



**Comparative study concerning the impact of control measures on
the televisual advertising markets in the EU Member States and
certain other countries**

FINLAND

LEGAL REPORT

**Drafted by BUTZOW NORDIA Advocates Ltd
(Mr Olli HYVONEN)**

Table of content

INTRODUCTION	4
I. DEFINITIONS	7
• Television broadcasting.....	7
• Television broadcaster.....	7
• Television advertising	7
• Sponsorship	7
• Teleshopping	7
• Surreptitious advertising.....	7
II. ADVERTISING RECOGNITION AND ADVERTISING/PROGRAMME SEPARATION (ARTICLE 10 TVWF DIRECTIVE)	9
a. Regulations.....	9
• Examination of the rules related to advertising and teleshopping spots recognition (acoustic and / or optical means)	9
• Examination of the rules related to the separation between the commercial content and the programme	9
• Examination of the rules related to the isolated advertising and teleshopping spots (allowed/prohibited; specific conditions, etc.)	9
• Prohibition of the use of "subliminal techniques"	9
• Prohibition of surreptitious advertng and teleshopping	9
b. Conclusion	10
III. RULES RELATED TO INSERTION OF ADVERTISING AND TEleshopping SPOTS BETWEEN AND WITHIN THE PROGRAMMES (ARTICLE 11 TVWF DIRECTIVE)	11
a. Regulations.....	11
• Examination of the rules related to the insertion of advertising and teleshopping spots between the programmes.....	11
• Examination of the rules related to the insertion of advertising and teleshopping spots within the programmes (allowed or prohibited; specific rules regarding the type of programme)	11
• Possible prohibitions of insertion of advertising and teleshopping spots within certain types of programme	11
b. Conclusion	12
IV. QUANTITATIVE RESTRICTIONS (ARTICLE 18 TVWF DIRECTIVE).....	13
a. Regulation	13
• Examination of the legal maximum percentage of daily transmission time devoted to teleshopping and advertising spots and for other forms of advertising (20% in the TVWF Directive	13
• Examination of the maximum daily transmission time devoted to advertising messages (15% in the TVWF Directive)	13
• Examination of the maximum daily transmission time devoted to advertising and teleshopping spots within a given clock hour (20 % in the TVWF Directive)	13
• Examination of the other possible quantitative restrictions.....	13
• Examination of the factors to take into account or not for the calculation of the advertising time	13
b. Conclusion	14
V. QUANTITATIVE RESTRICTIONS RELATED TO TEleshopping PROGRAMMES (ARTICLE 18BIS TVWF DIRECTIVE)	15

a.	Regulations.....	15
•	Examination of the minimum duration of windows devoted to teleshopping programmes (15 minutes in the TVWF Directive)	15
•	Examination of the maximum number of windows (8 in the TVWF Directive).....	15
•	Examination of the maximum daily duration (3 hours in the TVWF Directive).....	15
b.	Conclusion	15
VI.	SPONSORING (ARTICLE 17 TVWF DIRECTIVE)	16
a.	Regulations.....	16
•	Examination of the rules related to editorial independence of the broadcaster	16
•	Sponsor identification	16
•	Examination of the rules related to the insertion of the sponsor's name or logo within the programme (beginning/end, break bumper, during all the programme).....	16
•	Identification of the programmes that cannot be sponsored	16
•	Examination of the rules related to the content of the message (moving images, mention of the product, slogan, etc.)	16
•	Examination of the maximum duration of the mention and/or maximum daily/per hour volume	17
•	Examination of other rules eventually limiting the volume of sponsorship (ceiling for sponsorship profits, special tax, etc.)	17
•	Examination of other relevant rules related to product placement, price mentioning during TV shows, sponsorship linked to schedule/points indication during sport broadcasts, etc.)	17
b.	Conclusion	17
VII.	NEW ADVERTISING TECHNIQUES	18
VIII.	GENERAL RULES RELATED TO ADVERTISING AND TEleshopping CONTENT (ARTICLE 12 TVWF DIRECTIVE).....	19
a.	Regulations.....	19
b.	Conclusion	19
IX.	SPECIFIC PRODUCTS AND TARGETS	21
•	Tobacco	21
•	Medicines	22
•	Alcoholic beverages	23
•	Protection of minors	24
•	Religions, politics and parties, social groups etc:.....	25

Introduction

GENERAL MARKETING RULES

The general law on consumer protection in Finland is the *Consumer Protection Act* (Kuluttajansuojalaki 38/1978), hereinafter referred as "CPA".

CPA applies to the offering, selling and other marketing of consumer goods and services by businesses to consumers. CPA applies also where a business acts as an intermediary in the transfer of goods or services to consumers.

For the purposes of CPA, consumer goods and services are defined as goods, services and other merchandise and benefits that are offered to natural persons or which such persons acquire, to an essential extent, for their private households.

Chapter 2 of CPA includes general regulation of marketing as follows:

- Inappropriate marketing (Section 1):

No conduct that is inappropriate or otherwise unfair from the point of view of consumers shall be allowed in marketing. Marketing that does not convey information necessary in respect of the health or economic security of consumers shall always be deemed unfair.

- Recognition of the marketing (Section 1a):

The commercial purpose of the marketing and the marketer shall be clearly recognizable.

- False or misleading marketing (Section 2):

False or misleading information shall not be conveyed in marketing.

- Order precondition (Section 2a):

Consumer goods or services shall not be marketed by delivering them to consumers without an express order and by requiring that the consumer pays for them, returns them, safekeeps them or undertakes other measures in respect of them.

- Price information (Section 3):

The price of consumer goods or services shall not be advertised as being reduced by more than it actually is below the price previously charged by the business.

- Several consumer goods being marketed at one price (Section 4):

If several consumer goods or services are being marketed at one price or so that the purchase of a good or service entitles one to another good or service at a reduced price or to another specific benefit, the following information shall be clearly noted in the marketing:

- (1) the content and value of the offer and, for goods and services marketed at one price, their individual prices, unless the individual price of a good or service is less than EUR 10;
- (2) the conditions of the offer, especially its duration and the volume restrictions and other restrictions applying to it.

- Comparative advertising (Section 4a):

Comparative advertising is defined as advertising where a competitor or a good or service marketed by a competitor can be directly or indirectly recognised.

Comparative advertising shall be allowed, within the same terms as the ones provided by the European Directive 97/55/EU 96.10.97.

- Lotteries and games (Section 4b):

If the marketing includes lotteries, competitions or games, the laws and rules shall be clear and understandable as well as easily available. Dans les produits spécifiques?

- Definition of distance selling (Chapter 6, Section 4):

Distance selling is defined as the offering of consumer goods for sale to the consumer by way of distance offering, arranged by the business, so that the conclusion of the contract and the preceding marketing effort are carried out exclusively through one or more means of distance communication.

Distance offering is defined as a method of marketing or selling so arranged that its primary purpose can be deemed to be the conclusion of contracts through a means of distance communication.

Means of distance communication is defined as telephones, post, televisions, information networks or other devices that can be used for the conclusion of contracts without the parties being simultaneously present.

Chapter 6 of CPA also includes regulation concerning, among other things, Advance Information in Distance Selling (Section 13) and Confirmation of Information in Distance Selling (Section 14).

All the above mentioned general regulations must be complied with regarding the marketing and teleshopping in television.

TELEVISION

Directive 89/552 (as amended by directive 97/36) has been enforced in Finland by separate Act of Parliament, named *Act on Television and Radio Operations* (Laki televisio- ja radiotoiminna, 774/1998) referred hereinafter as "TVRO". The TVRO has been amended by several Acts of Parliament (778/2000, 1016/2001, 1539/2001, 420/2002 and 394/2003).

According to the TVRO, public broadcasting has been separated from commercial broadcasting. Oy Yleisradio Ab (YLE) is Finland's national public service broadcasting

company. YLE operates five national television channels. YLE's operations are financed mainly by television fees. According to the Act on Yleisradio Oy (746/1988, Section 12), YLE may not broadcast television advertising in connection with its programmes. The Council of State, however, has the right to grant the company, for a special reason, a programme-specific right to broadcast advertising.

Ministry of Transport and Communications is the regulatory authority competent for YLE and commercial broadcasters. The Finnish Communications Regulatory Authority (FICORA – Viestintävirasto) is a general administrative authority for issues concerning electronic communications and information society services.

There are currently fifteen digital television channels in operation in Finland. Advertising and other marketing by commercial broadcasters in Finland are covered by the TVRO.

- Scope of application:

TVRO applies to *television broadcasting* carried out by a natural person or an organization or foundation established in Finland if the operations are carried out in one or more Member States of the European Economic Area or States party to the European Convention on Transfrontier Television, as well as in cases referred to in Section 38 to the retransmission of television programmes. TVRO does not apply to television broadcasting in the Province of Åland.

- Restrictions in the scope of application:

Unless provided for otherwise in sections 19 (Programmes which may cause detriment to the development of children) and 38 (Suspension of retransmission), TVRO shall not apply to:

- (1) operations where the transmissions may be received only in a building of an educational unit, a hospital, a hotel or corresponding activity forming part of the operations;
- (2) operations in telecommunications network, if the network for the distribution of the programme may simultaneously be observed by no more than 2,000 interfaces.

Further, TVRO shall not apply to certain time limited operations (maximum three months) through analogical technology.

- Channels exclusively devoted to self-promotion (TVRO Section 33):

Sections 16 (European works), 17 (Programmes by independent producers) and 22 (Insertion of advertising and teleshopping spots) of TVRO shall not be applied to television channels exclusively devoted to transmitting programmes relating to the self-promotion of the television broadcaster. Advertising on such channels shall, however, be allowed in accordance with the provisions of section 29, paragraphs 1 and 2 (see below).

I. Definitions

In the TVRO

- Television broadcasting

shall refer to the initial transmission or provision by wire or over the air, including that by satellite, in unencoded or encoded form, of television programmes intended for reception by the public (// art. 1 a. TVWF Directive);

- Television broadcaster

shall refer to a party who has editorial responsibility for the composition of the television programmes and who transmits television programmes or has them transmitted by a third party (// art. 1 b. TVWF Directive);

- Television advertising

shall refer to any form of announcement in television broadcasting in return for payment or for other 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, *or in order to promote its own operations* (±// art 1 c. TVWF Directive);

- Sponsorship

shall refer to any contribution made by a public or private undertaking not engaged in television broadcasting or in the production of audiovisual works, to the financing of television programmes transmitted in television broadcasting with a view to promoting its name, its trade mark, its image, its activities or its products (// art. 1 e. TVWF Directive);

- Teleshopping

shall refer to 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 (// art. 1 f. TVWF Directive).

- Surreptitious advertising

TVRO does *not include* any definition of *Surreptitious advertising* despite the fact that there is *prohibition* of surreptitious advertising in the Act (TVRO Section 21, see below). However, the Government Bill (HE 34/1998) of TVRO includes the following definition of Surreptitious advertising:

“Surreptitious advertising would refer to the representation in words or pictures of goods, services, the name, the trade mark or to other activities of a producer of goods or a provider of services in programmes when such representation is intended by the broadcaster to serve advertising and might mislead the public to its nature.”(± // art. 1 d. TVWF Directive)

In comparison to the TVWF Directive it should be noted that the definition included in the Government Bill does not include any reference to *intention* in cases where surreptitious advertising is done in return for payment or against similar consideration.

The Finnish Communications Regulatory Authority (“Viestintävirasto”) is the supervisory authority regarding surreptitious advertising. Further, the Consumer Ombudsman (“Kuluttaja-asiamies”) supervises – from the consumer protection point of view – the compliance of the marketing with the prohibition.

The Finnish Communications Regulatory Authority has – for example – discovered (20.12.2002, decision 570/9220/02) that the prohibition of surreptitious advertising was violated in connection with a cooking programme, during which the chef shopped in a certain grocery store; this chain of grocery stores was the sponsor of the programme.

- Conclusion

In general, the Finnish regulation does not contain different definition than the ones of the Directive TVWF. One difference is in the definition of “surreptitious advertising” and in the application of the definition.

II. Advertising recognition and advertising/programme separation (Article 10 TVWF Directive)

a. Regulations

The identification of advertising is dealt with in the section 21 of the TVRO.

The Finish regulation makes a distinction between the public and the private broadcasters. The public broadcaster may not broadcast advertising in connection with its programmes. The Council of States shall however have the right to grant the broadcaster, for a special reason, a programme-specific right to broadcast advertising

- Examination of the rules related to advertising and teleshopping spots recognition (acoustic and / or optical means)

Television advertising shall be readily recognizable as advertising and teleshopping as teleshopping (// art. 10 §1 TVWF Directive).

- Examination of the rules related to the separation between the commercial content and the programme

They shall be kept separate from other parts of the programme service by optical or acoustic means (\pm // art. 10 §1 TVWF Directive), the Finish provision being less restrictive than the Directive

- Examination of the rules related to the isolated advertising and teleshopping spots (allowed/ prohibited; specific conditions, etc.)

Isolated advertising and teleshopping spots shall remain an exception (// art. 10 §2 TVWF Directive).

- Prohibition of the use of "subliminal techniques"

Advertising and teleshopping shall not use subliminal techniques (// art. 10 §3 TVWF Directive).

- Prohibition of surreptitious advertng and teleshopping

Surreptitious advertising and teleshopping shall be prohibited (// art. 10 §4 TVWF Directive).

b. Conclusion

TVRO Section 21 corresponds to Article 10 of TVWF Directive, except for what concerns the identification of the advertising.

III. Rules related to insertion of advertising and teleshopping spots between and within the programmes (Article 11 TVWF Directive)

a. Regulations

These issues are dealt with in the section 22 of the TVRO.

- Examination of the rules related to the insertion of advertising and teleshopping spots between the programmes

Advertising and teleshopping spots shall be inserted between programmes in television programme service (// art. 11 §1 TVWF Directive).

- Examination of the rules related to the insertion of advertising and teleshopping spots within the programmes (allowed or prohibited; specific rules regarding the type of programme)

Provided the conditions set out in paragraphs 2 to 5 of Section 22 (see below) are fulfilled, advertising and teleshopping spots may also be inserted during programmes in such a way that the integrity and value of the programme and the rights of the rights holders are not prejudiced (TVRO Section 22.1, // art. 11 §1 TVWF Directive).

In programmes consisting of autonomous parts, in sports programmes and similarly structured programmes containing intervals, advertising and teleshopping spots shall only be inserted between the parts or in the intervals (TVRO Section 22.2, // art. 11 §2 TVWF Directive).

The transmission of feature films and films made for television as well as of other audiovisual works, provided their scheduled duration is more than 45 minutes, may be interrupted once for each period of 45 minutes. A further interruption shall be allowed if their scheduled duration is at least 20 minutes longer than two or more complete periods of 45 minutes (TVRO Section 22.3, // art. 11 §3 TVWF Directive).

Where television programmes, other than those covered by paragraph 2 (see above), are interrupted by advertising or teleshopping spots, a period of at least 20 minutes shall elapse between each successive advertising break with the programme (TVRO Section 22.4, // art. 11 §4 TVWF Directive).

- Possible prohibitions of insertion of advertising and teleshopping spots within certain types of programme

Advertising and teleshopping shall not be inserted in any television broadcast of a religious service. News and current affairs programmes, documentaries, religious programmes and children's programmes, when their scheduled duration is less than 30 minutes, shall not be interrupted by advertising or by teleshopping. If their scheduled duration is 30 minutes or

longer, the provisions of paragraphs 1 to 4 above shall apply (TVRO Section 22.5, // art. 11 §5 TVWF Directive).

b. Conclusion

TVRO Section 22 corresponds generally to Article 11 of TVWF Directive.

It does not however contains provisions related to the taking into account of the natural breaks, the duration and the nature of the programme when inserting a spot within a programme.

IV. Quantitative restrictions (Article 18 TVWF Directive)

a. Regulation

It is important to remind that YLE may not broadcast television advertising in connection with its programmes. Therefore, YLE has stricter rules to comply with as it is completely forbidden. The rules are not identical for commercial and PSB broadcasters.

Section 29 TVRO implements Article 18 of the TVWF Directive.

- Examination of the legal maximum percentage of daily transmission time devoted to teleshopping and advertising spots and for other forms of advertising (20% in the TVWF Directive)

With the exception of teleshopping windows within the meaning of section 31 (Time limits for teleshopping), the proportion of transmission time devoted to teleshopping spots and television advertising shall not exceed 20 % of the daily transmission time (// art. 18 §1 TVWF Directive).

- Examination of the maximum daily transmission time devoted to advertising messages (15% in the TVWF Directive)

The transmission time for television advertising spots shall not exceed 15 % of the daily transmission time (TVRO Section 29.1, // art. 18 §1 TVWF Directive).

- Examination of the maximum daily transmission time devoted to advertising and teleshopping spots within a given clock hour (20 % in the TVWF Directive)

The proportion of advertising spots and teleshopping spots with a given clock hour shall not exceed 20 % with the exception of channels exclusively devoted to teleshopping spots (TVRO Section 29.2, //18 §2 TVWF Directive).

- Examination of the other possible quantitative restrictions

No other quantitative restriction is provided.

- Examination of the factors to take into account or not for the calculation of the advertising time

Advertising referred to in paragraphs 1 and 2 above and included in the time limits shall not include

- announcements made by the broadcaster in connection with its own programmes;

- ancillary products directly derived from those programmes;
- public service announcements;
- charity appeals broadcast free of charge (// art. 18 §3 TVWF Directive).

b. Conclusion

TVRO Section 29 corresponds to the Article 18 of TVWF Directive.

If self-promotion is not encompassed in the advertising time limitation, it is nonetheless considered as advertising and shall therefore respect all the other relevant provisions.

It is important to remind that YLE may not broadcast television advertising in connection with its programmes. Therefore, YLE has stricter rules to comply with as it is completely forbidden. The rules are not identical for commercial and PSB broadcasters.

V. Quantitative restrictions related to teleshopping programmes (Article 18bis TVWF Directive)

a. Regulations

Again, it is important to remind that YLE may not broadcast television advertising, nor teleshopping in connection with its programmes. Therefore, YLE has stricter rules to comply with as it is completely forbidden. The rules are not identical for commercial and PSB broadcasters.

The section 31 of the TVRO provides for the above mentioned quantitative restrictions.

- Examination of the minimum duration of windows devoted to teleshopping programmes (15 minutes in the TVWF Directive)

Windows devoted to teleshopping broadcast by a channel not exclusively devoted to teleshopping shall be of a minimum uninterrupted duration of 15 minutes (// art.18bis §1 TVWF Directive).

They must be clearly identified as teleshopping windows by optical and acoustic means distinguishing them clearly from other programme service.

- Examination of the maximum number of windows (8 in the TVWF Directive)

The maximum number of windows per day shall be eight (// art. 18bis §2 TVWF Directive).

- Examination of the maximum daily duration (3 hours in the TVWF Directive)

Their overall duration shall not exceed three hours per day (// art. 18bis §2 TVWF Directive).

b. Conclusion

TVRO Section 31 corresponds to Article 18 Bis of TVWF Directive.

As mentioned above, YLE may not broadcast television advertising, nor teleshopping in connection with its programmes. Therefore, YLE has stricter rules to comply with as it is completely forbidden. The rules are not identical for commercial and PSB broadcasters.

VI. Sponsoring (Article 17 TVWF Directive)

a. Regulations

The requirements related to sponsored programmes are set out in section 26, 27 and 28 of the TVRO.

- Examination of the rules related to editorial independence of the broadcaster

A sponsor may not influence the content and scheduling of sponsored television programmes in such a way as to affect the responsibility and editorial independence of the broadcaster in respect of programmes (// art. 17 §1 a. TVWF Directive).

- Sponsor identification

Sponsored television programmes must be clearly identified by the name or logo of the sponsor (// art. 17 §1 b. TVWF Directive).

- Examination of the rules related to the insertion of the sponsor's name or logo within the programme (beginning/end, break bumper, during all the programme)

Sponsored television programmes must be clearly identified by the name or logo of the sponsor at the beginning or end of the programmes (// art. 17 §1 b. TVWF Directive).

- Identification of the programmes that cannot be sponsored

News and current affairs programmes broadcast on television may not be sponsored (// art. 17 §4 TVWF Directive).

- Examination of the rules related to the content of the message (moving images, mention of the product, slogan, etc.)

Sponsored television programmes must not encourage the purchase or rental of the products or services of the sponsor or a third party, in particular by making special promotional references to those products or services (// art. 17 §1 c. TVWF Directive).

A programme sponsored by an undertaking whose principal activity is the manufacture of tobacco products may not be transmitted on television (// art. 17 §2 TVWF Directive).

If the sponsor of a programme is an undertaking whose activities include the manufacture or sale of medicinal products and medical treatment, the name or logo of the undertaking may be

shown in connection with the programme taking into consideration the provisions of section 26 (see above). However, a medicinal product or medical treatment available only on prescription in Finland may not be promoted in this connection (// art. 17 §3 TVWF Directive).

- Examination of the maximum duration of the mention and/or maximum daily/per hour volume

None.

- Examination of other rules eventually limiting the volume of sponsorship (ceiling for sponsorship profits, special tax, etc.)

None.

- Examination of other relevant rules related to product placement, price mentioning during TV shows, sponsorship linked to schedule/points indication during sport broadcasts, etc.)

None. However, the ban on surreptitious advertising is also applied to product placement. In practise it can be stated that the Finnish Regulatory Authority follows the guidelines given in the Explanatory Report regarding European Convention on Transfrontier Television. Product placement is only allowed when showing the product as a prize in a game show and in case it is necessary to show certain product if this is required by the editorial content. In case a certain product would be shown frequently, the product placement would not be allowed.

b. Conclusion

Sections 26-28 of TVRO correspond to Article 17 of TVWF Directive.

It should be reminded that YLE, the national broadcaster, cannot produce sponsored programmes.

VII. New advertising techniques

New advertising techniques such as split screen techniques, interactive advertising, virtual advertising or other new advertising techniques are not used by Finnish television channels. No special regulation or projects of regulation exists concerning these techniques.

However, the situation is about to change shortly, when new digital channels start to operate. According to the current interpretation of the Finnish Communications Regulatory Authority (Viestintävirasto), virtual advertising and split screen technique would *not be allowed* as long as they are used within the programme (and thus without separating them from the normal programme).

VIII. General rules related to advertising and teleshopping content (Article 12 TVWF Directive)

a. Regulations

Ethical principles of advertising and teleshopping spots are stipulated by the Section 23 TVRO.

Television and radio advertising or teleshopping spots shall not:

- prejudice respect for human dignity (// art. 12 a. TVWF Directive);
- include any discrimination on grounds of race, sex or nationality (// art. 12 b. TVWF Directive);
- be offensive to religious or political beliefs (// art. 12 c. TVWF Directive);
- encourage behaviour prejudicial to health, public safety (// art. 12 d. TVWF Directive) or the environment (// art. 12 e. TVWF Directive).

Moreover, the images or voices of persons appearing regularly in news or current affairs programmes may not be used in advertising (Section 21 TVRO).

Further, it should be noted that all the general regulations (see introduction) must be complied with regarding the marketing and teleshopping in television. Therefore, the regulation included in Chapter 2 of CPA must be complied for example regarding

- Inappropriate marketing,
- Recognition of the marketing,
- False or misleading marketing,
- Price information,
- Several consumer goods being marketed at one price,
- Comparative advertising, and
- Lotteries and games,

However, CPA is the general law on consumer protection. Therefore the more specific regulation of TVRO supersedes the more general regulation of CPA.

b. Conclusion

Section 23 TVRO corresponds to Article 12 of TVWF Directive.
The Finnish regulation stresses that the respect is due to the **public** safety.

The images or voices of persons appearing regularly in news or current affairs programmes may not be used in advertising.

IX. Specific products and targets

- Tobacco

Advertising of tobacco is regulated by the Act on Measures to Reduce Tobacco-Smoking (Laki toimenpiteistä tupakoinnin vähentämiseksi 693/1976), hereinafter referred as "Act on Tobacco".

The Act on Tobacco prescribes measures aimed, through the reduction of tobacco-smoking (smoking), at preventing origination of the dangers and injuries to health caused by smoking, or whose risk of origination smoking increases.

In the Act on Tobacco,

- (1) *tobacco* refers to a stimulant manufactured from or containing leaves, stalks or stems of tobacco plants (*nicotiana*);
- (2) *substitute tobacco* refers to stimulants which correspond to tobacco in their intended use but do not contain tobacco;
- (3) *tobacco products* refers to products manufactured entirely or partially from tobacco and intended for smoking, inhalation into the nose, sucking or chewing;
- (4) *orally used tobacco* refers to products manufactured entirely or partially from tobacco which is in the form of powder or some other form, or a combination thereof, excluding products intended for smoking or chewing;
- (5) *smoking accessories* refers to equipment or supplies intended for smoking or mainly for the preparation thereof, such as cigarette paper or other wrapping, cigarette rolling machines, mouthpieces, filters, pipes and pipe cleaners, in accordance with more detailed regulations laid down by the Ministry of Social Affairs and Health (Sosiaali- ja terveystieteiden ministeriö);
- (6) *tobacco imitations* refers to products intended for enjoyment which closely resemble tobacco products or smoking accessories and which do not contain tobacco or a substitute thereof;
- (7) *tobacco smoking* refers to smoking or other utilization of tobacco products as a stimulant;
- (8) *tar* refers to raw, water-free and nicotine-free condensation of tobacco smoke;
- (9) *nicotine* refers to nicotine alkaloids.

Advertising, whether direct or indirect, of tobacco products is **prohibited** (Act on tobacco, Section 8, // art. 13 TVWF Directive). The same regulation applies to teleshopping.

The sales promotion of tobacco products through the advertising of other commodities by exploiting the established symbol of a tobacco product or an altered but identifiable version thereof, or which otherwise creates an impression of a particular tobacco product, is specifically considered to constitute indirect advertising of tobacco products. What is provided above concerning tobacco products shall also apply to tobacco, a tobacco imitation

and smoking accessories. What is provided above concerning advertising shall also apply to other sales promotion activity.

A programme **sponsored** by an undertaking whose principal activity is the manufacture of tobacco products may not be transmitted on television (// art. 17 §2 TVWF Directive).

- Medicines

The marketing of medicinal products has to comply with the provisions of the Medicines Act, Section 91 (395/87, as amended).

The Medicines Act presents the provisions of the marketing of medicinal products with particular regard to the Directive 2001/83/EC of the European Parliament relating to medicinal products for human use. Teleshopping is encompassed in the expression "marketing" and is therefore submitted to the following regulation.

The marketing to the general public of medicinal products which are **available on medical prescription only** and medicinal products containing narcotic substances is **prohibited** (// art. 14 TVWF Directive).

The marketing of a medicinal product for which a **marketing authorisation** has not been granted in Finland according to Section 21 of the Medicines Act or which has not been registered in accordance with the Section 21a of the Medicines Act, is prohibited.

Only the **name** of the medicinal product, or the name of the medicinal product and the holder of the marketing authorisation, can be mentioned (≠ TVWF Directive).

The marketing of medicinal products shall motivate people to appropriate use of medicinal products. The marketing of medicinal product shall in all respects comply with the particulars listed in the summary of product characteristics.

The marketing of medicinal products shall not motivate people to unnecessary use of medicinal products, give erroneous or exaggerated impressions of their compositions, origins or medicinal values or shall not be otherwise inappropriate. Only medicinal products in the Medicines Act may be advertised or marketed as medicinal products.

In addition to the above mentioned, the marketing of medicinal products shall comply with the provisions of *Consumer Protection Act* (Kuluttajansuojalaki 38/1978).

The advertisement shall state the name of the medicinal product as well as the generic name of the active substance if the product contains only one active ingredient, contain the information necessary for the correct and safe use of the medicinal product, and contain an express, legible invitation to carefully read the instructions on the package leaflet or on the outer packaging. Reminder marketing is allowed notwithstanding what has been mentioned above.

The following therapeutic indications must not be used in the marketing to the general public: tuberculosis, sexually transmitted diseases, other serious infectious diseases, cancer and other neoplastic diseases, chronic insomnia or diabetes and other metabolic illnesses.

The marketing of medicinal products shall not include ungrounded statements of the effects to the health, nor be directed at children. The marketing of medicinal products shall not also otherwise exaggerate the effects of the product or give misleading information of the effects.

Distribution to the public of samples of medical products for promotional purposes is prohibited.

If the **sponsor** of a programme is an undertaking whose activities include the manufacture or sale of medicinal products and medical treatment, the name or logo of the undertaking may be shown in connection with the programme taking into consideration the provisions of section 26 (see above). However, a medicinal product or medical treatment available only on prescription in Finland may not be promoted in this connection (// art. 17 §3 TVWF Directive).

- Alcoholic beverages
 - Advertising of alcoholic beverages:

The marketing and advertising of alcoholic beverages are regulated by the Alcohol Act (Alkoholilaki 1134/94, as amended).

For the purposes of the Alcohol Act *alcoholic substance* means a substance or product which contains more than 2.8 percent by volume of ethyl alcohol.

In the Alcohol Act it is meant:

- (1) by *mild alcoholic beverage* a beverage which contains maximum of 22 percentage by volume ethyl alcohol;
- (2) by *strong alcoholic beverage* a beverage which contains more than 22 percentage by volume ethyl alcohol.

- Advertising of strong alcoholic beverages (Chapter 5, Section 33):

It is prohibited to advertise, indirectly advertise or otherwise promote the sales of *strong alcoholic beverages* (\neq TVWF Directive).

- Advertising of mild alcoholic beverages (Chapter 5, Section 33):

Advertising, indirect advertising and other sales promotion of *mild alcoholic beverages and beverages containing at least 1.2 percentage by volume of ethyl alcohol*, other sales promotion of such alcoholic beverages aimed at consumers and linking it to advertising or sales promotion of another product or service is prohibited if:

- (1) it is aimed at minors or other persons to whom according to Section 16 (see below) no alcoholic beverages may be sold, or if such persons are depicted in it (// art. 15 a. TVWF Directive);
- (2) consumption of alcohol is there linked to driving a vehicle (// art. 15 b. TVWF Directive) ;
- (3) the alcohol content of an alcoholic beverage is there emphasized as a positive quality (// art. 15 f. TVWF Directive) ;
- (4) an abundant consumption of alcohol is described there in positive terms, or temperance or moderate consumption of alcohol in negative terms (// art. 1 TVWF Directive)5 e. ;
- (5) it gives an idea that alcohol increases the functional capacity or makes one socially or sexually more successful (// art. 15 b. and c. TVWF Directive) ;
- (6) it gives an idea that alcohol has medical or therapeutic properties or that it refreshes, calms or is a means to settle conflicts (// art. 15 d. TVWF Directive);
- (7) it is contrary to good manners, is uses methods that are inappropriate from the viewpoint of the consumer or otherwise gives untruthful or misleading information about alcohol, its use, effects or other properties (≠TVWF Directive).

According to Section 16 of Act on Alcohol, alcoholic beverages shall not be sold to persons who are under twenty years of age, however so that mild alcoholic beverages may be sold to those aged eighteen and over. Neither shall alcoholic beverages be sold to persons who behave disturbingly or are clearly intoxicated, or if there is reason to suspect illegal use of alcoholic beverages or their illegal delivery or procurement for other persons.

As indirect advertising shall be considered in particular promotion for the sales of alcoholic beverages in connection with that of another commodity so that as the distinctive mark of the other product is used, as such or modified so that it can be identified, *such a distinctive mark* that has been established for the alcoholic beverage, or so that it otherwise conveys the image of a certain alcoholic beverage.

- Protection of minors
 - Protection of minors (TVRO Section 25):

Television advertising shall not cause moral or physical detriment to minors (// art. 16 §1 TVWF Directive). Television advertising shall not:

- (1) exhort minors to buy a product or service by exploiting their inexperience or credulity (//art. 16 §1 a. TVWF Directive);
- (2) directly encourage minors to persuade their parents or others to purchase the goods or services being advertised (// art. 16 §1 b. TVWF Directive) ;
- (3) exploit the special trust minors place in parents, teachers or other persons (// art. 16 §1 c. TVWF Directive);
- (4) unreasonably show minors in dangerous situations (// art. 16 §1 d. TVWF Directive).

Teleshopping spots shall correspondingly comply with these provisions. In addition, they shall not exhort minors to contract for the sale or rental of goods and services (/art. 16 §2 TVWF Directive).

Section 25 of TVRO on the protection of minors corresponds to the Article 16 of TVWF Directive.

CPA does not include any special regulation/ban on advertising directed to children. However, the ban on inappropriate marketing (CPA Section 1) and False or misleading marketing (CPA Section 2) applies to advertising directed to children. It is question of interpretation whether certain advertisement does not comply with these provisions. Further, it should be noted that the Finnish Consumer Ombudsman has given guidelines regarding children and marketing. In these recommendations it is stated that in Finland there is no particular age defined for children as a target group of marketing, but in several international studies it is indicated that marketing aimed at children under 12 must be guided by stricter rules than other marketing. The guidelines include recommendations for example regarding

- presenting a product to children and youngsters,
- hidden and textual advertising
- television commercials (“must be easily recognized”)
- time limits (children’s TV programmes, especially if they last less than 30 minutes, may not include commercial breaks)
- technical realization (advertisement must be separated)
- direct marketing and telesales
- children’s clubs
- teleservices subject to a charge
- additional benefits

- Religions, politics and parties, social groups etc:

No special regulation exists. However, the commercial broadcasters as MTV 3 have self-regulation concerning political advertising. According to these rules, the advertising of parties etc. may include critical and comparative elements. Negative critic of persons is although prohibited. Political advertisements shall not include other advertisements or commercial messages, either shall there be any signs etc. of sponsors.

b. Conclusions

Section 8 of Act on tobacco corresponds to Article 13 of TVWF Directive. Moreover, the Finnish regulation contains a detailed description of the tobacco products.

The Medicines Act - presenting the provisions of the marketing of medicinal products with particular regard to the Directive 2001/83/EC of the European Parliament relating to medicinal products for human use - corresponds to Article 14 of TVWF Directive.

It is even stricter when limiting the advertising only to the mentioning of the name of the product or the product and the holder of the marketing authorisation.

The Finnish regulation is also stricter when conditioning the teleshopping of a medical product to the fact that it is not delivered under prescription.

The regulation of alcoholic beverages in Finland is more severe than regulation included in Article 15 of TVWF Directive, *as advertising of other than mild alcoholic beverages is prohibited*. The regulation of Act on Alcohol regarding the advertising of mild alcoholic beverage corresponds with the conditions stipulated in Article 15 of TVWF Directive.

Section 25 of TVRO on the protection of minors corresponds to the Article 16 of TVWF Directive. It should be noted that the Finnish Consumer Ombudsman has given guidelines regarding children and marketing.

* * *