

# The General Advertising Code

CONSULTATION DOCUMENT



Broadcasting Commission of Ireland  
Coimisiún Craolacháin na hÉireann

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## 1. INTRODUCTION

This section introduces the work of the Broadcasting Commission of Ireland and explains the purpose of this consultation.

### 1.1 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. These responsibilities include licensing, monitoring, codes and rules, development, research, information and the administration of ‘Sound & Vision’ the Broadcasting Funding Scheme.

The Commission is required, under the Broadcasting Act 2001, to develop a code of standards and rules in respect of broadcast advertising, teleshopping material, sponsorship and other forms of commercial promotion. This code of standards and rules will be called the *General Advertising Code*.

The *General Advertising Code* will apply to broadcasters under 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 and TG4, television and radio services licensed under the Radio and Television Act 1988 (including TV3 and Today FM) as well as services licensed by the BCI under the Broadcasting Act 2001. The code will not apply to other services commonly received in this country, for example on ITV or BSkyB services. Advertising on these

services is governed by the Television Without Frontiers Directive (TWF Directive) and by any code or regulation laid down by the regulator in the country of origin, where applicable, (i.e. the country in which these services are licensed.)

The General Advertising Code, when completed, will not address issues that pertain to children’s advertising<sup>1</sup>. The Children’s Advertising Code, which came into effect on January 1st, 2005, deals with the area of children and advertising. A copy of the Children’s Advertising Code may be obtained at [www.bci.ie](http://www.bci.ie). However, it is acknowledged that some issues that arise in this consultation may have a relevance for the Children’s Advertising Code e.g. the use of new advertising techniques.

The Commission will develop the code over two phases. This 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

This public consultation document is part of Phase 1 of the development of the code. Three activities will be undertaken during Phase 1, namely;

- Liaison with relevant organisations and bodies
- The production of a research report, to include feedback from broadcasters<sup>2</sup>
- A public consultation.

1 Children’s Advertising is defined as advertising for products or services which could be deemed to be of interest to children and/or which is broadcast during children’s programming.

2 General advertising codes, a review of national and international practice’, Dr. R.Quinn, BCI, June 2005. The report is available from the BCI on [www.bci.ie](http://www.bci.ie)

## Key functions of BCI

### 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. There are currently eight television services licensed on these systems.

### 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. The

Commission also supports programming initiatives such as the New Adventures in Broadcasting Scheme.

### 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.

### Broadcasting Funding Scheme

Under the Broadcasting (Funding) Act 2003, the Commission has been given responsibility for the development and management of a scheme "Sound & Vision, the Broadcasting Funding Scheme" for the granting of funds to support:

- i Broadcasting of new television and radio programmes on Irish culture, heritage, experience and adult literacy;
- ii Broadcasting of such programmes in the Irish Language, and;
- iii Development of archiving of programmes produced in the state.

The Scheme is funded by 5% of net television licence fee revenue.

The information gathered during phase one will be used to inform the Commission's decision making and will influence the content of the draft rules.

## Phase 2

In Phase 2, the Commission will publish the draft code and seek views and comments on its content.

## 1.2 Purpose of this document

This document is part of the first phase of the development of the General Advertising Code and asks for your views in a number of areas, namely:

- What should the objectives of the General Advertising Code be?
- What should the key principles of the code be?
- What rules should apply to advertising/ sponsorship and teleshopping?
- What rules should apply to specific products and services?
- How should the appendices contained in the current code be revised?

Please read the document and provide us with your comments. It is important that you provide us with a reason for your views, as this will help us in understanding your point of view and in considering the submissions we receive. Please be as specific as possible in your responses.

The full legislative framework and background to the consultation is outlined in the next section.

## 1.3 Document structure

This document has a number of sections. These are as follows:

- **Legislative Framework**  
This section outlines the legislation and current context at national and European level which forms the basis for the development of the General Advertising Code.
- **Application of Regulatory Principles**  
In this section the Commission outlines its own regulatory principles and how it proposes to apply them to the development of the General Advertising Code.
- **Proposed Code Objectives and Structure**  
This section asks for your views on the proposed objectives of the code and the proposed structure of the code.
- **Key principles underpinning the Code**  
This section asks for your views on the principles that should govern advertising, sponsorship and teleshopping.
- **Rules relating to specific types of commercial communication**  
This section asks for your views on the rules that should apply to specific types of commercial communications.
- **Rules relating to specific types of products and services**  
This section asks for your views on the rules for specific types of products and services.
- **Draft revised Directive**  
This section asks for your views on the draft revised Television Without Frontiers Directive (TWF Directive).

## 1.4 Document dissemination

This document is being circulated to a wide range of individuals, groups and organisations. The Commission wants to encourage participation in the consultation process. A notice of this consultation will be placed in the national press and on radio and television. The Commission has provided a response form on its website for those who wish to email their responses. Copies of the document are also 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 BCI, all information submitted will be publicly available on request. However, there may be aspects of your submission which you may wish to make 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 BCI's obligations under the Freedom of Information Act, 1997 and the Freedom of Information (Amendment) Act 2003. If the BCI receives a request for information submitted in confidence, you will be consulted before any decision is made.

Responses should be forwarded to the Commission by post or email on or before **Friday 21st April, 2006.**

*Please note, if you are only interested in submitting views specific to the principles and rules to be contained in the code, proceed to Sections 5 to 7 on pages 13 to 25.*

## 2. LEGISLATIVE BACKGROUND

This section outlines the legislation which forms the basis for the development of the General Advertising Code. It also outlines the context in which the development of this code is taking place including developments at European level, which will have a direct bearing on the code.

### 2.1 Background

The existing codes governing broadcast advertising and sponsorship in Ireland were introduced by the Minister for Arts, Culture and the Gaeltacht further to the provisions of the Broadcasting Act 1990, in May 1995. These are the *Codes of Standards, Practice and Prohibitions in Advertising, Sponsorship, and other forms of Commercial Promotion in Broadcasting Services*, hereafter referred to as the 'Ministerial Codes'. The Ministerial Codes contain three main sections. The first section deals with advertising; the second with sponsorship and the final section contains detailed appendices regarding particular types of products and services. The Codes have been amended over the years in keeping with the requirements of the EU Television Without Frontiers Directive.

The Commission currently monitors independent radio and television for compliance with the Ministerial Codes. Such monitoring is carried out a number of times a year. RTÉ has responsibility for implementing the codes for its own services. The Broadcasting Complaints Commission has responsibility for considering complaints relating to the Ministerial Codes on all services.

The Ministerial Codes are now 11 years old. There have been many developments over that time, both in advertising and sponsorship techniques (e.g. virtual advertising) and in the range of products and services now available to the consumer (e.g. cosmetic enhancement). The Ministerial Codes do not take these developments into account. Similarly, existing restrictions on the advertising of certain products (e.g. contact lenses) and the language used within the Ministerial Codes, may now be viewed as outdated and in need of review.

#### 2.1.1 National legislation

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

Section 19(a) 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)).*

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 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 full outline of the relevant national and European legislation is contained in the Commission's research report, *General Advertising Code, a review of national and international practices*<sup>3</sup>. This report is available on our website at [www.bci.ie](http://www.bci.ie).

### 2.1.2 European Context

#### *Television Without Frontiers Directive*

At European level the Television Without Frontiers Directive (the TWF Directive) acts as an overarching piece of legislation which outlines certain objectives to be achieved by Member States. 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 Codes in 1999. They apply to radio and television, local and national stations, public, community and commercial broadcasters.

At European level the TWF Directive is also being reviewed. This review is ongoing and at the time of writing a draft of the revised TWF Directive exists which is to be considered by the European Commission. Any revisions or changes to the TWF Directive will have to be incorporated in national legislation/codes, including the General Advertising Code.

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

In this document, we have to develop the General Advertising Code in the context of the *current* TWF rules. It is important to emphasise that the General Advertising Code must conform to the existing TWF Directive, pending the introduction of any new revised Directive.

However, we are going to consult on some of the issues contained in the draft TWF revision.

In presenting the issues for consideration, this document will make clear which issues are those that pertain to the current TWF Directive and which are those issues that pertain to the draft revised document.

3 RBM Quinn (2005), *General Advertising Code, A Review of National and International Practices*. Dublin: BCI

The Commission is interested in seeking people's preliminary views on these issues, in order to influence Ireland's response to the TWF revision proposals and, so that when and if the draft TWF is approved, the Commission will be in a better position to consider how best to incorporate the issues into our national codes and rules. These issues are discussed in Section 8 of the document.

#### *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 despite the absence of a revised directive. This has raised questions regarding how compatible certain emerging advertising and sponsorship practices

are 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. To address this on 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 certain new forms and new techniques of commercial communication. This document also provides interim definitions and guidance. It outlines how the current TWF provisions and principles should be applied to these new techniques and practices. The BCI's consultation on the General Advertising Code also draws on the Interpretative Communication, as required, particularly with regard to split screen, virtual and interactive advertising.

### 3. APPLICATION OF REGULATORY PRINCIPLES

In this section of the document the Commission outlines its own regulatory principles and how it proposes to apply them to the development of the General Advertising Code. It also outlines how the Commission will develop the Code.

#### 3.1 Guiding Regulatory Principles

The Commission's regulatory principles are those that it considers important in formulating and implementing its regulatory policy. They are the principles that inform the manner in which the Commission carries out its activities and duties. They endorse the Council of Europe's premise that the primary task of a regulator is to ensure that it functions smoothly by establishing a climate of dialogue, openness and trust in its dealings with stakeholders. They acknowledge the importance of the Commission being able to respond adequately to unforeseen and often complex questions that will emerge in the developing broadcasting landscape. They also reflect the principles of better regulation presented by the Government in its White Paper 'Regulating Better' as well as the vision, values and goals of the Commission as developed in its Strategic Plan 2004-2008.

The four relevant regulatory principles are:

- Flexible and consistent approach
- Adequate regulation based on current conditions
- Openness and dialogue
- Clear decision-making

The manner in which they will inform the Commission's approach to the development of the General Advertising Code is outlined below.

##### 3.1.1 Flexible and consistent approach

The Commission aims to develop and operate a simple, flexible, but comprehensive code, to be applied consistently and which is capable of responding to technological and market developments. The on-going development of new advertising techniques, using new technology, means that the code must incorporate a flexible approach that is clear in its intent and principles and is technology neutral. The code will address issues of concern to the citizen/consumer with regard to specific types of products/services e.g. the advertising of alcohol. However, given the ever-increasing range of products and services being advertised to the citizen/consumer, the code will not attempt to address or anticipate each and every product or service that could arise. Rather, the code will be based on key principles, designed to help broadcasters make the necessary judgements regardless of the product or service being advertised.

##### 3.1.2 Adequate regulation based on current conditions

The code needs to be capable of facilitating broadcasting as well as setting standards and applying them. The code needs to be sufficiently flexible to respond to new advertising techniques, and products, rather than attempt to pre-empt such techniques and products. The code will set out principles and rules that will provide direction for broadcasters while providing guidance to the audience as to the standards it can expect in broadcast advertising. The code will take into account current conditions, in terms of the trends throughout Europe and the Irish experience of regulating these areas to date.

### **3.1.3 Openness and dialogue**

The process used to develop the code should be open, transparent and facilitate dialogue. To this end, the consultative process, be designed to maximise participation and awareness of the debate among the range of broadcasting, advertising and citizen/consumer interests, as has been the Commission's practice in the development of the other Section 19 codes.

### **3.1.4 Clear decision-making, transparency and accountability**

The process used to develop the code will be transparent with a rationale provided for decisions taken by the Commission. This has been the Commission's practice in the development of the other Section 19 codes. At each station of the development of a code the Commission has produced a summary of submissions received and published a Statement of Outcomes document. This principle means that the final code should be clear, comprehensive and capable of implementation. It will also be grounded in an Irish cultural experience, practice and research, while according with all applicable laws.

#### **QUESTION:**

- 1 Are you satisfied with the manner in which the Commission is applying its regulatory principles to the development of the General Advertising Code?

## 4. PROPOSED OBJECTIVES AND STRUCTURE OF THE CODE

This section asks for your views on the proposed key objectives of the General Advertising Code and the proposed structure of the Code.

### 4.1 Objectives

The Commission has identified the following key objectives as those that should guide the General Advertising Code bearing in mind its regulatory principles and its statutory obligation to produce such a code. The objectives focus on the need for the code to inform the citizen and consumer and to ensure that a common understanding exists of the standards that are expected of advertising, sponsorship and teleshopping. The proposed objectives of the General Advertising Code are as follows:

- 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.

#### QUESTIONS:

- 2 Are these key objectives appropriate in the context of the development of the General Advertising Code? Please provide a rationale for your response.
- 3 Are there other objectives which should be taken into account? Please provide a rationale for your views.

### 4.2 Structure

#### 4.2.1 Current Structure

The General Advertising Code is being developed within the context of the existing Ministerial Codes and the experience of broadcasters over the years of implementing that code. It is also being developed within the context of the European requirements contained within the TWF Directive and the proposed revisions to the Directive. The work completed by the Commission in relation to the Children's Advertising Code is also relevant. Each of these elements has influenced the proposed structure and content of the code as set out in this section.

The Ministerial Codes are currently structured as follows:

- 1 A section on advertising rules and principles
- 2 A section on sponsorship rules and principles
- 3 Appendices outlining rules regarding specific products.

In preparing for this consultation, the Commission carried out research that included, among other things discussion with broadcasters and advertisers regarding the structure of the Ministerial Codes. A key finding was that the codes contain unnecessary repetition, because of their being divided between advertising and sponsorship. There are principles and rules that apply to both, yet these were being repeated in each section. A second finding was that the appendices require updating and some questions were raised with regard to the need for detailed appendices.

#### 4.2.2 Proposed Structure

The Commission is proposing to structure the General Advertising Code as follows:

- 1 Definitions of key terms
- 2 Key Principles that apply to commercial communications
- 3 Rules with regard to specific types of commercial communication
- 4 Specific rules with regard to particular types of products and services
- 5 Appendices (The inclusion of appendices is to be decided)

It is proposed that the General Advertising Code will employ the term *commercial communication* in order to facilitate a restructuring of the code that avoids unnecessary repetition. **Commercial communication will refer to advertising, sponsorship and teleshopping.** It also means that the principles and rules can be applied to new techniques as they arise rather than being seen solely as relevant to traditional advertising and sponsorship. While there are some specific rules that apply to each of these types of commercial communication, it is proposed that they will be contained in a specific section. These rules are outlined in the next section of the document.

#### QUESTIONS:

- 4 What are your views on the proposed structure of the General Advertising Code?
- 5 What are your views on the use of the term commercial communications in this General Advertising Code as a general term to include advertising, sponsorship and teleshopping?

## 5. CONTENT OF THE CODE

This section outlines the proposed content of the General Advertising Code, specifically, the sections containing the definitions, the key principles and the rules in relation to specific types of commercial communication and specific products and services.

### 5.1 Definitions

Key to any code or set of rules is a common understanding of the terms used within that code. For this reason, it is proposed that the first section of the General Advertising Code will contain a set of definitions of such terms.

When the Commission developed the Children's Advertising Code, it was necessary to develop a set of definitions around advertising and sponsorship issues. Many of these definitions are based on the European definitions required under the TWF Directive. The Commission proposes that it 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 Children's Advertising Code and the General Advertising Code retrospectively.

The definitions to be used in the General Advertising Code are as follows:

**5.1.1 Advertising** is defined as 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.

Limits are in place with regard to the amount of advertising that can be broadcast each hour on a broadcasting service. For this reason it is important that there is clarity as to what constitutes advertising so that a clear determination may be made as to whether a broadcaster has complied with these limits. The following page lists announcements that do not currently constitute advertising and are identified here as exclusions. As a result such announcements are not taken into account for the purpose of the calculation of the advertising limits.

**5.1.2 Sponsorship** is defined as 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.

**5.1.3 Misleading advertising** is defined as 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.

**5.1.4 Comparative advertising** is defined as all advertising that contains an explicit or implicit identification of a competitor or goods or services offered by a competitor.

**5.1.5 Surreptitious advertising** is defined as the representation in words or pictures of goods, services, the name, the trade mark or the activities or 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.

**5.1.6 Subliminal advertising** is defined as 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.

## 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.
- Announcements of forthcoming concerts, recitals or performances organised by the broadcaster or given by any orchestra or performing group that are employed or under contract to the broadcaster, whether intended for broadcast or not, to which the public are allowed entry free of charge.
- Announcement 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 name of 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, if there are promotional references to the concern, for example, promotional references to the products, services or brand of the joint sponsor(s) or the commercial outlet providing the facilities, then this will constitute advertising.

**5.1.7 Teleshopping** is defined as 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.

**5.1.8 Virtual advertising** is defined as a television advertising technique, which allows broadcasters to electronically insert virtual advertising messages or sponsorship announcements into a television programme by altering the broadcast signal itself.

**5.1.9 Interactive advertising** is defined as advertising 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. Interactivity also allows the viewer to provide information directly to the broadcaster/advertiser by means of a return path, and/or participate in an evolving interactive environment which is separate from the broadcast content.

**5.1.10 Split screen advertising** is defined as a technique, which allows the simultaneous presentation of editorial content and commercial information on the same screen, divided into two or more parts.

#### QUESTIONS:

- 6 A number of exclusions to the definition of advertising have been identified. What are your views on these exclusions?
- 7 Are there any other exclusions you believe should be permitted? Please provide a reason for your response.

## 5.2 Key principles of the Code

There are a number of key principles contained in the TWF Directive and within the Ministerial Code. These principles form a framework against which commercial communication (*advertising, sponsorship and teleshopping*) will be assessed for compliance. It is proposed that while the code will contain more detailed rules with regard to particular products and services, this section on principles will function as the core rules that will govern all commercial communication, regardless of the technique used or the product or service featured in the advert. Under each principle (*in italics*) are a number of rules that give practical effect to the principle.

In assessing whether a commercial communication is adhering to the code, it will be required to fulfil each of these principles. The principles have been grouped under headings in order to clarify their intent.

These proposed headings are as follows:

- Protecting the Citizen/Consumer
- Offence and Harm
- Transparency
- Editorial Integrity
- Content Rules
- Assessment

### 5.2.1 Protecting the Citizen/Consumer

*All commercial communication must be prepared with a sense of responsibility to consumers and society and must not prejudice the interest of the consumer. All commercial communication must be legal, honest, decent and truthful.*

Specifically:

- 1 Commercial Communication 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 advertised or its suitability for the purpose recommended.
- 2 They shall not contain inaccurate or deceptive claims, statements, illustrations or representations, either direct or implied, with regard to a product or service.
- 3 They must not omit relevant information in a manner that, in the result, is deceptive. This means that all pertinent details of an advertised offer must be clearly and understandably stated.
- 4 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.

- 5 Commercial communication that is required to carry a tagline or on-screen message, must do so in a way that is clear, legible and/or audible to the average viewer or listener.
- 6 Commercial communication containing direct or implied comparisons with other advertisers' 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 on the advertiser.

### 5.2.2 Offence and harm

*Commercial Communications must not cause harm or serious or widespread offence. They shall not (i) prejudice respect for human dignity; (ii) include any discrimination on ground of race, sex or nationality; (iii) be offensive to religious or political beliefs, or encourage behaviour prejudicial to the protection of the environment or to health or safety.*

- 1 Commercial Communication shall be appropriately scheduled with regard to the likely audience, time of broadcast, type of programme and nature of the advertised product or service.

### 5.2.3 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.*

- 1 Presenters and other on-air personnel must not make gratuitous reference to commercial products or services or advertise or promote products and services during the course of a programme.

### 5.2.4 Editorial integrity

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

### 5.2.5 Content Rules

- 1 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.
- 2 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 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 as a condition of the acceptance of the communication.
- 4 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 advertisement makes clear the customer's obligation to do so.
- 5 Product placement is prohibited.

#### 5.2.6 Assessment

- 1 *The principles are indivisible, that is, all commercial communication must conform with all principles.*
- 2 *Commercial communication will be assessed in whole and in context against the principles and rules contained in this code. This means that a commercial communication will be assessed with regard to its content and the programming context in which it features.*
- 3 *The Code is intended to be applied in the spirit as well as in the letter.*

#### QUESTIONS:

- 8 What are your views on these principles? Please make sure to specify to which principle(s) your response refers and provide a rationale for your views.
- 9 Are there additional principles you believe should be contained in this section of the General Advertising Code?

## 6. SPECIFIC RULES REGARDING PARTICULAR TYPES OF COMMERCIAL COMMUNICATION

This section contains a range of rules that pertain separately to advertising, sponsorship and teleshopping content. It also asks for your views on a number of new advertising techniques and what rules should apply to these.

### 6.1 Advertising

This section asks for your views regarding what rules should be applied to advertising.

#### 6.1.1 Advertising Rules

- 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.
- 2 Political advertising is not permitted in any circumstances. Religious advertising is only permitted in accordance with Section 65 of the 2001 Act.<sup>4</sup>
- 3 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 In the case of feature films and films made for television, provided their scheduled duration is more than forty five minutes, they may be interrupted once for each complete period of forty five minutes. A further interruption is allowed if their scheduled duration is at least twenty minutes longer than two or more complete periods of forty five minutes.
- 5 For programmes other than those mentioned above, 20 minutes must elapse between each successive break within the programme.
- 4 This rule is based on a separate piece of legislation, namely, Section 20(4) of the Broadcasting Authority Acts 1960-1993, in the case of broadcasting services operated by the RTÉ Authority, and Section 10(3) of the Radio and Television Act, 1988, in the case of services established under that Act as well as Section 65 of the Broadcasting Act 2001. The Commission is not consulting on this particular rule as it is outside the scope of this consultation.
- 6 Advertising may not be inserted in any broadcast of a religious service, news or current affairs programmes, documentaries or children's programme if the scheduled duration is less than thirty minutes.
- 7 Isolated advertising remains the exception.
- 8 Advertising breaks must be signalled by visual or audio means. Such means may not itself contain any commercial communication.
- 9 Surreptitious advertising, whereby the audience are not made aware of the advertising intent, is prohibited.
- 10 Subliminal advertising is prohibited.
- 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.

#### QUESTIONS:

- 10 What are your views on these rules? Please indicate to which rule your response refers and provide a rationale for your response.
- 11 Are there additional rules you believe should be incorporated? Please provide a rationale for your response.

## 6.2 New advertising techniques

Three new advertising techniques are discussed here and your views sought as to what rules should apply.

### 6.2.1 Split screen advertising

*Split screen advertising* is defined as a technique, which allows the simultaneous presentation of editorial content (i.e. a television programme) and commercial content (e.g. an advertisement) on the television screen. The screen is typically divided into two or more parts to facilitate two separate images appearing at the same time. Provided the space set aside for the advertising is not excessive, this technique enables the viewer to continue to watch the programme during the transmission of the advertising spot. For example, as the credits of a programme are playing in one section of the television screen, another section of the screen would feature an advertisement. Or, for example, during a horse racing programme, advertising could appear in a section of the screen.

Split screen advertising will have to conform with the key principles identified for all forms of commercial communication, i.e. protecting the citizen/consumer, offence and harm, editorial integrity of the programme etc. It will also have to conform with the rules identified for advertising, for example, the insertion rules or the need for commercial communication to be identifiable and separate from programming content. Separation in split screen advertising is by virtue of the screen being divided into two or more sections that prevents the viewer from mistaking advertising content for programming content, as opposed to advertising being separate by virtue of commercial breaks.

Split screen advertising is not very common as yet on Irish services. As outlined here, it will have to conform to the same principles and rules as all types of advertising. However, no specific rules currently exist with regard to the manner in which split screen is used. For example, whether split screen advertising should be allowed in all types of programming? Whether split screen advertising should be allowed at any time during a programme? Whether limits should be placed on the proportion of the screen that is given to the advertising content? Whether split screen advertising is appropriate for children's programming?

#### QUESTIONS:

- 12 What are your views on split screen advertising generally?
- 13 Do you believe that the key principles and advertising rules are sufficient to regulate split screen advertising? Please provide a rationale for your response.
- 14 If not, what additional rules, if any, do you believe should be attached to split screen advertising? Please provide a rationale for your response.

### 6.2.2 Interactive advertising

Interactive advertising is defined as *advertising which allows the viewer to interact with the broadcaster by actively choosing the advertising content to which s/he wishes to be exposed for as long as s/he wants*. This means that interactive advertising is something that the viewer chooses to access, having been given the option to do so, during a traditional type advertisement. The viewer uses his/her remote control to respond to an icon or flashing banner on the screen. This allows the viewer to leave

the current advertisement being broadcast and access additional information with regard to the particular products and services featured in that advertisement. Interactivity also allows the viewer to provide information directly to the broadcaster/advertiser and/or participate in an evolving interactive environment which is separate from the broadcast content.

The EU Interpretative Communication sets out how the principles contained in the TWF Directive should be applied to interactive advertising. These are as follows:

- It must be kept separate from programme content
- It must protect human dignity
- It must protect minors
- It cannot bring the viewer immediately/ directly to products or services that are prohibited in traditional television advertising.

A key point to remember, however, is that the rules governing broadcast advertising are only relevant to the first step in the process, that is, how and when the option to access additional commercial content is presented to the viewer. Once the viewer voluntarily chooses to access the interactive advertising, then the material is governed by the rules of electronic commerce and not of broadcasting.

The Interpretative Communication stipulates that when the viewer clicks on the icon or banner, s/he must not be brought directly to advertising that would not be permitted in the TWF Directive, e.g. tobacco products or prescription medicines. Rather, the viewer must be brought to an intermediate screen that alerts and informs the viewer to the fact that s/he is about to enter an interactive advertising environment. This

intermediate screen must then require the viewer to click on an icon a second time before s/he can access that environment, thus ensuring that the viewer has entered the interactive environment on a voluntary and informed basis.

The Interpretative Communication also stipulates that advertising broadcast between or during children's programming cannot include icons enabling *direct* access to interactive advertising that directly exhorts minors to buy a product or service by exploiting their inexperience or credulity. Similarly, interactive advertising for alcoholic beverages that can be accessed *directly* from traditional type advertisements must comply with the rules within the TWF regarding the advertisement of such products.

The Interpretative Communication states that it is for Member States to decide on any appropriate measures for guaranteeing viewers adequate protection. Are there measures that you believe should be taken with regard to interactive advertising?

#### QUESTIONS:

- 15 What are your views on interactive advertising generally?
- 16 Should it be permitted in all types of programming? Please provide a rationale for your response.
- 17 Do you believe that the key principles and advertising rules are sufficient to regulate interactive advertising? Please provide a rationale for your response.
- 18 If not, what additional rules, if any, do you believe should be attached to interactive advertising? Please provide a rationale for your response.

### 6.2.3 Virtual Advertising

Virtual advertising is defined as a television advertising technique, which allows broadcasters to electronically insert virtual advertising messages or sponsorship announcements into a television programme by altering the broadcast signal itself. This means that, for example, in a sporting event, the broadcaster can change the advertising that appears on the hoardings around the pitch electronically. The viewer will see a range of different advertising messages during the match, whereas these may remain unchanged in reality, i.e. for a person who is attending the match. The Interpretative Communication stipulates that the broadcaster can only use this technique to place advertising where it would normally appear in reality, e.g. the hoardings. It cannot be used to make advertising more conspicuous or visible than it usually would be, e.g. in the stadium. It also states that it must not affect the comfort and pleasure of the viewer, adversely affect the integrity or value of the programme or prejudice the interests of the rights holder. Also, the viewer must be informed in advance of the presence of virtual images.

#### QUESTIONS:

- 19 What are your views on virtual advertising generally?
- 20 Do you believe that the key principles, advertising rules and the rules outlined in the Interpretative Communication are sufficient to regulate virtual advertising? Please provide a rationale for your response.
- 21 If not, what additional rules, if any, do you believe should be attached to virtual advertising? Please provide a rationale for your response.

## 6.3 Sponsorship

*In this section, your views are sought on sponsorship and what rules should apply.*

Sponsorship is defined as 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. The viewer or listener's typical experience of sponsorship is of the announcement before and after a programme, or at the beginning and end of commercial breaks during the programme stating that this programme is sponsored by X. Competitions within programmes may also be sponsored. The principle is that the broadcaster receives a contribution from the sponsor towards the financing of the programme and the sponsor has an opportunity to promote his or her name, trademark etc.

The TWF Directive, the Ministerial Codes and the Interpretative Communication envisage that there is a difference between sponsorship and advertising. The definitions of both practices, however, make reference to the ability of both sponsorship and advertising to promote not only the name and trademark but also the product/goods and/or service(s) of the advertiser or sponsor. There is a need therefore for Member States to determine how best to differentiate between the two practices. This has meant that there are some differences among Member States in the manner in which a distinction is made between advertising and sponsorship.

It is important that a distinction is maintained, as there are limits on the amount of advertising that can be broadcast in any one hour and so there *must* be a way of telling which is a sponsorship message and which is advertising content.

The Commission's own practice in relation to differentiating between what is advertising and what is sponsorship is reflected in rule 4 below. Namely, that a sponsorship announcement may make reference to the name, contact details, and generic tagline of the sponsor, but it cannot make *promotional* references to the sponsor's products or services or encourage their purchase or rental. This means, for example, that while a sponsorship announcement may say:

*'Sponsored by Johnson's Ford Dealers, Shortmile Road, for all your driving needs'*,

It cannot say:

*'Sponsored by Ford Focus, European Car of the Year – Johnson's Ford Dealers, Shortmile Road, for the best deals on Ford cars.'*

The first version makes reference to the sponsor's name, contact details, a generic tagline or message and makes reference to the general products available, i.e. Ford Cars. However, the second version is promoting a particular product<sup>5</sup> i.e the Ford Focus and its attributes (it is Car of the Year), and the fact that the 'best deals' can be got at this dealer, thereby encouraging the purchase of this product. In the view of the Commission, this is now an advertisement.

Another example would be:

*'Sponsored by Murphy's Office Supplies, Shortmile Road, for all your printing and office needs.'*

*'Sponsored by the Bannan LX printer, fastest printing everytime, available now at Murphy's Office Supplies, Shortmile Road.'*

The Commission is interested in your views on how best to distinguish between sponsorship and advertising.

#### **The rules regarding sponsorship are as follows:**

- 1 Sponsorship may occur through the provision of direct funding by the sponsor or through investment in kind through the provision of facilities or services from the sponsor (e.g. outside broadcasts) or through the supply of goods/prizes.
- 2 Programme material may not be sponsored by a sponsor involved in the manufacture, supply or provision of a product or service that is not permitted to be advertised under this code.
- 3 Programmes may not be sponsored by sponsors whose products or services are not permitted to appeal to the typical audience for that programme or during which it would not be permitted to advertise.

<sup>5</sup> In the case of certain products, the name of the sponsor/brand and the name of the specific product are the same and in these cases reference to the specific product is permitted e.g. Baileys.

- 4 Sponsorship must not constitute advertising as defined in this code. This means that sponsorship while it may highlight or acknowledge the sponsor's name, contact details and sponsorship credit or generic tag line, may not encourage the purchase or rental of the products or services of the sponsor or a third party. In particular this means that sponsorship (of all the types listed above) must not make promotional references to those products or services by referring to their attributes, qualities or price. In the event that such promotional references are made, this will then be considered to be advertising.
- 5 Competitions must comply with sponsorship regulations. The mechanic used within the competition, i.e. what the viewer or listener has to do to enter and/or win the prize, or the prize itself must not constitute advertising. It must not make promotional references to the attributes, qualities or price of the sponsor's products or services.
- 6 News, current affairs programmes and religious programmes may not be sponsored.

#### QUESTIONS:

- 22 What are your views on these rules? Please make specific reference as to which rule your response refers and provide a rationale for your response.
- 23 (i) With regard to Rule 4, what are your views generally on the means by which the Commission should distinguish between sponsorship and advertising?
  - (ii) Do you believe the Commission should permit sponsorship announcements to include reference to the specific products or services of the sponsor? Please provide a rationale for your response.
  - (iii) Do you believe that the Commission should permit programmes to be sponsored by specific products rather than an overall brand or outlet? E.g. Sponsored by Ford Focus as opposed to sponsored by Johnson's Ford Cars. Please provide a rationale for your response.
  - (iv) If you believe that sponsorship announcements should be permitted to include reference to specific products or that programmes should be permitted to be sponsored by specific products or services, what then should be the basis by which the Commission distinguishes between a sponsorship announcement and an advert?
- 24 Are there additional rules you believe should be included? Please provide a rationale for your response.

## 6.4 Teleshopping

*Teleshopping* is defined as 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.

The key principles and rules applying to commercial communication (advertising, sponsorship and teleshopping) as well as the rules relating to advertising, identified earlier in this document, where relevant, will also apply to teleshopping, e.g. separation, insertion etc.

The TWF Directive requires that teleshopping (as with advertising) must be readily recognisable as such and kept separate from other parts of the programme service by optical and/or acoustic means. Individual or isolated spots, that is, where just a single advertisement or single teleshopping feature is broadcast in an ad break, is only permitted in certain circumstances. These are, when the teleshopping spot is long, when the period available for advertising or teleshopping is very short, e.g. between the rounds of a wrestling match, or where the broadcaster has insufficient advertising orders to permit a grouping of spots. Therefore isolated teleshopping spots must remain an exception.

In addition to the key principles, the following rule will apply to teleshopping:

Isolated teleshopping spots shall remain the exception.

### QUESTION:

25 Are there additional rules you believe should apply to teleshopping? Please provide a rationale for your response.

## 7. SPECIFIC RULES REGARDING PARTICULAR PRODUCTS AND SERVICES

This section outlines the rules regarding the advertising of particular products and services.

### 7.1 Prohibited Products

This section outlines the products and services which are currently prohibited from being advertised. Some of these prohibitions are required at European level e.g. tobacco and therefore will continue to be prohibited. Some of the prohibitions are those required under the Ministerial Codes. It is worth noting that if a product or service is prohibited from being advertised, then it also cannot be involved in the sponsorship of a programme. Your views are sought as to whether these products and services should continue to be prohibited and/or if there are additional products that you believe should be prohibited.

Those products and services that are currently prohibited are:

- 1 Moneylenders
- 2 Fortune tellers and the like
- 3 Medicines and medical treatment which are only available on prescription
- 4 Medicines, products, advice or appliances for the treatment of these illnesses/ conditions as outlined in the appendices of the Ministerial Codes, may not feature in commercial communications, *(for a list of these illnesses/conditions, please see the appendices of this document)*
- 5 Organisations/companies/persons seeking to advertise for the purpose of giving betting tips
- 6 Unlicensed employment services, registers or bureaux
- 7 Products or treatments for bust development

- 8 Products or treatments for slimming, weight reduction or limitation, or figure control
- 9 Clinics for the treatment of hair and scalp
- 10 Smoking cures
- 11 Slimming clinics
- 12 Ethical drugs or medicines
- 13 Products for treatment of alcoholism
- 14 Contact or corneal lenses
- 15 Breath testing devices and products which purport to mask the effects of alcohol
- 16 Hypnosis, hypnotherapy, psychology, psychoanalysis or psychiatry
- 17 Cigarettes and tobacco.

#### QUESTIONS:

- 26 What are your views as to whether these products and services should continue to be prohibited from being advertised? Please be specific as to which product or service your response refers and provide a rationale for your response.
- 27 Are there any additional products that you believe should be prohibited? Please provide a rationale for your response.

### 7.2 Alcoholic drinks

Section 15 of the Ministerial Codes outlines a number of rules in relation to the advertising of alcoholic drink. The rules apply not only to alcoholic drinks but also to soft drinks, if these are promoted as mixers. The rules are in the Ministerial Codes are as follows:

- 1 Alcoholic drinks advertising must not encourage young people or other non-drinkers to begin drinking – it must be cast towards brand selling and identification only.
- 2 Broadcasters will ensure that alcoholic drink advertisements are not transmitted in or around programmes primarily intended for young viewers or listeners; advertisers are required to take account of the age profile of the viewers and listeners so that advertisements are communicated, so far as it is possible, to adults.
- 3 Advertising shall not encourage immoderate consumption of alcohol or present abstinence or moderation in a negative light.
- 4 Advertisements shall not claim that alcohol has therapeutic qualities or that it is a stimulant, a sedative, tranquilliser or a means of resolving personal conflicts.
- 5 Advertising shall not place emphasis on high alcoholic content as being a positive quality of the beverages.
- 6 Advertising for alcoholic drink may not be aimed specifically at minors or, in particular, depict minors consuming these beverages.
- 7 The advertising of alcoholic drinks should not create the impression that consumption of such beverages contributes towards sexual attraction and success or social success.
- 8 Advertising shall not link the consumption of alcohol to enhanced physical performance or to driving.

## 7.3 Voluntary Codes

### 7.3.1 Alcohol content

Over the past number of years, Irish broadcasters have observed a *voluntary* practice whereby spirit based alcoholic drinks (i.e. whiskey, gin, vodka, brandy, etc) are not advertised on radio or television. Albeit, as a voluntary practice, this does not have a statutory basis, the Commission has, however, recognised the practice and monitored for compliance with it.

### 7.3.2 New Voluntary Codes

In December 2005, the Tánaiste and Minister for Health and Children, launched new *Voluntary Codes of Practice* which have been agreed between the Department of Health and Children and representatives of the advertising, drinks and media communications industries. These codes relate to alcohol advertising and young people and set out policies with regard to the advertising of alcohol. Compliance with the Voluntary Codes of Practice will be assessed by a new Alcohol Advertising Monitoring Body. This will be made up of representatives from the Department for Health and Children, the Commission, the Drinks Industry Group of Ireland and the Advertising Standards Authority.

The Voluntary Codes define a young person as those under the age of 18 and require that all alcohol advertisements must be first assessed and accepted by Central Copy Clearance Ireland. The codes outline the policy that will be operated in relation to specific media forms, i.e. cinema, radio, television, outdoor media. The policy as it relates to radio and television is as follows<sup>6</sup>:

6 The extracts from the Voluntary Codes of Practice are taken from <http://www.dohc.ie/press/release/2005/20051215.html>

### 7.3.3 Television:

- 1 No advertising for alcohol would be booked by an alcoholic drinks advertiser or his agency or placed by the Broadcasters in any programming where more than 33% of the audience is under the age of eighteen years.
- 2 No advertising for alcohol will be placed in any programming specifically aimed at children or young people.
- 3 Each Broadcaster will produce and provide to an independent monitor a profile of its audience. The profile will:
  - i Be for each channel broadcast
  - ii Based on individuals up to eighteen years of age and those over eighteen years of age.
  - iii Be for each half-hour between 3pm and 10pm.
  - iv Updated every six months.
- 4 When new programmes are introduced to the schedule the profile previously achieved for that time block will be used to ascertain the audience profile. Once the new programme has had four transmissions the profile will be re-examined and subsequently used to decide on the suitability for alcohol advertising.

### 7.3.4 Radio

- 1 Ensuring that programmes aimed at young people do not carry branded alcohol advertising. We propose to achieve this by:
  - Banning all alcohol advertising from programmes where greater than 33% of the listeners are young people

- These programmes will be identified through the Joint Nation Listenership Research (JNLR) on a station by station basis
  - After the publication of the JNLR, on a twice yearly basis, we propose that each station will submit a list of programmes to the Broadcasting Commission for Ireland (BCI) that will not carry alcohol advertising. The BCI will independently validate the list.
  - The BCI would include alcohol advertising on the schedule of criteria that are assessed in the course of its independent random sampling of each stations output.
  - Any breach of the alcohol advertising code would be immediately notified to the Independent Monitoring Body and the station involved.
- 2 The introduction of a Code of Conduct for presenters whereby speech content that glamorises or encourages over consumption or abuse of alcohol is banned. Independent Broadcasters of Ireland (IBI) will draft the Code in consultation with the BCI and the Department. IBI would undertake to develop appropriate training packages to ensure that its members fully comply with the Code and will agree to an appropriate monitoring mechanism.
  - 3 IBI and RTÉ Radio will co-operate and comply with other broader elements of the industry agreement including the Copy Clearance process and the Independent Monitoring Body.

The General Advertising Code will contain statutory rules with regard to alcoholic drinks. The TWF Directive prohibits commercial communications for alcohol from targeting minors or encouraging immoderate consumption of alcohol and this will be reflected in the General Advertising Code.

The Commission is interested in your views on the rules currently contained in the Ministerial Codes. It is also interested in your views as to whether the General Advertising Code should recognise these Voluntary Codes as they relate to television and radio. This would mean that the Commission would monitor for compliance with these Codes.

#### QUESTIONS:

- 28 What are your views on the rules contained in the Ministerial Codes? Please indicate to which rule your comments refer and provide a rationale for your response.
- 29 Are there additional rules you believe should be included in the General Advertising Code? Please provide a rationale for your response.
- 30 What are your views on the voluntary practice of not advertising spirit based alcoholic drinks?
- 31 What are your views on the proposal that the General Advertising Code recognise the *Voluntary Codes of Practice*?

### 7.4 Betting Services and facilities

Advertising that encourages people to bet is not acceptable under the Ministerial Code. However, firms who wish to advertise their services for those who want to bet is acceptable. In practice this means that while betting establishments, companies and online betting facilities may advertise their service, they may not include any promotional material which could be construed

as an encouragement to bet. This refers to references to prizes, the likelihood of winning or any other inducement.

#### QUESTION:

- 32 What are your views on the rules concerning the advertising of betting services? Please provide a rationale for your response.

### 7.5 Financial advertising

Appendix 5 of the Ministerial Codes concerns financial advertising and sets out a range of rules with regard to the manner in which financial products and services may be advertised. The Ministerial Code pre-dates the establishment of the Irish Financial Services Regulatory Authority, (IFSRA). IFSRA has subsequently established a code of practice which includes regulations with regard to the advertising of financial products and services. It sets out the mandatory messages which are included at the end of such advertisements, e.g. '*X is regulated by the financial regulator*'. It is proposed therefore that while all financial advertising, sponsorship and teleshopping will have to comply with the key principles and rules outlined in this document, the General Advertising Code will not outline specific rules for financial products or services, as such rules will be contained in the IFSRA Code, thus negating the requirement for appendix 5. The General Advertising Code will instead recognise the IFSRA Code as it relates to broadcast advertising for these products and apply its rules, as appropriate.

#### QUESTION:

- 33 What are your views on the proposed recognition and application of the IFSRA Code to the advertising of financial products and services? Please provide a rationale for your response.

## 7.6 Medicines and Treatments

The following rules are taken from the Ministerial Codes, specifically appendix 3 which contains rules with regard to how medicines and treatments that are available for purchase without prescription may be advertised. The Commission is interested in your views on these rules.

- 1 Presentations of doctors, dentists, pharmaceutical chemists, nurses, midwives etc., which give the impression of professional advice or recommendation are not permitted.
- 2 Statements giving the impression of professional advice or recommendation made by persons who appear in the advertisements and who are presented either or by implication, as being qualified to give such advice or recommendation are not permitted.
- 3 Medical or veterinary professionals are not permitted to make reference to their approval of, or preference for, a product or its ingredients or their use.
- 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.
- 5 No advertisement should contain any reference to doctors or hospitals, unless such reference can be used with propriety in the context of the advertisement. No such advertisement should contain in the name of the product the term 'Doctor' or 'Dr' unless the product was so named prior to 1st January, 1944.
- 6 No advertisement should contain the words college, clinic, institute or laboratory unless a bona fide establishment corresponding to the description used does in fact exist.
- 7 Claims that a medical product will effect a cure and the indiscriminate use of such words as 'safe', 'without risk', 'harmless' or terms of similar meaning are unacceptable. No advertisement should, either directly or by implication, contain a claim to any ailment or symptoms of ill health in the positive sense of extirpating any ailment, illness or disease.
- 8 No advertisement should contain an offer of a medicine or product for, advice relating to the treatment of, serious diseases, complaints, conditions or symptoms which should rightly receive the attention of a registered medical practitioner.
- 9 No advertisement should offer to diagnose by correspondence diseases, conditions or any symptoms of ill health, nor should any advertisement offer to treat by correspondence any ailment, illness, disease, or symptoms thereof.
- 10 No advertisement should be calculated to induce fear on the part of the viewer or listener or that he or she is suffering, or may without treatment suffer, or suffer more severely, from an ailment, illness or disease.
- 11 No advertisement shall make exaggerated claims in particular, through the selection of testimonials or other evidence unrepresentative of a product's effectiveness, or by claiming that it possesses some special property or quality which is incapable of being established e.g. through the use of the words 'magic', 'magical', 'miracle', 'miraculous'.
- 12 No statement or implication should be allowed to appear in a testimonial which would not be permitted in the text of the advertisement. In any case no advertisement should contain a testimonial other than one

limited to the actual views of the writer. No advertisement for a medicine or treatment may include a testimonial or be presented by a person well known in public life, sport, entertainment, etc.

- 13 No advertisement for medical products, treatments or services should offer to refund money paid other than on appliances or therapeutic clothing.
- 14 No advertisement for medical products or treatments should contain any reference to a prize competition or similar scheme.
- 15 No advertisement should falsely claim or suggest that the article advertised is in the form in which it occurs in nature or that its value lies in its being a natural product.
- 16 No advertisement of products, medicines or treatment for disorders or irregularities peculiar to women should contain the following or similar expression which may imply that the product, medicine, treatment advised can be effective in inducing miscarriage.
- 17 No advertisement should claim that the product medicine or treatment advertised 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 these habits.
- 18 Advertisements should not contain any offer of any product or treatment 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) all advertising offered for publication on either a weight loss or a figure control platform has to be checked by media before being accepted for publication. To facilitate this pre-publication checking, no new 'slimming' copy should be submitted unless at least seven days are available for checking by media. When a product or new formulation is introduced or when new claims are made for an existing product, advertisements when submitted for publication should be accompanied by full substantiation for all new claims;
  - (d) much confusion arises from the fact that wholly different kinds of product and service are sold under the general description of 'slimming'. The primary task of the advertiser is to ensure that his audience is entirely clear which of the possible ways of achieving 'slimness' is provided or helped by his product.
- 19 No advertisement should claim or imply that the product, medicine, or treatment advertised will do more than arrest the loss of hair, but claims to restore lost hair may be permitted provided that they refer only to cases of temporary baldness.
- 20 Advertisements should not contain any claims for the relief of backache and rheumatic pains based upon the urinary antiseptic properties of the products advertised.
- 21 No advertisement should state or imply that good health is likely to be endangered solely because people do not supplement their diets with vitamins.

- 22 It is accepted that the relief of pain, such as headache, may consequently ease tension or tiredness. But no simple or compound analgesic may be advertised for the direct relief of tension or tiredness. In such advertisements, there should be no reference to depression.
- 23 **Tonic:** The use of this expression is not acceptable in advertisements for medicines or treatments or products for which medical or health claims are made.
- 24 No advertisement shall encourage, directly or indirectly indiscriminate, unnecessary or excessive use of products within the scope of this section of the code.
- 25 No advertisement shall encourage the adoption of any unsafe practices especially by children.

#### QUESTIONS:

- 34 What are your views on the rules contained under this heading? Please indicate to which rule your comments refer and provide a rationale for your response.
- 35 Are there additional rules you believe should be included? Please provide a rationale for your response.

### 7.7 Advertisements prohibited for treatments for particular illnesses or conditions

Appendix 4 of the Ministerial Codes outlines a range of illnesses and conditions. It prohibits the advertisement of any medicines, products, advice of appliances for the treatment of these illnesses and conditions. The specific illnesses and conditions are as follows:

Albuminuria (b)  
 Amenorrhoea  
 Anaemia (pernicious)  
 Ankles, diseased  
 Appendicitis (b)  
 Arteria-sclerosis (b)  
 Artery troubles  
 Arthritis  
 Asthma (a)  
 Barber's Rash  
 Bleeding disease  
 Blood pressure (b)  
 Bone Disease (b)  
 Breasts, diseases of the  
 Bright's Disease (b)  
 Cancer (b)  
 Carbuncles (b)  
 Cataract  
 Cholecystitis (b)  
 Convulsions  
 Dermatitis  
 Diabetes (b)  
 Diphtheria (b)  
 Diseased ankles  
 Disseminated sclerosis  
 Dropsy (b)  
 Ears (any structural or organic defect of the auditory system)  
 Enlarged glands  
 Epilepsy (b)  
 Erysipelas (b)  
 Eyes (any structural or organic defect of the optical system)  
 Fits  
 Fungus infections (c)  
 Gallstones (b)  
 Glands, enlarged  
 Glaucoma

Goitre  
 Heart troubles  
 Cardiac symptoms (b)  
 Impetigo  
 Indigestion, where the reference is to chronic or persistent  
 Kidneys, disorders of diseases of the  
 Lazy eye  
 Leg troubles  
 Locomotor Ataxia  
 Lupus (b)  
 Mastoiditis (b)  
 Measles (b)  
 Menopausal ailments  
 Mumps (b)  
 Nephritis (b)  
 Obesity  
 Osteoarthritis  
 Otitis media (b)  
 Paralysis (b)  
 Paratyphoid (b)  
 Pernicious anaemia  
 Phlebitis  
 Pneumonia (b)  
 Poliomyelitis (b)  
 Prolapse  
 Prostrate gland disorders (b)  
 Psoriasis – except where the reference is confirmed to relief from the effects of the complaint.  
 Purpura  
 Pyelitis (b)  
 Pyorrhoea  
 Rheumatism, where the reference is to chronic or persistent  
 Rheumatoid arthritis  
 Ringworm  
 Rodent Ulcer (b)  
 Scabies  
 Scarlet Fever (b)

Skin diseases, where the reference is to “all or most” skin diseases, or skin ailments in general.

Sleeplessness, where the reference is to chronic or persistent

Smallpox (b)

Squint

Sycosis

Thrombosis

Tuberculosis (b)

Tumours (b)

Typhoid (b)

Ulcers – Duodenal, Pyloric, Stomach (b)

Uraemia

Urinary infections

Varicose veins (d)

Whooping cough (b) (e)

(a) This prohibition does not apply provided that:

(i) it is made clear in the advertisement that the medicine, treatment, product or appliance advertised is only for the alleviation of an attack of asthma.

(ii) the advertisement contains a recommendation that sufferers should seek medical advice.

(b) The Health Act, 1947 (see Appendix 3).

(c) This prohibition does not apply to the advertisement of products for the treatment of athlete’s foot.

(d) Advertisements for elastic hosiery are permissible provided that no claim is made that the product has any beneficial effect on the condition.

(e) This prohibition does not apply where the reference to whooping-cough appears only on labels or in literature issued with the product and is limited to offering the product for alleviating the symptoms of whooping cough.

#### QUESTION:

- 36 What are your views on the prohibition of advertising for medicines, products, advice or appliances for the treatment of the illnesses and conditions listed in appendix 4? Please provide a rationale for your response.

### 7.8 Other products or services

The products and services featured in this section are those that are included in the Ministerial Codes. Since the establishment of the Ministerial Codes a range of new products and services have come into existence or increased in prominence e.g. cosmetic surgery.

The Commission is interested in hearing your views with regard to whether there are particular rules that should be attached to any new such products or services in the General Advertising Code.

#### QUESTIONS:

- 37 Are there other products/services or events that you believe should have particular rules attached to them in the code? Please provide a rationale for your response.
- 38 If you do believe there are additional rules that should be included, please specify the product/service to which you refer and the nature of the rule you believe is appropriate.
- 39 Are there any other issues which you believe should be addressed in the General Advertising Code? Please provide a rationale for your response.

## 8. DRAFT REVISED DIRECTIVE

This section of the document asks for your views on a number of issues that are included in the draft revision of the TWF Directive. Your views are sought in order to inform Ireland's response to the proposed Directive and so that if and when the Directive is adopted, the Commission will be better placed to incorporate the principles and rules contained in the Directive into national regulations.

### 8.1 Key terms

The draft revision of the TWF Directive contains a differentiation between what are described as linear services and non linear services. These are defined as follows:

**8.1.1 Linear services** *are where a media service provider decides upon the moment in time when a specific programme is transmitted and establishes the programme schedule.*

Linear services would include the usual programme schedule whereby the viewer or listener has no discretion or ability to deviate from the normal schedule of programmes and advertisements. The viewer cannot decide to change the order in which the programmes are broadcast or skip ahead to a particular programme in the schedule. For example, the viewer cannot look at the schedule and decide to watch the programme that is scheduled for 7pm at 5pm instead. The viewer or listener can only watch or listen to the programmes in the order in which the broadcaster has scheduled them.

**8.1.2 Non linear services** *are where the user decides upon the moment in time when a specific programme is transmitted on the basis of a choice of content selected by the service provider.*

Non linear services are those that allow the viewer or listener to decide when and what they want to watch or listen to. For example in interactive television, the viewer can decide to access more information on a particular subject through his or her remote control. The viewer may click on an icon on the screen using the remote control to access a specific news report or additional information on a news story. In doing this, the viewer has left the usual (linear) schedule and has chosen to watch unscheduled material.

These definitions are included in the draft of the revised TWF directive because it is proposed that different levels of regulation may be required for different types of audiovisual media service depending on whether it is linear or non linear. It is proposed that a basic tier of regulation will apply to non-linear content. This basic tier of regulation will include the following requirements:

- Details with regard to the name and contact details of the media provider must be made available to the viewer or listener
- Content must not be made available in such a way that might seriously impair the physical, mental or moral development of minors
- Content must not contain any incitement to hatred
- Rules with regard to the promotion of European works
- Rules with regard to commercial communications on such services, namely that they must be identifiable as such and must not use surreptitious or subliminal techniques. They must not discriminate on grounds of race, sex or nationality, be offensive to religious or political beliefs or encourage behaviour prejudicial to health/safety or to the protection of the environment.
- Commercial communications for cigarettes and tobacco products shall be prohibited
- Commercial communications for alcoholic beverages must not be aimed at minors or encourage immoderate consumption of such beverages
- Commercial communications must not cause moral or physical detriment to minors

- Rules are provided with regard to how product placement can be contained in content.

Linear services will have additional regulations and rules. This difference in regulation between linear and non linear services is based on the premise that the user has greater choice and control with regard to non-linear services, i.e. they chose to access the material. The viewer or listener is deciding to access the non linear service on an informed and voluntary basis, and therefore this requires less regulation. Linear services are available to all viewers and listeners and the viewer or listener does not control the order or type of material being presented, therefore additional protection or regulation is required.

#### QUESTIONS:

- 40 What are your views on the distinction between linear and non linear services?
- 41 What are your views on the use of different levels of regulation for the two types of services?

## 8.2 Product Placement

Product placement is currently prohibited, but the draft revision of the TWF Directive proposes that it be allowed within certain rules and regulations. Product placement is defined in the revised Directive as:

*the inclusion of, or reference to, a product, a service or a trade mark within a programme normally in return for payment or for similar consideration.'*

This means that, for example, rather than a generic type of mobile phone being used by a character in a programme, the audience are aware that the

character is using a particular brand of phone, or wearing a particular brand of clothes, or has a particular brand of foodstuff on the shelves in their kitchen. The idea being that this will encourage the audience to purchase that product or service. In this way, advertising for the product is not contained within a commercial break but rather within the programme content. The audience member can see the product or hears the character/presenter making reference to it.

Product placement is currently prohibited under the TWF directive. This is because it is regarded as surreptitious advertising, in that it is a form of advertising for a product or service, but the viewer or listener is not made aware of the commercial intent. It is also prohibited because it goes against a key principle within the TWF directive, that is, that advertising content and programming content should be separate, identifiable and distinct. This is usually done by having advertising broadcast in advertising breaks.

The draft revised TWF Directive puts forward proposals to permit product placement and to establish rules that will govern its use. Rather than focusing on separation from programming content, the key principle will be one of transparency. This means that the broadcaster will be obliged to inform the audience when product placement is happening in a programme, i.e. that there exists a commercial arrangement between the broadcaster and the advertiser to feature a particular product in a programme.

We would like your views as to what rules or regulations you believe should be attached to the practice of product placement, if it is to be allowed by the TWF directive. In particular, what are your views on the following questions?

#### QUESTIONS:

- 42 What are your views on product placement generally as a form of commercial communication?
- 43 Should product placement be permitted in all programmes?
- 44 Are there particular categories or genres of programmes that should not be allowed to carry product placement? Please provide a rationale for your response.
- 45 Should product placement be subject to any particular rules with regard to the times of broadcast or the audiences it can target e.g. children? Please provide a rationale for your response.

#### QUESTION:

- 46 How should the principle of transparency be given practical effect, i.e. how best should the audience be informed that product placement is featured in the programme? Please provide a rationale for your response.

The principle of transparency will require that audiences are informed when product placement is being carried in a programme. What are your views on the way this is done? For example, this could be done by using an on-screen message at the start of the programme which would inform the audience that a particular product(s) is going to feature in the programme, or the message could appear when the product appears on the screen, or at the end of the programme a list of the products 'placed' could be broadcast. In considering the requirement to inform the audience, there is also, however, the requirement to avoid an undue impact on the audience's enjoyment of the programme.

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of announcement broadcast whether in  
similar consideration or broadcast for self-  
public or private undertaking in connection  
for profession in order to promote the  
including immovable property, rights and  
vestment. 4.1 The general principle which  
ing 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  
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ement may include anything that states  
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Advertising

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And Tobacco All forms of advertising for

tobacco products shall be prohibited.15.

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