercial communications encouraging people to bet are not acceptable.

Commercial communications by firms who wish to promote their services for those who want to bet are acceptable. These communications may contain factual descriptions of services available but must not contain anything which could be deemed to be an encouragement to bet; for example: – details of special offers, discounts or any other promotional offers; encouragement and/or invitation to visit any betting establishment, including on-line betting sites; references to betting odds available, etc.

8.8 Premium Rate Telecommunication Services

Commercial communications for premium rate telecommunication services must clearly state all charges for accessing these services in terms which do not mislead, whether by exaggeration, omission or in any other way.

9. Prohibited Products

Commercial communications coming within the recognised character of, or specifically concerned with, the following are not acceptable:

- Fortune tellers, psychic services, etc.
- Commercial communications directed towards a political end or which have any relation to an industrial dispute.
- Advertising directed towards a religious end with the exception of the following:
 - i) The sale or supply of religious newspapers, magazines or periodicals
 - ii) The holding of events or ceremonies associated with any particular religion

Advertising of this nature must not address the issue of the merits or otherwise of adhering to any religious faith or belief or of becoming a member of any religion or religious organisation.

- Infant formula.
- Medicines or treatments which are only available on prescription.
- Ethical drugs or medicines.
- Hypnosis, hypnotherapy, psychology, psychoanalysis or psychiatry.
- Smoking cures.
- Cosmetic surgery.
- Cigarettes and tobacco.

10. Appendix

The following is a non-exhaustive list of the principal legislation which restrict, control or otherwise affect advertising in Ireland:

Broadcasting legislation

Broadcasting Act, 1990
Broadcasting Act, 2001
Broadcasting Authority Act, 1960
Broadcasting Authority (Amendment) Act, 1966
Broadcasting Authority (Amendment) Act, 1976
Broadcasting Authority (Amendment) Act, 1979
Broadcasting Authority (Amendment) Act, 1993
Broadcasting and Wireless Telegraphy Act, 1988
Radio and Television Act, 1988

Other national legislation

Adoption Act, 1952.
Air Navigation (Rules of the Air) Order, 1963.
Animal Remedies Act, 1956.
Animal Remedies Act, 1993.
Animal Remedies (Control of Sale) Regulations, 1985.
Betting Act, 1931.
Building Societies Act, 1989.
Casual Trading Act, 1980.
Cement Act, 1933 (Section 9).
Central Bank and Financial Services Authority of Ireland Act, 2003.
Central Bank Acts, 1942-1989.
Censorship of Films Acts, 1923-1970.
Censorship of Publications Acts, 1929-1965.
Charges (Hairdressing) Display Order, 1976.
Companies Acts, 1963-2004.
Consumer Credit Act, 1995.
Consumer Credit Act, 1995 (Section 28) Regulations, 1996.
Consumer Information Act, 1978.
Consumer Information (Advertisement for Concert or Theatre Performances) Order, 1997.
Consumer Information (Advertisements) (Disclosure of Business Interest) Order, 1984.
Consumer Information (Advertisement for Airfares) Order, 2000.
Consumer Information (Miscellaneous Goods) (Marking) Order, 1984.
Copyright Act, 1963.
Customs Free Airport (Amendment) Act, 1958 (Section 7).
Data Protection Act, 1988.
Dairy Product Act, 1924.
Defence Act, 1954.
Employment Agency Act, 1971.
Employment Agency Regulations, 1972-1993.
Exempted Development Regulations, 1967. Part II.
Forgeries Act, 1913.
Gaming and Lotteries Act, 1956.
Hallmarking Act, 1981.
Health (Foods for Particular Nutritional Uses) Regulations, 1992.
Hire Purchase Amendment Act, 1960.
Hire Purchase and Credit Sale (Advertising Order), 1961.
Industrial and Commercial Property (Protection Act), 1961.
Industrial Research and Standard Act, 1961.
Intoxicating Liquor Act, 1988.
Intoxicating Liquor Act, 1988 (Age Card) Regulations, 1999.
Investment Intermediaries Act, 1995.
Irish Red Cross Society Order, 1965
Landlord and Tenant Act, 1931 Section 59 and Subsection 60 (5).
Local Government (Planning and Development) Act, 1963.

Investment Compensation Act, 1998.
 Medicinal Products (Licensing and Sale) Regulations, 1998.
 Medical Preparations (Advertising) Regulations, 1993-1996.
 Medical Preparations (Labelling and Package Leaflets) Regulations, 1993-1999.
 Medicinal Products (Prescription and Control of Supply) Regulations, 1996-2000.
 Merchandise Mark Acts, 1887-1931 and 1970.
 Merchandise Marks (Pre-packaged Goods) (Marking and Quantities) Order, 1973 (as amended).
 Metrology Act, 1996.
 Moneylenders Act, 1933.
 Milk and Dairies Act, 1935, 1938 and 1955.
 Occasional Trading Act, 1979.
 Opticians Act, 1956.
 Opticians Act, 1956, Rules (Amendment) Rules, 1993.
 Packaged Goods (Quantity Control) Act, 1980.
 Package Holidays and Travel Trade Act, 1995.
 Patents Act, 1964.
 Prices Acts, 1958-1980.
 Prices and Charges Order, 1973.
 Pyramid Selling Act, 1972.
 Red Cross Acts, 1938 and 1954.
 Registration of Business Names Act, 1963.
 Retail Price (Beverages in Licensed Premises) Display Order, 1999.
 Retail Price (Diesel and Petrol) Display Order, 1997.
 Retail Price (Food in Catering Establishments) Display Order, 1984.
 Sale of Goods and Supply of Services Act, 1980.
 Solicitors Amendment Act, 1994.
 Solicitors (amendment) Act, 2002, Section 5.
 Solicitors (advertising) Regulations 2002.

Statutory Instrument Section 3(2); (M0.251 of 1965).

Telegraph Act, 1863 Section 21, 23-29.

Telegraph Act, 1892 Section 3.

Telegraph Act, 1908, Section 2.

Tobacco Products (Control of Advertising, Sponsorship and Sales Promotion) Act, 1978.

Tobacco Products (Control of Advertising, Sponsorship and Sales Promotion) Regulations, 1991-2000.

Tourist Traffic Acts, 1939 and 1957.

Trade Marks Act, 1963.

Trustee Savings Banks Act, 1989.

European legislation

Council Regulation (EC) No. 2200/96 on the common organisation of the market in fruit and vegetables.

Electronic Commerce Directive (Financial Services and Markets) Regulations, 2000.

Electronic Commerce (EC Directive) Regulations, 2002.

European Communities (Television and Broadcasting) Regulations, 1999 (S.I. No. 313 of 1999) and European Communities (Television Broadcasting) Regulations, 1999.

European Communities (Definition, Description and Presentation of Spirit Drinks Regulation, 1995 – S.I. No. 300 of 1995).

European Communities (Definition, Description and Presentation of Aromatised Wines, Aromatised Wine-Product Cocktails) 1998 – S.I. No. 254 of 1998.

European Communities (Protection of Geographical Indication and Designations of Origin for Agricultural Products and Foodstuffs) (Amendment) Regulations, 1999 – S.I. No. 275 of 1999.

European Communities (Supply of Information on the Origin, Identification and Destination of Bovine Animals) Regulation, 1999 – S.I. No. 258 of 1999.

European Communities (Food Supplements) Regulations, 2003 (S.I. No 539 of 2003).

European Communities Council Directive in Infant Formulae and Follow-on Formulae, 1991. (91/321/EEC).

European Communities Council Directive on Foods Intended for Energy-Restricted Diets for Weight Reduction, 1996 (1996/8/EC).

European Communities Council Directive on Medicinal Products for Human Use, 2001. (2001/83/EC as amended by 2004/24/EC and 2004/27/EC).

European Communities (Pesticides Residues) (Fruit and Vegetables) Regulations, 1989-1998.

European Communities (Pesticides Residues) (Foodstuffs of Animal Origins) Regulations, 1999.

European Communities (Pesticides Residues) (Products of Plant Origin, including Fruit and Vegetables) Regulations, 1999.

European Communities (Pesticides Residues) (Feeding Stuffs) Regulations, 1992.

European Communities (Pesticides Residues) (Cereals) Regulations, 1999.

European Communities (Classification, Packaging and Labelling of Pesticides) Regulations, 1994).

European Communities (Export and Import of Certain Dangerous Chemicals) (Pesticides) (Enforcement) Regulations, 1995-1998.

European Communities (Authorisation, Placing on the Market, Use and Control of Plant Protection Products) Regulations, 1994-1999.

European Communities (Prohibition of Certain Active Substances for Agricultural Purposes) Regulations, 1991.

European Communities (Labelling, Presentation and Advertising of Foodstuffs) Regulations, 2000.

European Communities (Misleading Advertising) Regulations, 1988.

European Communities (Names and Labelling of Textile Products) Regulations, 1998.

European Communities (Life Assurance) Framework Regulations, 1994.

European Communities (Non-Life Insurance) Framework Regulations, 1994.

European Communities Council Directive on Comparative Advertising.

European Communities (Requirements to Indicate Product Prices) Regulations, 2002.

European Communities (Protection of Consumers in Respect of Contracts Made by Means of Distance Communications) Regulations, 2001.

European Communities (Cosmetic Products) Regulations, 1997-2000.

Poisons (Control of Residues in Foods of Animal Origin) Regulations, 1985.

European Convention on Human Rights.

Protection of Children (Hague Convention) Act, 2000

Television Without Frontiers, 1989 and 1997 (EU Directives 89/552/EEC and 97/36/EC)

Rights

Child Trafficking and Pornography Act, 1998

Child Trafficking and Pornography (Amendment) Act, 2004

Children's Act, 2001

Defamation Act, 1961

Equal Status Acts, 2000, 2004

Equality Act, 1998 Prohibition of Incitement to Hatred Act, 1989

3. WHY WE HAVE INCLUDED THE OBJECTIVES, PRINCIPLES AND RULES.

This section provides the rationale for the inclusion of the proposed objectives, principles and rules in the draft code.

Introduction

These notes are designed to explain the rationale for the inclusion of the objectives of the code and the various principles and rules in the *Draft BCI General Advertising Code*. The purpose of this section is to provide guidance and some background to the Commission's thinking in presenting the draft proposals. In so far as this is a draft code, and is subject to further amendment, it should be noted that the Commission's thinking may also be amended following completion of this consultation.

These notes are provided in the context of this consultation only. They are not intended as a definitive guide as to the interpretation of the draft code nor are they intended as an exhaustive description of what is potentially covered by the draft code. They are provided in the context of the consultation only. A full outline of the rationale for the proposals contained in the *Draft BCI General Advertising Code* may be found in the *Statement of Outcomes Document Phase 1*. This document can be obtained on www.bci.ie and from the Commission's offices.

1. Objectives of the Draft BCI General Advertising Code

Drawing on national and international research, its regulatory principles and the statutory obligation to develop the code, the Commission identified five key objectives as those that would guide both the development of the *BCI General Advertising Code* and the rules and principles to be contained in it.

These objectives are intended primarily to recognise the right of the Citizen/Consumer to honest, legal and decent commercial

communications and to inform them of how broadcasters will be required to recognise this right. They are also intended to highlight the need for a common understanding between broadcasters and the public about the standards that are expected of commercial communications. The obligation to provide clear guidance to broadcasters and the Citizen/Consumer about the standards required and expected reflects this need.

The first four principles were proposed in the Phase 1 consultation document and they were endorsed by the majority of people who responded to the consultation. The fifth and last principle was included following consideration of a request from broadcasters and advertisers to include an objective which would recognise the right of broadcasters to communicate commercial messages. While fully supporting the four principles proposed, they argued for the inclusion of another objective which would acknowledge the primary role that commercial communications play in the financing of radio and television programming enjoyed by the public.

The Commission agreed with the argument presented and a fifth objective recognising the right of broadcasters to communicate commercial messages is now included in the draft code. However, it should be noted that this right is not absolute. Rather, it is dependent on a requirement that commercial messages comply with the objectives, principles and rules of the code and with Irish and European law in place to protect the Citizen/Consumer.

QUESTION 1

- What are your views on the five objectives proposed?
- Please provide a rationale for your responses.

2. Definitions

The draft code includes thirteen definitions. Each definition describes a different type of commercial communication; for example, sponsorship, misleading advertising, etc. Definitions are important to any code because a common understanding of the terms used throughout the code is necessary for both the public and broadcasters.

Many of these definitions come from the official European definitions included in the Television Without Frontiers Directive (TWF Directive). This Directive is the key piece of European legislation governing television broadcasting services in Europe. A number of the definitions included in the draft code have not been officially defined in either European or Irish legislation. These include the definitions for split screen, interactive and virtual advertising. These are relatively new types of advertising which are not currently in common use in Ireland. However, definitions have been included in the *Draft BCI General Advertising Code* in anticipation that their use will increase in the coming years. The TWF Directive is under revision at this time and it will include official definitions for these types of commercial communications. The Commission will continue to employ the existing definitions until such time as the TWF revision is complete and adopted. The Commission will incorporate any new definitions into both the *BCI General Advertising Code* and the *BCI Children's Advertising Code* retrospectively.

This section of the code also details a number of 'exclusions' to the definitions of commercial communications. These are on-air announcements which promote a range of activities which are not considered commercial in nature. The rules and principles of the code will not apply to these types of announcements. However, bearing in mind the objectives of the code, they are detailed in the code in order to ensure clarity for the public and broadcasters about the status and nature of these announcements.

QUESTION 2

- What are your views on each of the exclusions proposed in the draft code?
- Please provide a rationale for your responses.

3. General principles and rules applying to all commercial communications

The four principles detailed in this section will apply to all commercial communications. Each principle also contains a number of associated rules intended to give practical effect to the principle. These principles and associated rules embody a number of key principles contained in the TWF Directive and the current *Ministerial Advertising Code*.

All commercial communications must comply with these principles and rules, regardless of the technique used or the product or service promoted. In assessing whether a commercial communication is adhering to this code, it will be assessed with reference to these principles and rules and with reference to the context in which it is broadcast.

The specific principles proposed in the draft code are intended to serve a number of aims.

The principle of **Protecting the Citizen/Consumer** is intended to ensure that commercial communications aimed at the Citizen/Consumer must be legal, honest, decent and truthful. Advertising, sponsorship, teleshopping and any other type of commercial communication must not mislead the Citizen/Consumer either directly or indirectly about the qualities, price, etc., of a product or service being promoted. Inaccurate claims, or deceptive and deliberate omissions of relevant information, are prohibited.

The principle of **Offence, Harm and Human Dignity** is intended to set out basic standards in relation to commercial communications. Among other things, broadcasters are required under this principle to take steps to avoid the inclusion of discriminatory content in commercial communications, to respect political and religious beliefs and to schedule commercial communications appropriately so as to minimise the potential for the communications to cause offence and harm.

The principle of **Transparency** is concerned with ensuring that all commercial communications aimed at the Citizen/Consumer are apparent to them. It obliges broadcasters to ensure that the distinction between editorial content in a programme consumed by a viewer or listener is clearly and identifiably separate from the commercial communications which may be broadcast during a programme. For this reason, radio and television presenters are not allowed to advertise products or services other than during an ad break and product placement is prohibited.¹

The principle of **Assessment** sets out the manner in which compliance with the *BCI General Advertising Code* will be measured. In practice, this principle will be used by the Broadcasting Complaints Commission (BCC) when assessing complaints by members of the general public. It will also be used by the BCI when it assesses radio and television programmes for compliance with the code.

Six principles were originally proposed in the Phase 1 consultation document and each principle received broad support from respondents to this phase of the consultation process. However, it was agreed by the Commission to reduce the number of principles included in the draft code from six to four. This has been done by incorporating the principles and the associated rules proposed in Phase 1 under the headings *Editorial Integrity* and *Content Rules* into the remaining four principles.² As a result, while the number of principles has been reduced, the substance of this section of the code has not been fundamentally altered. This change was made in response to requests by respondents to the consultation to simplify and clarify this section of the code and the code in general.

In addition to a reduction in the number of principles and the incorporation of two principles, eleven new or amended rules have been introduced in the draft code in response to views expressed in Phase 1.³ The rationale for these changes is outlined in detail in the *Statement of Outcomes Phase 1* document.

- ¹ Please note, it is not proposed to revoke this prohibition at this time. This issue will be reviewed following completion of the revised TWF Directive.
- ² The principle of Editorial Integrity and Content Rules 2, 3 and 4 are now included as rules 3.3.4, 3.3.5, 3.3.6 and 3.3.7 under the principle of Transparency in the draft code. Content Rule 1 is now included as rule 2.4 under the principle of Offence, Harm and Human Dignity.
- ³ These are rules 3.1.1, 3.1.6, 3.2.1, 3.2.2, 3.3.1, 3.3.2, 3.3.3, 3.3.8, 3.3.9, 3.4.1 and 3.4.2.

QUESTION 3

- What are your views on the principles and rules proposed?
- Please provide a rationale for your responses.

4. General rules pertaining to advertising

While Section 3 of the draft code is intended to establish principles and rules which will apply to all types of commercial communication, the rules in Sections 4, 5 and 6 of the draft code are included in recognition of the particular characteristics of traditional and new advertising techniques.

Aside from Rule 4.11, the rules in Section 4 of the draft code incorporate rules contained in the TWF Directive and as a result, they must be included in the *Draft BCI General Advertising Code*. Some of the TWF Directive rules have been applied to television only, while others have been applied to television and radio. The intent of these rules is to ensure that the integrity of programming is not unduly affected by the placement of advertisements during a programme. Furthermore, the rules aim to protect the interests of rights holders and the rights of viewers and listeners.

QUESTION 4

- What are your views on the advertising rules proposed?
- Please provide a rationale for your responses.

5. Rules pertaining to new advertising techniques

A number of new advertising techniques have been developed in recent years covering split screen, virtual and interactive advertising. While these are not in common usage on Irish services at this time, they are expected to become more prevalent in the coming years. For this reason, rules have been included in the *Draft BCI General Advertising Code*.

No rules were proposed for this type of advertising in the Phase 1 consultation document. Rather, general views were invited on the use of the three techniques in advertising. Views were also invited on the suitability of the guidance provided in the *EU Interpretative Communication on Certain Aspects of the Provisions on Televised Advertising in the 'Television Without Frontiers' Directive ('EU Interpretative Communication')* and the suitability of applying the general principles and rules to these types of advertising.

The rules proposed under this section of the draft code are intended to regulate this type of advertising. They reflect the views expressed during Phase 1 of the consultation process, the guidance provided in the *EU Interpretative Communication* and the general requirements of European law pertaining to broadcasting.

QUESTION 5

- What are your views on the rules proposed for new advertising techniques?
- Please provide a rationale for your responses.

6. Rules pertaining to teleshopping

The principles and rules applying to commercial communication as well as the rules relating to advertising, identified earlier in this document will also apply to teleshopping. The additional rules under this heading are drawn from the TWF Directive and the Commission is required to include them in the draft code.

QUESTIONS 6

- What are your views on the teleshopping rules proposed?
- Please provide a rationale for your responses.

7. Rules pertaining to sponsorship

The rules in this section of the draft code are intended to ensure that the distinction between advertising and sponsorship is clear to broadcasters and to viewers and listeners. This distinction is recognised in both Irish and European broadcast law. This distinction is important as there are limits to the amount of advertising that can be broadcast and in the absence of a clear distinction, it would be difficult for the Commission to assess compliance with these limits, for broadcasters to ensure compliance and for the public to know the legal requirements in this area.

The Commission's current guidelines in this area permit on-air acknowledgements by broadcasters of programme sponsors but these are limited to references to the sponsor's name, contact details and a generic tagline for branding purposes only. References to the attributes, qualities or price of the sponsor's products or services are not permitted.

However, responses to the consultation document, the Commission's research and its experience of implementing these guidelines, indicated a need for greater clarity concerning how to implement these guidelines in light of the definition of sponsorship. The sponsorship rules in the proposed code have been drafted in view of this and represent a change to permitted practice in this area.

The draft code sponsorship rules will now permit on-air acknowledgements of sponsorship to include references to the products or services of the sponsor once these references do not constitute advertising. In this regard, a sponsorship announcement which contains advertising copy, lengthy product descriptions, a call to action or prices (except where required) will constitute advertising.

The rules in this section of the code are not intended to change the definition of sponsorship in the draft code or weaken the distinction between advertising and sponsorship. Rather, they are intended to clarify how broadcasters can implement this definition in practice. The Commission is satisfied that the proposed changes are in keeping with the definitions of sponsorship contained in the code. More importantly, these rules will ensure that the distinction between advertising and sponsorship announcements will be maintained. The rules should also provide certainty and clarity for broadcasters and the public alike.

QUESTION 7

- What are your views on the proposed sponsorship rules?
- Please provide a rationale for your response.

8. Rules pertaining to specific products and services

This section of the draft code contains a number of rules pertaining to commercial communications for specific products and services relating to the alcohol, medicines, food, cosmetics, slimming, betting and financial services. These rules are drawn from the current code and also relevant European and Irish legislation governing commercial communications for these products and services.

The rules are included in order to provide additional protection to Citizen/Consumers. Rules of this nature are quite common in other jurisdictions. It is important to note that commercial communications for these products and services will also have to comply with the principles and rules pertaining to all commercial communications and, where relevant, rules for teleshopping and for general and new advertising techniques. In a number of cases, the rules highlight the role of 'competent agencies'. Competent agencies are statutory bodies responsible for implementing Irish and European legislation.

Alcohol

Eight of the eleven rules in this section derive from Article 15 of the TWF Directive. As the Commission is statutorily obliged to reflect Article 15 in the *BCI General Advertising Code*, it does not have any discretion regarding the inclusion of these rules in the draft code. Rules 8.1.9 and 8.1.10 concern the promotion of spirit-based alcoholic drinks such as vodka and Ready to Drink (RTD) products including so called 'alcopops'. These rules prohibit the promotion of both types of drinks.

The final rule in this section requires radio and television broadcasters to comply with the *Voluntary Codes of Practice* for the promotion of alcoholic drinks. The voluntary code was developed by the Department of Health and Children in co-operation with representatives of the advertising, drinks and media communications industries in order to minimise the exposure of young people to alcohol adverts. The voluntary codes define a young person as anyone under the age of 18. The voluntary code provisions were detailed in the Phase 1 consultation document. This document can be accessed on the Commission's website www.bci.ie.

Under this rule, the Commission would monitor commercial communications for compliance with the voluntary codes in addition to the other rules detailed in this section of the draft codes.

QUESTION 8

- What are your views on the proposed alcohol rules?
- Please provide a rationale for your response.

Medical Treatments, Products and Services

This section of the code contains a detailed set of rules pertaining to commercial communications for medical treatments, products and services. These rules are based on the provisions of the current code as well as Irish and European legislation.

The rules require broadcasters to take great care when airing commercial communications for products and services of this nature given the fact that exaggerated, misleading or inaccurate claims for medical treatments, products and

services can cause serious harm to individuals. The rules are included in order to minimise this risk.

The rules require broadcasters to comply with all relevant legislation in this area. In this regard, the rules also recognise the role of the Irish Medicines Board (IMB), the competent authority for implementing and enforcing Irish and European legislation in relation to the manufacture and promotion of medicines and treatments to health professionals and the general public. In particular, commercial communications will be required to comply with the *Summary of Product Characteristics* (SPC) issued with each medical item licensed by the IMB. The SPC is the basis of information for health professionals on how to use the medical product safely and effectively. Commercial communications must not make claims contrary to the SPC.

QUESTION 9

- What are your views on the rules proposed for medicines?
- Please provide a rationale for your response.

Food

The first rule under this heading requires all commercial communications which make health or nutritional claims for food to comply with Irish and European law. It also acknowledges the role of the *Food Safety Authority of Ireland* (FSAI), the competent authority for the implementation and enforcement of legislation in relation to the promotion of food. The second rule relates to the promotion of 'follow-on infant formula'. This rule reflects European law in relation to the

promotion of this product and incorporates best practice in this area as recommended by the FSAI.

QUESTION 10

- What are your views on the rules proposed for food?
- Please provide a rationale for your response.

Cosmetics

This rule requires all commercial communications for cosmetic products and treatments to comply with the relevant Irish and European legislation in this area.

QUESTION 11

- What are your views on the rules proposed for cosmetics?
- Please provide a rationale for your response.

Slimming

The health of the Citizen/Consumer is the primary concern of these rules. While commercial communications for slimming are legitimate, they must have due regard for the role of slimming in the context of a healthy and balanced lifestyle. For this reason, the products or services promoted must not be harmful, must be directly associated with the following of a balanced diet and the Citizen/Consumer must be aware of the manner in which the slimming will be achieved.

QUESTION 12

- What are your views on the rules proposed for slimming?
- Please provide a rationale for your response.

Financial

These rules relate to commercial communications for financial services and products such as mortgages, bank loans, car loans and hire purchase or other credit agreements. The first rule is intended to establish a basic standard. The second rule requires broadcasters to ensure that commercial communications for financial services and products comply with relevant legislation. In addition, these communications must comply with the code of practice issued by *The Financial Regulator*. This authority regulates the majority of financial services including banks, moneylenders, mortgages and loan providers among others and the code operated by them sets out, among other things, the mandatory messages which are included at the end of such advertisements, e.g. 'X is regulated by *The Financial Regulator*'.

The rules also recognise the authority of the *Office of the Director of Consumer Affairs* (ODCA). The ODCA deals primarily with credit intermediaries i.e. those providing credit sales, hire purchase agreements and consumer hire, and enforces Irish and European legislation pertaining to distance/direct selling and misleading advertising.

QUESTION 13

- What are your views on the rules proposed for financial services?
- Please provide a rationale for your response.

Betting

This rule reflects a number of Irish legal restrictions currently in place. The rule permits commercial communications for betting to promote the services offered by a betting establishment including on-line betting services, once they do not include any content which might encourage a person to bet. In essence, commercial communications of this nature should be directed at people who are already predisposed to bet. The rule recognises the potential damage that can be caused by addictions to gambling and it is intended to provide a measure of protection to the Citizen/Consumer for this reason.

QUESTION 14

- What are your views on the rule proposed for betting?
- Please provide a rationale for your response.

9. Prohibited Products

This section of the Code includes a list of products and services which are prohibited from promotion by means of commercial communications. The majority of these prohibitions are based on restrictions in either Irish or European law and must be included in the code.

However, some of the prohibitions are those required under the *Ministerial Advertising Code* only. These are the prohibitions pertaining to fortune tellers, psychic services, hypnosis, hypnotherapy, psychology, psychoanalysis or psychiatry, and smoking cures.

It was the view of the Commission that no convincing arguments were provided by any respondents to Phase 1 which warranted the removal of the prohibition of these services in the *Draft BCI General Advertising Code*.

In addition, the draft code will include a prohibition on commercial communications for cosmetic surgery. The Commission took the view that in the absence of statutory regulation for this area, the introduction of the *BCI General Advertising Code* could provide an opportunity to introduce a provision in this area with a view to providing the Citizen/Consumer with a measure of protection not provided elsewhere.

QUESTION 15

- What is your view on the inclusion of prohibitions pertaining to:
 - i) fortune tellers, psychic services, etc;
 - ii) cosmetic surgery;
 - iii) hypnosis, hypnotherapy, psychology, psychoanalysis or psychiatry;
 - iv) smoking cures.

10. Appendix

The appendix of the code contains a list of Irish and European legislation which is of relevance to broadcast commercial communications. This legislation covers a wide range of areas including commercial communications for food, medicines, gambling, solicitors, air travel, concert tickets etc. It also includes a list of primary broadcast legislation in Ireland and Europe.

While the appendix in the draft code provides a long list of legislation, it contains considerably less detail than the current *Ministerial Advertising Code*. The current code has six appendices which set out detailed rules in relation to products and services pertaining to medicines and financial services among others. The experience of the Commission and of broadcasters has highlighted the problem of including such detailed appendices. In particular, general problems in implementing the current code had arisen in some part from the dated nature of some of the content of these appendices.

In response to this, the draft code contains only one appendix and the appendix contains no rules. Where appropriate, specific rules from the current appendices are now included in the body of the draft code e.g. medicines. As the appendix contains no rules, the Commission can update the list of legislation in the appendix without the need to consult. The advantage of this approach is that it will provide the Commission with the flexibility required to respond to changes in the broadcast and legislative landscape as it occurs.

QUESTION 16

- What is your view on the appendix as proposed?
- Please provide a rationale for your response.

4. BACKGROUND TO THE DEVELOPMENT OF THE DRAFT BCI GENERAL ADVERTISING CODE.

This section introduces the work of the Broadcasting Commission of Ireland and its statutory requirement to develop a new *BCI General Advertising Code*. It outlines activities undertaken during Phase 1 and those planned for Phase 2.

4.1 The Broadcasting Commission of Ireland

The Broadcasting Commission of Ireland (“BCI” or “the Commission”) is a statutory body of ten members. The Commission is responsible for a number of key areas of activity with regard to television and radio services in Ireland further to the provisions of the Radio and Television Act 1988, the Broadcasting Act, 2001 and the Broadcasting (Funding) Act, 2003. They include:

Licensing

The Commission licenses independent broadcasting services with a view to providing listener choice and diversity. This includes the licensing of a national television programme service (TV3), a national radio service (Today FM) and a total of 54 regional, local, community and institutional radio services. The Commission is also responsible for the licensing of additional services on digital terrestrial, cable, MMD and satellite.

Monitoring

The Commission monitors all of the above services to ensure that licence holders comply with their statutory obligations as well as their terms of contract. Monitoring includes the assessment of programme performance, ownership and control structures, financial and trading performance, human resource management practices and transmission and studio facilities.

Codes and Rules

The Commission is responsible for the development of codes and rules in relation to programming and advertising standards. When introduced, these codes will apply to all broadcasters, both public and private.

Development

The Commission provides support for training and development initiatives, in an effort to promote a culture of excellence in the independent broadcasting sector.

Research

The Commission undertakes and/or commissions research to assist the development of broadcast policy in Ireland, in the context of technological change, changes in EU legislation, new programming formats and international trends and experiences.

Information

Through its information function, the Commission publishes and disseminates information to those working in the broadcasting sector as well as to the general public.

Sound and Vision – The Broadcasting Funding Scheme

The Commission is responsible for the development and administration of funding scheme(s) to support new television and radio programmes in the areas of Irish culture, heritage and experience and adult literacy.

4.2 Approach to the development of the BCI General Advertising Code

The *BCI General Advertising Code* is being developed over two phases. This phased approach allows for the work to be broken into manageable sections as well as allowing the results of each phase to inform the subsequent work undertaken.

Phase 1

Phase 1 of the development of the Code was carried out from 28th February to 21st April 2006. Three activities were undertaken, namely;

- Liaison with relevant organisations and bodies;
- The production of a research report, to include feedback from broadcasters⁴;
- A public consultation.

The consultation sought views regarding proposals related to definitions, principles, prohibition and rules pertaining to advertising, sponsorship and teleshopping. In addition, views were sought regarding the draft revised EU *Television Without Frontiers Directive* (TWF Directive).

There were 64 submissions received and these have been summarised in the report entitled '*Review of Submissions Received*'⁵. This document is available on the Commission's website www.bci.ie and is available on request from the Commission's offices.

Phase 2

Phase 2 of the consultation process will run from July 28th until September 25th. This will entail a number of activities, namely:

- Publication of a report on Phase 1 submissions;
- The publication of a consultation document;
- A workshop with broadcasters;
- A national press, television and radio advertising campaign promoting the consultation process.

4.2 Legislation

The development of the *BCI General Advertising Code* is informed by a range of Irish and European legislation.

National legislation

The Broadcasting Act, 2001 (2001 Act) requires that the Commission develops a new *General Advertising Code*. This code will replace the current *Ministerial Advertising Code*. There are a number of provisions within the 2001 Act relating to the General Advertising Code, as follows:

Section 19(1)(b) which states:

The Commission shall, upon being directed by the Minister to do so and in accordance with the provisions of this section prepare 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 (other than advertising and other activities as aforesaid falling within paragraph (c) (children's advertising)).

4 Dr. R.B.M. Quinn, (2005). *General advertising codes, a review of national and international practice*. BCI, June 2005.

The report is available from the BCI on www.bci.ie

5 Dr. R.B.M. Quinn, (2006). *General advertising code, review of submissions received*. BCI, June 2005.

The report is available from the BCI on www.bci.ie

As with the other codes and rules under Section 19, the Commission is required under Sections 19 (5) and (6) to make a draft of the rules available for comment before the code is finalised.

Section 19(5) states:

Before preparing a code or making a rule under this section, the Commission shall make available for inspection by any person who makes a request of it in that behalf a draft of the code it proposes so to prepare or the rule it proposes so to make and shall have regard to any submissions made to it, within such period as it specifies for the purpose, by that person in relation to the draft before it prepares the code or makes the rule concerned.

Section 19(6) states:

The Commission shall cause to be published in at least one newspaper circulating in the State notice of the fact that, pursuant to subsection (5), a draft referred to in that subsection is available for inspection, of the place at which or the means by which the draft can be inspected and of the period specified by it under that subsection within which submissions may be made to it in relation to the draft.

Section 24.2(e) provides the basis by which complaints regarding general advertising, among others, can be processed.

While these provisions form the basis for the development of the new *BCI General Advertising Code*, there are other pieces of legislation at national and European level that must also be taken into account. At both national and European level there exists legislation regarding advertising generally, as well as separate legislation referring to how certain products and services are advertised e.g. financial institutions.

A detailed list of relevant national and European legislation is contained in the appendix of the draft code.

European Context

Television Without Frontiers Directive (TWF Directive)

At European level the TWF Directive functions as an overarching piece of legislation which outlines certain objectives to be achieved by the European Member States, including Ireland. This means that Irish regulations must incorporate the principles laid down in that document into national codes and rules.

The principles and rules contained in the TWF Directive were transposed into the *Ministerial Advertising Code* in 1999. They apply to radio and television, local and national stations, public and independent broadcasters.

Just as developments in advertising techniques and products have prompted a review of the *Ministerial Advertising Code*, so too at European level, they have prompted a review of the TWF Directive. This review is ongoing and at the time of writing there exists a draft of the revised TWF Directive which is being considered by the European Commission. The rules and principles to be contained in the new document will be incorporated in national legislation/codes including the *BCI General Advertising Code*, and the *Children's Advertising Code*.

The TWF Directive and the proposed revisions contain key principles and rules that apply to all types of broadcast commercial communications – basically any form of broadcast communication that is commercial – advertising, sponsorship and teleshopping.

EU Interpretative Communication

The revision of the TWF has been ongoing for a number of years. However, the development of new advertising techniques, and emerging advertising practices has continued. This has raised questions regarding the compatibility of certain emerging advertising and sponsorship practices with the provisions of the current Directive. Questions have also arisen with regard to how key rules and concepts in the Directive are to be interpreted and applied to such practices.

In acknowledgement of this and as an interim measure, the European Commission issued an *Interpretative Communication* in 2004. This Communication aims to clarify how the relevant provisions of the Directive apply to new techniques of commercial communication. This document provides interim definitions and guidance. It outlines how the current TWF provisions and principles should be applied to these new techniques and practices. The development of the *BCI General Advertising Code* has drawn on the *EU Interpretative Communication*, as required, particularly with regard to split screen, virtual and interactive advertising.

5. SUMMARY OF QUESTIONS ASKED.

Definitions

- What are your views on each of the exclusions proposed in the draft code?

Objectives of the Draft BCI General Advertising Code

- What are your views on the five objectives proposed?

General principles and rules applying to all commercial communications

- What are your views on the principles and rules proposed?

General rules pertaining to advertising

- What are your views on the advertising rules proposed?

Rules pertaining to new advertising techniques

- What are your views on the rules proposed for new advertising techniques?

Rules pertaining to teleshopping

- What are your views on the teleshopping rules proposed?

Rules pertaining to Sponsorship

- What are your views on the proposed sponsorship rules?

Rules pertaining to specific products and services

Alcohol

- What are your views on the proposed alcohol rules?

Medical Treatments, Products and Services

- What are your views on the rules proposed for medical treatments, products and services?

Food

- What are your views on the rules proposed for food?

Cosmetics

- What are your views on the rule proposed for cosmetics?

Slimming

- What are your views on the rules proposed for slimming?

Financial Services

- What are your views on the rules proposed for financial services?

Betting

- What are your views on the rule proposed for betting?

Premium Rate Telecommunications Services

- What are your views on the rule proposed for premium rate telecommunications services?

Prohibited Products

- What are your view on the inclusion of prohibitions pertaining to:
 - fortune tellers, psychic services, etc;
 - cosmetic surgery;
 - hypnosis, hypnotherapy, psychology, psychoanalysis or psychiatry;
 - smoking cures.

Appendix

- What is your view on the appendix as proposed?

Please provide a rationale for all of your responses.

The Commission wishes to thank you for your time and participation. Your views have played an integral role in the development of the BCI General Advertising Code. The Commission will consider the responses received to Phase 2 of the consultation process prior to the finalisation of the code.

...odes the word "advertisement" shall be
of announcement broadcast whether in
similar consideration or broadcast for self-
public or private undertaking in connection
t or profession in order to promote the
cluding immovable property, rights and
yment. 4.1 The general principle which
ng is that it should be legal, honest, decent
and particularly television broadcasting,
ence in the home, raises problems which
ther media and it is therefore essential to
quality in broadcast advertising. 4.2 These
plied in the spirit as well as in the letter.
(i) prejudice respect for human dignity, (ii)
n grounds of race, sex or nationality, (iii)
olitical beliefs, or (iv) encourage behaviour
of the environment. 6. False Or Misleading
gements shall not be misleading or shall
f consumers. 7. Programme Separation
e any editorial influence over the conten
ement may include anything that states,
d reasonably be taken to suggest of
programme broadcast by a service had
d by an advertiser. 8. Identification of
ements shall be clearly distinguishable
te from the other items of the prog

oustic means. In principle, they shall be
olated adv
Advertising
vice which
ans, explo
influenci

being aware or fully aware, of what has
And Tobacco All forms of advertising for
tobacco products shall be prohibited.15.
ng of alcoholic drink may be accepted by
plies fully with the following criteria:- (a

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