



**Comparative study concerning the impact of regulation on TV
advertising markets in the EU Member States and EEA States,
applicant countries and certain other countries**

UNITED KINGDOM

LEGAL REPORT

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Introduction

The Independent Television Commission (ITC) was the regulatory body responsible for licensing and regulating terrestrial, cable and satellite commercial channels in the UK. The ITC drafted several Codes containing rules on advertising, sponsorship and teleshopping and was also the competent authority for the control and application of these Codes.

The ITC has ceased to exist from 18 December 2003 and its duties are now assumed by the Office of Communications (OFCOM), which inherits the duties of 5 existing regulators, including the ITC.

The ITC Codes and guidelines remain applicable and are published on OFCOM's website . They are applicable to all the ITC licensees, which are: ITV, GMTV, Channel4, Channel 5, satellite television services provided by broadcasters within UK jurisdiction, licensable programme services, local delivery services, digital programme services and services provided under Restricted Service Licences (local TV).

OFCOM is currently examining the possibility of establishing a co-regulatory partnership between OFCOM and a new self-regulatory partnership to be set up by the advertising industry.

The ASA would become a "one stop shop" for the consumer for all advertising content regulation across all conventional media. A separate legal entity for broadcast advertising would be established and the Codes in relation to broadcast advertising would also transfer to the new co-regulatory system. This would provide the opportunity to achieve a coherent approach between broadcast and non-broadcast advertising codes.

OFCOM would retain its statutory responsibilities and would retain control over the new system. Some non content related elements would remain the exclusive competence of OFCOM, such as the amount and scheduling of advertising, separation of advertising and programmes, own programme trailers and promotions.

The ASA would treat all the complaints in relation to broadcast advertisement content and the industry would have to observe its decisions. Nevertheless, the broadcasters remain responsible for compliance with the Codes and failure to abide by ASA decisions would result in referral to OFCOM, which can impose a fine or withdraw the licence.

I. Definitions

The ITC Codes do not contain a list of definitions, but in the preliminary remark of the ITC Advertising Standards Code it is mentioned that *“for the purposes of the Code, the terms **“advertisement** and **“advertising”** mean any publicity (by licensees themselves or advertisers) in breaks during or between programmes. This is irrespective of whether payment is made. The rules also apply to “teleshopping channels, windows and spots”*

A definition of **teleshopping** is provided in par.8.1. of the ITC Rules on the amount and scheduling of advertising, according to which, *“teleshopping (also known as home shopping, advertorials, infomercials, etc.) is a form of advertising involving the broadcast of direct offers to the public with a view to the supply of goods or services, including immovable property, or rights and obligations, in return for payment”*.

Par 8.1. specifies that teleshopping offers of any kind must contain a direct offer for sale to the public within the teleshopping transmission itself. Where the offer for sale is only contained elsewhere (for example in a text service) the material cannot be qualified as "teleshopping".

There are **3 possible types** of teleshopping broadcast:

- i) channels fully devoted to teleshopping, i.e. channels containing exclusively teleshopping;
- ii) teleshopping windows, i.e. extended teleshopping features with a minimum uninterrupted duration of 15 minutes;
- iii) teleshopping spots, inserted in breaks during programmes (mixed with advertising spots or exceptionally isolated teleshopping spots are permitted);

The ITC issued a separate Code of Programme Sponsorship (hereafter “CPS”), regulating **sponsorship**.

The CPS defines sponsorship in par. 2 as follows: *“a **sponsored programme** is a programme that has had some or all of its costs met by a sponsor with a view to promoting its own or another's name, product or service”*.

A **sponsor** is defined as *“any organisation or person other than the broadcaster or television producer who is sponsoring the programme in question with a view to promoting their goods or services. This definition extends to those who are otherwise supplying or funding the programme”*.

A **“masthead programme”** is defined by the CPS as *“a programme made or funded by a periodical, newspaper, book or information software publisher. This may include websites that have a significant editorial content and could be regarded as the web equivalent of a*

published magazine. It may incorporate the name of the publisher's product in its title and have similar editorial content."

The ITC Rules concerning Advertiser Involvement in Programmes par.15.1. give a definition of a **product placement** as *"the inclusion of, or reference to, a product or service within a programme in return for payment or other valuable consideration to the programme maker or ITC licensee (or any other representative or associate of either)"*.

Some other relevant definitions can be found in the Broadcasting Acts of 1990 and 1996, and in the Communications Act of 2003.

A **Television broadcasting service** is defined in section 362 of the Communications Act 2003 as a service (other than any text service) which consists in a service of television programmes provided with a view to its being broadcast (whether in digital or in analogue form), and which is provided so as to be available for reception by members of the general public. It does not include a restricted television service, a television multiplex service, a service provided under the authority of a licence to provide a television licensable content service, or a service provided under the authority of a licence to provide a digital television programme service.

A **Restricted television service** has the same meaning as in section 42A of the Broadcasting Act 1990, namely a service which consists in the broadcasting of television programmes for a particular establishment or other defined location, or a particular event, in the United Kingdom. The term used in the 1990 Act is simply a "restricted service": the word "television" has been added here, and also in relation to digital television programme services and digital additional television services, to distinguish them from radio-related services which, in the 1990 and 1996 Acts are given the same name.

The meaning of **Television licensable content services** is given in section 232 of the Communications Act 2003: it is described as a service provided (in digital or in analogue form) as a service that is to be made available for reception by members of the public and consists of TV-programmes or electronic programme guides or both, and is being secured by broadcasting of the service from a satellite or distribution of the service by any means involving the use of an electronic communications network.

A **Digital additional television service** is defined under section 24 of the Broadcasting Act 1996, as being any service provided with a view to its being broadcast to the public in digital form by means of a television or general multiplex service, but not including a Channel 3 service, Channel 4, Channel 5, a public television service of the Welsh Authority, the digital public teletext service, a digital television programme service, a digital sound programme service, an ancillary service, or a technical service.

A **Digital television programme service** means any digital programme service within the meaning of section 1(4) of the Broadcasting Act 1996, namely a service consisting in the provision of television programmes (together with any ancillary services as defined by section 24(2) of that Act) with a view to its being broadcast in digital form so as to be available for reception by members of the public. It does not include a teletext service, any service in the case of which the visual images to be broadcast do not consist wholly or mainly of images capable of being seen as moving pictures (except to the extent that either of these services are ancillary to the television programme) or a qualifying service.

Conclusion

The ITC Codes contain a definition of “advertising” which is different from the definition of “television advertising” as foreseen in the Directive. The definition of “teleshopping” however is identical to the definition included in the Directive.

A definition of “sponsorship” as described in the Directive does not exist but the ITC Codes define a “sponsored programme” and a “sponsor”.

The ITC Codes do not contain a definition of “surreptitious advertising” but the notion “product placement” is defined.

The definitions of “television broadcasting” and “broadcaster” have not been taken over but the Broadcasting Acts and the Communications Act include detailed definitions of for example: “television broadcasting service”, “restricted television service”, “Television licensable content service” and “digital additional television service”.

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

Identification

Specific rules are contained in the ITC Rules on the Amount and Scheduling of Advertising, par. 3.1., “Break identification”.

“Television advertising must be readily recognizable as such and kept quite separate from other parts of the programme service. Breaks containing advertising spots of any kind, including teleshopping spots, must be identified in vision and/or sound, eg station identifications going in and out of breaks. Teleshopping windows must be identified both in vision and in sound at both the beginning and end of the break”.

The ITC Rules on the amount and scheduling of advertising contain a special Section 8, devoted to teleshopping and self-promotional channels.

As a general rule it is mentioned that teleshopping transmissions must be clearly recognizable and distinguishable from other broadcast and that the ITC Code of Advertising Standards applies in full to any kind of teleshopping broadcast. The specific rules on "Long advertisements" also apply to teleshopping.

Where a teleshopping service is transmitted between other services or in intervals between two parts of one service, both licensees must make it clear in sound and in vision when their respective services begin and end.

Separation of commercial and editorial content

The Advertising Standards Code provides in section 2 rules (2.1) to ensure the separation of advertisements and programmes:

The Advertising Standards Code states in rule 2.1.1. that there must be a clear distinction between programmes and advertisements. An additional note mentions that in ambiguous cases, advertisements must be identified as such on screen.

“Advertisements must not:

- use expressions reserved for important news and public service announcements (eg “news flash”)*
- use a situation, performance or style reminiscent of a programme in a way that might confuse viewers as to whether they are watching a programme or an advertisement*
- refer to themselves in a way that might lead viewers to believe they are watching a programme (eg by adopting the title “Programme”)*
- include extracts from broadcasts of parliamentary proceedings*
- feature, visually or orally, anyone who regularly presents news or current affairs on television”*

The rules in par.2.2 concern the editorial independence of the broadcasters.

According to par. 2.2.2 :

“Advertisements must not:

- *refer to the use or appearance of any product or service in any programme*
- *feature a person who appears in any current programme which the advertiser would be precluded from sponsoring*
- *include extracts from any recent or current programme (with limited exceptions)*
- *include titles, logos, sets or theme (ie start/end) music from any programme “*

Certain exceptions to the rules included in 2.1 and 2.2 concern programme promotions, advertisements to products or services based on a particular programme, news footage or brief extracts from interviews where the interviewer or programme is not identifiable and some sponsors and programmes subject to the ITC Code of Programme Sponsorship.

Par.4.2.7. of the Rules on the amount and scheduling of advertising provides rules concerning the appearance of well known persons or performers in advertisements. In order to maintain a clear distinction between programmes and advertisements, and to minimize any risk of confusion between the two, advertisements featuring a well known personality or performer, or a person who takes a leading role in a programme, must not be scheduled in breaks in or adjacent to that programme (also cartoons and puppets are covered by this rule).

Section 7 of the ITC Rules on the amount and scheduling of advertising contains specific rules for the identification of "Long advertisements". Par.7.1.1. states that any advertisement that lasts longer than one minute should be carefully assessed to ensure that there is no risk of confusion with programme material. Except where the style makes it fully apparent that it is an advertisement, any "long advertisement" must be flagged as such at the beginning and at the end. (7.1.2.) Where an advertisement adopts a programme style (interview, cookery demonstration...) there must be in addition a 5 second reminder to viewers of it's advertising nature in every full minute of duration and a 3 second reminder in any part minute over 20 seconds.

Isolated advertising and teleshopping spots

According to par.3.4 of the ITC rules on the amount and scheduling of advertising breaks containing just one spot advertisement or one teleshopping spot shall remain the exception.

Section 5, rule 5.4.5 of the Advertising Standards Code contains a specific rule on **subliminal advertising** : *“No advertisement may use images of very brief duration, or any other technique which is likely to influence viewers, without their being fully aware of what has been done”*

The ITC codes do not provide a definition of **surreptitious advertising**.

However the ITC Programme Code in par.8.1 as a general rule prohibits the promotion of commercial products or services in programmes. Par. 8.3 adds that product placement is not allowed (see above Definitions).

An exception is made for programme related materials and services (8.1). The availability of licensee produced materials or services that can demonstrate a clear relationship to the content

of programmes, can be promoted if editorially justified. Books, videos, CD-roms, Dvds and music may only be promoted at the end of the programme. This type of reference is subject to specific conditions and the advertising content of any form of programme support material must not exceed 35% of the total format. Moreover this advertising needs to be clearly distinguishable from the editorial content.

Licensee internet sites and addresses are defined as programme related services. It is important that the initial pages/home pages show a direct relationship to the content of the programme. Non licensee internet sites or sites which are not directly related to the programme services are defined as commercial products/services.

Par.8.4 mentions that no undue prominence may be given in any programme to a commercial product or service. Any reference to a product/service must be limited to what can be justified by the editorial requirements of the programme. As a general rule branded products must not be mentioned in audio or shown in close up.

Advertisements should be confined to paid-for advertising time but there are however some **exceptional circumstances** allowing derogation from this rule (par.8.5):

- i) in case it is necessary in the news or another factual programme to refer to a particular advertisement ;
- ii) for an entertainment programme it is allowed to use the extracts from advertisements in accordance with the following conditions:
 - minimum six weeks must have past since the advertisement in question was transmitted in paid-for time in the UK;
 - any featured advertisement must be justified by the editorial requirements of the programme

Conclusion

The **identification rule in art.10.1.** of the Directive TVWF is almost literally implemented in the ITC Code.

However the ITC included very detailed rules in its Codes concerning the separation of advertising and editorial content. The regulation is far more detailed than the Directive TVWF on this issue.

The rule on **isolated advertising and teleshopping spots** in **art. 10.2** Directive TVWF is literally implemented in the ITC Code.

The prohibition in art.10. 3 on the use of subliminal techniques is included in the ITC rules but it is clearly explained what is meant by “subliminal techniques”.

Art.10.4 on surreptitious advertising is not literally included in the ITC Codes but they include very detailed rules on product placement and undue prominence. Surreptitious advertising must be considered as prohibited by the ITC Codes and it is explained in detail how this rule must be understood and applied in practice.

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

a. Regulations

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

The ITC Rules on the amount and scheduling of advertising state (par.5.1) that breaks within programmes may be taken only at a point **where some interruption would occur** in any case. Such natural breaks must not damage the integrity or value of the programme in which they occur.

Section 6 of the Rules contains guidance to recognize natural breaks. It defines "natural break" as "a point at which some interruption of the programme continuity would in any case occur were the programme not to be interrupted by advertising.

- i) in the case of **drama and situation comedy**, a break may only take place if there is a clearly marked and dramatically significant lapse of time in the action or there is a complete change of scene, with a significant break in the continuity of the action or, in case of adaptation of stage plays, the original intervals in it may be regarded as natural breaks;
- ii) in the case of **documentaries and discussion programmes**, a break can be taken only if there is a change of topic or exposition, at the end of any filmed inserts in live documentaries or when new participants in a discussion programme are introduced;
- iii) in the case of **light entertainment**, a break is possible only at the end of an act or of a sequence;
- iv) in the case of **music**, a break is normally allowed at the end of a musical composition, a set, between the acts of an opera or a ballet. Breaks are not allowed between movements of a symphonic or similar work, nor between segments of a series of pieces usually heard as a continuous performance and where an audience would not normally leave their seats;
- v) for **children's programmes** the rules on drama and entertainment apply;
- vi) **Sport: breaks may be taken during intermissions of the particular sport being televised**; in live coverage of long continuous events breaks may be taken at points where the focus of coverage shifts from one point to another of the event or breaks may also be taken adjacent to cut-away discussion or background film insert sequences; Where edited recorded sport programmes are shown, break points should be selected to avoid creating the impression that some part of the event has been omitted to accommodate advertising;
- vii) in the case of **outside broadcasts** other than sport events, breaks may be taken when the commentator moves to a new item;

- viii) in the case of **programmes with prizes**, a break may be taken when one of the competitors leaves the scene and before a new one is introduced; otherwise a break may appear at the end of a complete round of questions only;
- ix) if a programme has been **purchased from overseas**, pre-existing breaks can be taken only if the above mentioned conditions have been met;
- x) if the licensee relays a **live programme feed from an overseas broadcaster**, the break pattern of the originating broadcaster may be taken; Where advertising inserted by the originating broadcaster is also taken, the ITC licensee should be able to block or otherwise replace the transmission of any material that does not comply with the ITC Codes and Rules;

In the case of **programmes made up of autonomous parts**, breaks may occur in between these parts only (par.5.2). In sports programmes and similarly structured events or performances containing intervals, breaks may be taken only in the intervals (par.5.3).

In the case of programmes other than those referred to in Par.5.2 and 5.3, a period of at least 20 minutes should elapse between each successive internal break. A slightly shorter interval is acceptable only where the interests of viewers would be better served by taking a break earlier but in such a case the programme must not contain more internal breaks than would be permissible by strict application of the 20-minutes principle (Par.5.4).

Par.5.5 refers to **feature films or made for television films** (excluding series, serials, light entertainment and documentaries) which may not carry an internal break for advertisements if their scheduled duration does not exceed 45 minutes. If the total scheduled duration is more than 45 minutes, the film can be interrupted once for each complete period of **45 minutes** and with a further break if scheduled duration is at least 20 minutes longer than two or more complete periods of 45 minutes. (example: 46-89 min.: 1 break, 90-109 minutes:2, 110-135 minutes: 3, ...)

Paragraph 5.6 contains special provisions concerning **terrestrial Channels 3-5** :

2. In programmes of up to 20 minutes duration: no breaks.

3. In programmes of:

21-44 minutes	1 break
45-59 min.	2 breaks
60-89 min.	3 breaks
90-119 min	4 breaks
120-149 min	5 breaks

4. The maximum durationon of any break within a programme is 3 minutes 50 seconds, of which no more than 3,5 minutes may be advertising and no more than 20 seconds may be programme promotion;

5. Exceptions on these rules may be permitted by the ITC provided that these are justified for programming reasons;
 6. Limited departures from (1) are also permitted in the case of coverage of certain sporting and similarly structured events where there are frequent natural breaks of brief duration. The distribution of advertising in such intervals must have regard to the interests of good programme presentation and it will often be preferable for some intervals not to carry advertising;
- Prohibition and particular separations

The ITC Rules prohibit insertion of advertising in the following programmes (par.3.2) :

- a **religious service** or other devotional programme
- a formal **Royal ceremony** or occasion
- a programme designed and broadcast for reception in **schools**
- a programme for **children** of less than 30 minutes duration (cfr Directive TVWF)
- a programme of live transmission of **Parliamentary proceedings**, including coverage of Committees, of half an hour scheduled duration or less;
- a **religious programme, a documentary or a news or current affairs programme** of less than 30 minutes duration (cfr Directive TVWF)
- such other programmes as the ITC may from time to time specify in particular or general terms, for example, programmes of a particularly harrowing or sensitive nature;

Concerning Channels 3-5, advertisements must not be inserted in any programme of less than 20 minutes scheduled duration (3.2 A).

Par.3.3 imposes **30 sec. buffers** following religious services and Royal ceremonies and a prohibition on advertising following epilogues and other religious items if they appear before a closedown.

Section 4 of the ITC Rules contains general rules (par.4.1) and specific provisions (4.2 and 4.3) concerning **particular separations** of advertisements and programmes.

According to the general principles contained in **4.1** the ITC expects its licensees to exercise responsible judgment on the scheduling of advertising and in particular to operate internal systems capable of identifying in advance, and avoiding, inappropriate juxtapositions between advertising material and programmes, particularly those which could cause distress or offend viewers.

Particular sensitivity is required in relation to advertising inserted in or around news programmes where a news item may completely transform the context in which an advertisement, having some apparent connection with it, may be perceived by viewers.

Par 4.2 contains some specific separation requirements.

Par.4.2.1. mentions a series of products/services which cannot be advertised in or adjacent to **children's programs** or programmes directed at or likely to appeal to audiences below the age of 18 (for example alcoholic drinks, bingo, religious subject matter, slimming products) or below the age of 16 (lotteries, pools); below the age of 10 (female sanitary protection

products). The following may not be advertised in or adjacent to children's programmes: drinks containing more than 1,2% alcohol by volume, liqueur chocolates, matches, medicines, vitamins and other dietary supplements, trailers for films and videos carrying an 18+ or 15+ certificate)

According to par. 4.2.3, advertisements which might frighten or cause distress to children of particular ages or which are otherwise unsuitable for them must be subject to appropriate restrictions on times of transmission designed to minimize the risk that children in the relevant age group will see them.

Par.4.2.4 includes the “**post watershed**” rules:

- Before 9pm the following may not be advertised: advertisements in which personalities or other characters (including puppets) who appear regularly in any children's Tv programme on any UK TVchannel present or positively endorse products/services of special interest to children.
- Before 9pm the following may not be advertised without prior agreement of the Commission: advertisements in which children are shown having any medicine, or vitamin or other dietary supplement administered to them; advertisements for medicines, vitamins or other dietary supplements which use techniques that are likely to appeal particularly to children; advertisements for condoms;

Alcoholic drinks (from 1.2%) may not be advertised in or between **religious programmes** (par.4.2.5).

Charity advertising may not be shown adjacent to any **appeal or community service announcement** transmitted in programme time (par. 4.2.6).

In order to maintain a distinction between programmes and advertisements that is clear to the viewer, and to minimize any risk of confusion between the two, advertisements featuring a **well known personality or performer**, or a person who takes a leading role in or whose appearance is central to a programme, must not be scheduled in breaks in or adjacent to that programme. For these purposes cartoon and puppet characters are classed as ‘persons’. In detailed notes some permissible exceptions to this rule are described.(par 4.2.7)

An advertisement featuring someone who appears regularly as a leading performer or participant in a series or serial must not be broadcast in breaks in or adjacent to the programme in question, whether or not he or she appears in that episode.

The ITC Advertising Standards Code sets out circumstances in which it is permissible for **advertisements for products or services which are based on a particular programme** to contain elements from that programme. Such advertisements must not be scheduled in breaks in or immediately preceding any episodes or editions of the programme to which they relate but may appear in the break immediately following provided they are not first in the break.(4.2.8)

Advertisements for **products or services which appear in any advertisement shown as part of programme content** may not be transmitted within or adjacent to that programme (4.2.9).

Par.4.210 contains specific rules on advertisements featuring **UK politicians**:

- (a) Once a General or European Election, or a by-election for the UK or European Parliament, or a local election (excluding a local by-election) has been called, no advertisement featuring a UK politician may be shown in any area in which the election is taking place.
- (b) In the case of Parliamentary by-elections and local authority elections, advertisements featuring candidates must not be shown in breaks in or adjacent to national news or election results programmes in areas where an election is taking place.

There are particular requirements applicable to advertisements in or adjacent to broadcasts of **live Parliamentary proceedings**. (Section 10.)

Other separations and timing restrictions are foreseen in 4.3:

- (a) The ITC reserves the right to issue directions requiring separations between particular advertisements and particular programmes or types of programme, such as:
 - (i) not first and / or last in any advertising;
 - (ii) not in the two hours preceding or following a particular programme;
 - (iii) not for the duration of a programme series;
 - (iv) neither for the duration nor for a given period after and/or before the series.
 - (v) not before 7.30pm.
 - (vi) not in or adjacent to programmes with a specific audience index..
- (b) On encrypted subscription services where normal programme content-related scheduling constraints have been relaxed, advertising appearing similarly encrypted on such a service may reflect the programme scheduling
Example: Where the programme watershed has been moved on such a service, say to 8pm, then encrypted advertisements that attract a watershed timing restriction will be permitted after 8pm rather than after 9pm.

b. Conclusion:

The general rule included in art.11.1 Directive TVWF on the interruption of programmes is included in par.5.1 of the ITC rules on the amount and scheduling of advertising. Furthermore section 6 of these rules indicates in detail how “natural breaks” must be determined depending on the type of programme.

Par. 5.2 of the ITC rules contains an identical rule as included in art.11.2 of the Directive TVWF.

Par.5.5 contains the rules on interruption of feature films and television films as foreseen in art.11.3 Directive TVWF.

Par.5.4 contains the 20 minutes rule of art.11.4 Directive TVWF but it is mentioned that a slightly shorter interval is acceptable where the interests of viewers would be better served (see above).

Par.6 of the ITC rules contains additional stricter rules for Channels 3-5 (a limited number of programme interruptions are permitted depending on the duration of the programme and a maximum duration of the break is imposed).

Par 3.2 of the ITC rules contains the provisions of art.11.5 of the Directive TVWF. This rule includes other types of programmes, such as a religious service or Royal ceremony which may not be interrupted by advertising.

Section 4 of the ITC rules imposes some particular separation requirements, depending of the type of programme and the type of products/services advertised. Some types of advertising cannot be inserted in or adjacent to certain types of programmes

IV. Quantitative restrictions (Article 18 TVWF Directive)

a. Regulations

- Examination of the legal maximum percentage of daily transmission time devoted to teleshopping and advertising spots and to other forms of advertising

The ITC regulation distinguishes different rules for terrestrial (Channels 3,4 and 5) and other broadcasters.

Average total amount per hour

Par. 1.1 of the ITC Rules is split up in to two subparagraphs, each referring to different types of broadcasters:

- i) par.1.1.1 refers to terrestrial broadcasters **channels 3-5** : the total amount of advertising in any one day must not exceed an average of **7 minutes** per hour of broadcasting;

In the periods between 6pm- 11pm and 7am-9am the total amount of advertising must not, without the Commission's prior permission, exceed an average of eight minutes an hour on any one day;

Transfers of advertising time from one day to another are permissible only exceptionally and where such is necessary in the interests of good programme presentation. Additionally, the Commission may permit transfers to make good losses sustained through unforeseen human or technical failure or unavoidable interruption. In no circumstances may transfers cause the hourly average on any particular day to exceed nine minutes.

For the purposes of this rule a day's broadcasting is deemed to commence at 6am and run for the following 24 hours.

- ii) par.1.1.2 refers to **other services** than those mentioned above and mentions a maximum average of **9 minutes** (15%) per hour of broadcasting; this number can be increased by a **further 3 minutes** (5%) devoted exclusively to teleshopping spots, but this additional 5% must not be used for other forms of spot advertising. In any one clock hour there must be no more than 12 minutes of advertising spots and/or teleshopping spots. (art.18 Directive TVWF)

Teleshopping spots (8.1.1 B)- up to **5%** of daily transmission time above the spot advertising maximum of 15% of transmission time may be devoted to teleshopping spots; this 5% may be increased by any balance of 15% of transmission time not devoted to spot advertising (Directive TVWF art.18);

In par.2.1 the ITC Rules specify what is understood by the term "**advertising items**" for the purpose of calculating advertising time :

- all items of publicity broadcast on behalf of someone other than the licensee in breaks in or between programmes, apart from public service announcements, charity appeals broadcast free of charge, announcements required by the BSC (Broadcasting Standard Commission), information to viewers in accordance with the ITC requirements.
- publicity by the licensees themselves except information to viewers about or in connection with programmes.

Par.2.2. states that intervals of more than 5 minutes between programmes do not count towards the broadcasting time from which entitlement to advertising minutage is calculated (for example interludes, slides with programme details, technical breakdowns).

Section 7 of the ITC rules contains specific rules on “**Long Advertisements**”:

Any advertisement that lasts longer than one minute should be particularly carefully assessed to ensure that there is no risk of confusion with programme material (7.1.1).

Except where the style makes it fully apparent that it is an advertisement, any advertisement which lasts more than a minute must be flagged as such at the beginning, and at the end (7.1.2).

Where an advertisement adopts a programme style there must in addition be a five second reminder to viewers of its advertising nature in every full minute of duration and a three second reminder in any part minute over 20 seconds. Furthermore/Additionally, the *ITC Advertising Standards Code* forbids advertisements to refer to themselves as ‘programmes’ (7.1.3-7.1.4).

Long Advertisements on Channels 3 – 5 :

- (a) Without the ITC’s prior approval no advertisement may exceed seven minutes duration.
- (b) Airtime for advertisements of three and a half to seven minutes duration must be drawn wholly or principally from the same clock hour with any shortfall coming from the closest immediately adjacent clock hour.
- (c) Without the ITC’s prior approval, advertisements lasting longer than three and a half minutes must not be broadcast in the periods 6pm–11pm and 7am–9am.

b. Conclusion

The ITC rules (rule 1.1) include a maximum total amount of advertising in one day, expressed as a maximum average per hour of broadcasting. A maximum of 15% advertising and 5% teleshopping spots per hour broadcasting or maximum 12 minutes in total per clock hour. For Channels 3-5 a stricter regime applies. The rules of art.18. 1 and 2 Directive TVWF have not been taken over in an identical way.

Art.18.3 Directive TVWF is included in par 2.1 of the ITC rules.

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

a. Regulations

Section 8 of the ITC rules on the amount and scheduling of advertising concern teleshopping and self promotional channels.

Teleshopping on “other services” (excluding Channels 3-5) :

Teleshopping windows (8.1.2 B)- teleshopping windows may be broadcast on channels not wholly devoted to teleshopping, subject to the following:

- no more than **8 windows per day** (Directive TVWF art.18 Bis);
- the overall duration may not exceed **3 hours** per day (Directive TVWF art.18 Bis);
- teleshopping windows must not be interrupted by other material (advertising, teleshopping spots or editorial); advertising and teleshopping spots can however be inserted between windows;
- teleshopping windows can be composed of a set of teleshopping spots provided that the window as a whole is presented as a single entity and identified as such in listings of any kind;
- windows must be identified in vision and in sound at the beginning and at the end of the window and their commercial nature must be clear (Directive TVWF art.18 Bis);
- windows must be separately identified in published programme listings.

For Channels 3-5 the rules are more restrictive:

- i) there is no additional air-time for teleshopping on Channels 3-5. Between midnight and 6am these channels may run long-term advertisements, including teleshopping but this airtime will count towards the daily maximum referred to in Section 1.1.A;
- ii) any long-term advertisements exceeding 7 minutes' duration must be separately identified in published programme listings;
- iii) any advertising other than a teleshopping feature of a minimum duration of 15 minutes will count towards the 12 minutes maximum per any given clock hour.

Special rules for Local Advertising Features are provided in 9.2(B):

Local television channels may use all or part of the airtime for teleshopping windows to which they are entitled under the ITC Advertising Standards Code (up to eight windows per

day with an aggregate duration not exceeding three hours per day) for the purpose of broadcasting local advertising features, provided:

- (i) the advertising purpose is clearly flagged to viewers, in vision and sound, at the beginning and end of each feature;
- (ii) the features are of a minimum duration of 15 minutes and are separately identified in listings;
- (iii) a significant proportion of the content of each feature refers specifically to the locality in which it appears. This does not exclude customization of material prepared for wider purposes but such customization should be significant e.g. in the case of coverage of national advertisers, it should not be confined to the addition of slides with details of local outlets but should, for example, include extended material filmed at those outlets.

Teleshopping channels or channels devoted exclusively to teleshopping - channels exclusively devoted to teleshopping can be licensed by the ITC. For this type of channel the above mentioned rules and maximum-duration **do not apply**. However, the rules on maximum duration of advertising are applicable.

b. Conclusion

Article 18 bis is included in the ITC rules in section 8: the time restrictions are identical but teleshopping windows are not possible on Channels 3-5.

VI. Sponsoring (Article 17 Directive TVWF)

a. Regulations

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

The ITC Code of Programme Sponsorship contains the rules that apply to sponsored television programmes and advertiser supplied or funded programmes. The Code also applies to acquire programmes, including those programmes acquired from outside the UK. Films made for cinema, and coverage of sporting or other events taking place outside the UK may deviate from the Code where this is unavoidable.

The 2 keys principles are:

- a. To ensure that programmes are not distorted for commercial purposes, a sponsor must not influence the content or the scheduling of a programme in such a way as to affect the editorial independence and responsibility of the broadcaster (par.4.1).
- b. A distinction between advertising and sponsor credits must be maintained to ensure that credits are not used to extend the time allowed for advertising (4.2).

- Sponsor identification

Sponsors must be clearly identified at the beginning and/or end of the programme. Bumper credits (entering or leaving a commercial break) are also allowed. Credits may be oral and/or visual (10.1).

- Identification of the programmes that cannot be sponsored :

Programmes that *can* be sponsored (par.7):

- i) Individual programmes and series of programmes;
- ii) “showcases” or themed programme blocks provided all the programmes are eligible for sponsorship by the sponsor;
- iii) Some specialist news reports
- iv) Substantive programme strands may be sponsored. Sponsor credits for these strands may only appear adjacent to the strand and must only be adjacent to a commercial break. (there may be no sponsor credits in the programme itself)

The following may *not* be sponsored :

- any other element of the programme service
- a whole television channel
- news programmes

- current affairs programmes (on Channels 3-5 current affairs programmes are identified in the annual return to the ITC; on cable and satellite channels, the ITC will normally regard a current affairs programme as one that contains explanation and analysis of current events and issues, including material dealing with political or industrial controversy or with current public policy)

Certain sponsors cannot sponsor certain programmes:

- consumer advice programmes : these cannot be sponsored by advertisers whose business involves the marketing or provision of products of the type featured
- masthead programming : magazines sharing the name of an advertiser may not supply masthead programming
- merchandising and licensing arrangements : programmes may enter into merchandising arrangements to produce products based on programme characters or other programme-elements, but these companies may not fund any programme with which they are involved in this way.

- **Content of sponsored programmes**

Section 9 of the CPS contains some rules on the content of sponsored programmes.

There may be no reference, whether visual or oral, to the sponsor in the programme or series they are sponsoring. The financial relationship between a sponsor and a broadcaster or programme-maker may create a higher presumption that the inclusion of a sponsor reference is deliberate and/or promotional.

This rule also extends to generic references to the sponsor's product, service or business. When editorially justified there may be occasions when a generic reference is justified, but this may never be in a way that suggests the generic reference is promotional for the sponsor.

There are exceptions to this rule:

- during the coverage of bona fide events when the broadcast and event sponsor is the same advertiser;
- during masthead programmes, when the programme and magazine title share the same name
- when editorially justified, during programmes supplied to a single interest channel;

Concerning programme presenters par.9.2 mentions that presenters of unsponsorable programmes (for example news) must not be used in vision in sponsored programmes scheduled adjacent to the unsponsorable programme in which they appeared.

- **Insertion**

Par.10.2 of the CPS provides that there must be **no sponsor credits within** programmes.

Front sponsor credits must not be integrated within any part of the programme other than its title sequence. (provided that the sequence does not include, and is not preceded by any part of the programme itself).

End and bumper credits may overlap the programme for not more than 5 seconds.

- Duration

The CPS Code only contains rules on duration for Channels 3-5. There are no restrictions on credit lengths for all other channels.

Opening credits must not exceed 15 seconds for a single sponsor and 20 seconds if there is more than one.

Each bumper or end credit must not be more than 10 seconds in length (even in case of multiple sponsorship).

Integrated credits : if the sponsor credit is integrated with a programme title sequence which is longer than the permitted length for sponsor credits, the sponsor credit will be deemed to start with the commencement of the title sequence.

Front credits and, in case of their absence, end credits must identify the sponsor and explain its connection with a programme.

- Content of credits (rule 11)

The principal purpose of sponsor credits must be to create an association between the sponsor and the actual programme being sponsored

The link between the programme and sponsor must be reflected in the sponsor's credits (visually and/or orally). Any use of the sponsor's product must help to reflect the link between sponsor and programme.

Credits must not include any extracts from advertising campaigns that have been transmitted on ITC licensed services within the last three years.

Credits must not contain any direct exhortations to purchase or rental of the sponsor's goods/services. They may not include specific references to the attributes, benefits or prices of those products/services.

Credits must not be used explicitly to resolve promotions in other media.

The front (or end) credit must identify the sponsor and explain the sponsor's actual connection with the programme.

Expressions that suggest the sponsor has compromised the licensee's broadcasting responsibilities are not acceptable (for example "brought to you by..." is not acceptable).

Sponsor credits must not be capable of being confused with items of station continuity. Credits must not feature station continuity presenters or announcers.

Sponsor credits must not be capable of being confused with programmes. Unless the credits are fully integrated with the programme's title sequence, credits must not feature programme

presenters or performers. If the credits are fully integrated, there must be no interaction between the programme presenter or performer and the sponsorship material.

News presenters may not be used in sponsor credits (those who currently present news bulletins or have done so in the previous 12 months)

- References to sponsors in programme trailers (rule 12)

The sponsor's presence should remain secondary in trailers. There may be one simple oral and/or visual reference to the sponsor, lasting not more than 5 seconds in total.

- Other types of sponsoring

1. Product placement

The general rule is that product placement is prohibited.

Par.15.2 however states that where their use is clearly justified editorially, products and services may be acquired at no more or less than full cost. Provision of the article must not be conditional on any specific agreement as to the manner of its appearance in the programme.

If the programme is not prohibited from sponsorship, a "basic text acknowledgement" of a duration of maximum 5 seconds may be included within the end credits, but only if the identity of the product is not apparent from the programme.

Par.10.6 of the ITC Programme Code prohibits "undue prominence" of commercial products/services in programmes. In particular, any reference to such a product or service must be limited to what can clearly be justified by the editorial requirements of the programme itself. An impression of external commercial influence on the editorial process must be avoided. In no circumstances may the manner of appearance of a product be the subject of negotiation or agreement with the supplier.

2. Advertiser references in game shows and viewer competitions (rule 18)

Prizes have to be described in an informational non-promotional manner. Where editorially justified, there may be two mentions of one brand, or one mention each of two brands, in connection with the prizes in game shows or viewer competitions. Any additional prizes must not be identified by brand.

In viewer competitions, the brand mentions may only be given when details of how to enter are given.

Licensees must retain full responsibility for viewer competitions during their programmes. Viewer competitions containing brand mentions cannot stand alone as programmes in their own right and trailers for programmes may not include viewer competitions with brand mentions.

Sponsors cannot donate their own products or services as prizes in competitions contained within programmes they are sponsoring.

3. Coverage of events (rule 19)

With the exception of recognized sporting occasions, events are expected to occur on a one-off, or at the most, annual basis. Television coverage must not be the principal purpose of the event and it must be open to the public.

Any visual or oral reference to advertising at an event must be limited to what can clearly be justified by the editorial needs of the programme itself.

A set of detailed rules explains if and how event's sponsors and advertising can be referred to at the event. These rules seek to ensure that the broadcaster's primary responsibility is to cover the event and not any incidental advertising.

4. Timing and Information services (rule 20)

A programme may include technical information services (e.g. timing) electronically generated directly on screen at reduced or no charge. A brief on-screen acknowledgement to the technical provider may appear on screen whenever the information is displayed.

5. Sponsored support material. (rule 21)

Permitted programme support material are "publications, off-air activities or recorded theme music available in actual programme content".

Par.21 CPS excludes from sponsored support material, programmes that cannot be sponsored. If a sponsor is prohibited or restricted from programme sponsorship, he is restricted or prohibited from sponsoring support material also.

The sponsor may be identified when details of how to get the support material are given. The sponsor credit must be limited to a simple, factual audio and/or visual reference concerning the sponsor's identity and such credits may last no longer than 15 seconds. Support material credits must be separate from, and not integrated with, the programme sponsor credits. A brief visual display of the sponsor's trade mark or registered logo may be included with the sponsor's name.

b. Conclusion

Art.17.1 a Directive TVWF is included in par 4.1 of the CPS.

Art. 17.1 b Directive TVWF is included and further detailed in rule 10.2 (insertion of the sponsor message: front, end and bumper credits are allowed) and in section 11 (content of the sponsor message: the principal purpose must be the association between the sponsor and the programme).

Art. 17.1 c Directive TVWf is included in section 9 of the CPS.

Art. 17.1 c Directive TVWF is included in section 7 (programmes that cannot be sponsored). The rules are far more detailed and also specify which programmes can be sponsored, what cannot be sponsored (e.g. the channel itself) and which sponsors cannot sponsor certain types of programmes.

Art.17.2 and 3 are included in Section 5 of the CPS (prohibited and restricted sponsors). Included are also political bodies, those who cannot advertise on TV, bookmaking, gaming.

The rules on sponsoring are far more detailed than the provisions of the Directive TVWF. The CPS also includes rules on duration of sponsor credits, detailed rules on the content of sponsored programmes, product placement, references to advertisers in game shows, coverage of events, timing and information services and sponsored support material.

VII. New advertising techniques

a. Split Screen Techniques

The ITC tolerates the use of split screen techniques on analogue television, but under strict conditions. During an advertising break textual information on a Tv-programme in text only is permitted.

On digital interactive television the use of split screen techniques in the interactive environment is permitted to a larger extent. TV programme and other commercial content have to be separated but the separation can be spatial and need not be temporal.

b. Interactive Advertising

In February 2001 the ITC issued a guidance note in relation to interactive television services. It should be read alongside the ITC's existing rules for the regulation of content, and in particular the Programme Code, the Advertising Code and the Rules on the Amount and Scheduling of Advertising.

The ITC conducted an in-depth consultation on the regulation of interactive television services during the course of 2000. This generated a total of 32 responses, some very detailed. The ITC also engaged in a series of bilateral discussions with interested parties. Almost all the participants recognized the complexity of the issues, and the fast-moving nature of the market place. There was also a general recognition of the importance of ensuring that regulatory burdens on this new and important market should be as light as possible. But many respondents also highlighted the need to ensure that the existing protection of viewers of linear television services – especially in relation to the separation of commercial content from programmes, and the protection of children – remains adequately safeguarded.

Rules for interactive enhanced programme services

The ITC expects the broadcasters to observe the following rules when providing interactive enhancements to programme services. These rules are based on analogous requirements in the ITC's codes for the content of linear services, and are designed to protect programme integrity.

Licensees' general responsibility.

1 The ITC licensee is required to retain full editorial responsibility;

(a) for any interactive icons the licensee has caused to be present during the course of editorial programmes;

(b) for all editorial programme enhancements, whether on initial or subsequent enhancement screens;

(c) for all advertising contained on the first screen accessed after the first choice to interact; and

(d) for all screens containing enhancements – whether advertising or editorial programming – over which they exercise control.

Note:

The ITC takes the view that advertising exposed as a direct result of choosing programme enhancement material has not been requested by the viewer and so is the equivalent of advertisements appearing during linear programmes. This ‘first click’ content is therefore subject to the same compliance requirements as an advertisement in the breaks in linear programmes. Beyond the ‘first click’, this rule applies only to content clearly designed as a programme enhancement and within the licensee’s own control.

Viewer Transparency

2. The status of different types of content should be transparent to the viewer. Where access is provided to content that has a connection with the programme or which looks like editorial material but over which the licensee cannot assert editorial control, the viewer must not be misled into believing that such material is within the licensee’s control.

Note:

The ITC recognizes that links may be provided to material which resides eg on an Internet site or a third party server. It does not expect licensees to exert control over such content.

3 Advertisements appearing in conjunction with programme enhancements must;

(a) be clearly distinguishable as advertisements; and

(b) be recognizably separate from all editorial content.

4 Where a viewer will incur any cost through choosing to interact (eg from a telephone call), this cost must be made clear.

Commercial content linked to programmes.

5 No interactive icon present during the course of editorial programming may;

(a) be commercially branded; or

(b) be moved or placed by the broadcaster in conjunction with any part of the editorial content, if the resulting interactivity to which it leads contains commercial information related to the editorial.

Note:

This rule does not prevent the icon being branded with the identity of the editorial content provider or the interactive service provider. Nor is it intended to prevent all offers for sale

linked to a programme or the provision of a moveable icon in circumstances where it could provide a link to genuine editorial support material. Its aim is to prevent the presentation of interactive options in a way which could prejudice programme integrity, e.g. by encouraging the production of programmes designed purely as vehicles for selling products.

Licensees should also be reminded of the ITC rules on undue prominence (Programme Code Rule 10.6). These limit references to products or services to what can be justified by the editorial requirements of the programme itself, and set the requirement that no impression be created of external commercial influence on the editorial process.

The rule applies only to the activities of broadcasters – it does not apply to any icons placed on the screen e.g. by equipment manufacturers.

6 *A choice to interact is not the same as a choice to receive advertising or offers for sale. No choice to interact with editorial programming may take a viewer at the first click to a site dedicated wholly to advertising content. When the viewer first chooses to interact with editorial, the destination must offer some editorial programme enhancements. These may be coupled with links to commercial content, but there should be a clear indication that the next click will take the viewer into advertisements or offers for sale.*

7 *Interactive options may contain information about products related to the editorial content of a programme such as books, video or music. But these options must be treated as advertising rather than editorial material.*

Note:

This is not designed to prevent licensees making references to such material in and around programmes under the terms of Section 10.3 of the ITC Programme Code.

8 *Within any programme enhancement, advertising which is not specifically selected by the viewer must not predominate over programme material.*

Note:

The ITC recognizes that it is difficult to quantify screen area exactly but as a general rule will expect licensees to ensure that commercial messages do not fill more than one third of the screen in these circumstances.

9 *No advertisement or other commercial content contained on an enhancement may be for a product or service that could not be transmitted in and around the programme in the linear environment.*

News and current affairs programmes

10 *No advertisement on an enhancement screen to a news or current affairs programme may be for, or contain any reference to, an advertiser, product or service referred to in, or otherwise connected with, the editorial content of that part of the programme where the interactive prompt resides.*

Note:

For example, if a news or current affairs programme referred to a given advertiser then that advertiser may not advertise on any screen, or be referred to in any other advertisement, that will be seen if the viewer opts to interact with the news or current affairs programme.

11 *No direct offers for sale may be provided on an enhancement screen to a news or current affairs programme.*

Consumer advice programmes

12 *Where a programme includes reviews or advice on products or services, no direct offers for sale of the products or services reviewed may be provided on an enhancement screen to the programme concerned.*

Note:

This restriction is designed to exclude invitations to viewers to click into a direct offer for sale linked to the content of a 'what to buy' consumer advice programme. It does not exclude the provision of access to information about relevant products or services, or about the company concerned, nor does it exclude the provision of access to screens providing offers for sale provided these are not linked to the editorial content of the programme.

Children's programmes

13 *No advertisement or other commercial content contained on an enhancement to a children's programme, or programme likely to have a significant child audience, may be for any product or service that could not be transmitted in or adjacent to that programme in the linear environment.*

Note:

This means in particular that advertisements on enhancements to this class of programme may not contain direct offers for sale.

c. Virtual Advertising

In November 2000 an ITC **Guidance Note** was issued concerning virtual advertising. The act is only a guideline but the ITC Rules on AIP mention in par.19.2.4. (section on coverage of events) that the use of electronic imaging systems during broadcast coverage of an event must comply with the ITC guidance in force at the time.

In a preliminary note the Guidance note mentions that it is designed to aid licensees in their interpretation of the ITC CPS and that it aims to reflect current practice in the application of the Code (so it must be read in conjunction with the detailed rules of the Code).

Attention is drawn to the fact that these guidelines have been developed for preliminary trials and may be varied in future in line with experience and future developments.

Definition

The Guidance note gives a short explanation on the technique of "virtual advertising" and its use :

"Electronic imaging systems, such as EPSIS or Imadgine, have been developed to expand the potential market for event sponsors by altering (or adding) the received broadcast of advertising at events to suit different markets. For example, one sponsor of an international event could target different markets by advertising different brands for each receiving country. Another event could sell advertising space ten times over to different sponsoring companies for each receiving nation.

Virtual advertising works by altering the broadcast signal itself. As a result, special precautions must be taken to ensure that the broadcaster does not lose the editorial control of the television signal."

Rules

1. The use of virtual advertising must be made transparent to viewers, either at the beginning or end of any broadcast using the system. At least until such time as the general public understand their use, explanatory credits should explain the purpose of the system (example: "This broadcast uses electronic imaging to replace some of the actual advertising billboards at the sports arena with advertising aimed at the UK market").
2. Systems may not be used to place advertising additional to that which is at an event, nor to place advertisements on unused billboards or other sites. Moving imagery can only be used on virtual billboards that replace actual animated advertising billboards.
3. Subject to guideline 2, systems may be used to replace advertising on moving objects.
4. "Virtual advertising" for tobacco products is not allowed.
5. The use of systems should not result in discernible degradation in picture quality. It must not lead to failure in compliance with the ITC Technical Performance Code, as far as Channels 3, 4 and 5 are concerned.
6. The licensee must have the contractual right to refuse to carry an electronically altered signal and such right should be exercised at his reasonable discretion.
7. The licensee must not in any way be involved in selling virtual advertising to advertisers or their agents.

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

a. Regulations

- General consumer protection regulation

Control of misleading advertisements regulations 1988.

These regulations were made on 23 May 1983 under the European Communities Act 1972, section 2(2), and came into force on 20 June 1988. They implement EEC Council Dir. 84/450 relating to misleading advertising.

They impose a duty upon the Director General of Fair Trading (in his case the duty is a non-mandatory one and arises only if a complaint is referred to him by the ASA, the Independent Television Commission, the Radio Authority and the Welsh Authority to consider complaints on misleading advertising unless “the complaint appears to be frivolous or vexatious”.

The Regulations do not apply to investment advertising and certain advertisements referred to in section 58(1)(d) of the Financial Services Act 1986 (Reg. 3 (1)(a)-(b)).

Once the Director General of Fair Trading is satisfied that the complaint is genuine and that the advertisement concerned is misleading he may, if he considers it appropriate, make an application to the Court for an injunction preventing publication or continued publication of the advertisement (Reg. 5).

Sale of goods act 1979

The Sale of Goods Act 1979 came into force on 1 January 1980 and applies to all contracts for sale of goods made on or after 1 January 1980, including those to people dealing as consumers. As such it forms a major part of the legislative framework concerned with consumer protection.

The Act does not deal with advertising specifically.

Consumer protection act 1987

The Act received its Royal Assent on 15 May 1987. It is divided into three main parts dealing with:

- Part I; liability for damage caused by defective products;
- Part II; safety of goods; and
- Part III; misleading price indications.

Again, the Act does not deal with advertising specifically. However Part III of the Act, which came into force on 1 March 1987 (by virtue of the Consumer Protection Act 1987

(Commencement No 3) Order 1988, SI 1988/2076) makes it an offence to give a misleading price indication in respect of goods, services, accommodation or facilities, or to fail to correct any such misleading price indication (section 20). Section 21 lists five ways in which a price may be considered to be misleading including that it is less than in fact it is or that the price quoted is incomplete and there will be “additional charge(s)”.

Therefore, any misleading price indications will fall within the legislative ambit of the Act as well as within the appropriate self-regulatory or statutory codes of practice.

Parts I and III do not apply to Northern Ireland.

- Audiovisual regulation by the ITC

The ITC Advertising Standards Code (version of September 2002) is designed to inform advertisers and broadcasters of the standards expected in television advertising. It is based on the principles that advertising should not mislead, cause deep or widespread offence or lead to harm, particularly to the vulnerable.

It is the responsibility of the broadcasters themselves to ensure the advertising they transmit complies with both the spirit and the letter of the Code. The Broadcast Advertising Clearance Centre (BACC, which is not a part of ITC or OFCOM) can offer its clients a useful pre-transmission advertising checking and approval service, however this does not remove the licensee’s own responsibility.

a. General principles

The Code contains general principles to be observed in advertising: all advertising should be legal, decent, honest and truthful and may not mislead, cause serious offence or lead to harm. Important rules on the content of advertising are for example:

- i) No advertisement may directly or by implication **mislead** about any material fact or characteristic of a product or service (section 5 contains detailed rules on claims, price claims, creative treatments such as visual techniques and special effects, superimposed text, comparative advertising);
- ii) Section 6 contains rules concerning “harm and offence”. As a general rule “*advertisements must not cause serious or widespread offence against generally accepted moral, social or cultural standards, or offend against public feeling*” (section 6.1)

Section 6.2 mentions that “*advertisements must not encourage or condone violence or cruelty*” and Section 6.6 states that “*Advertisements must not prejudice respect for human dignity or humiliate, stigmatize or undermine the standing of identifiable groups of people*”. Other rules in section 6 concern use of animals, personal distress, privacy, health and safety, the environment and sound levels in advertisements.

b. Conclusion

The general principles of art.12 Directive TVWF are included in section 6 of the ITC Advertising Standards Code. A set of rules on misleading advertising is included in section 5. The rules are more detailed than those described in the Directive.

IX. Specific products and targets

a. Regulations

Section 3 of the ITC Advertising Standards Code lists a set of unacceptable products and services. These are prohibited because there is a statutory prohibition or because there is a risk of potential harm from the power of television advertising used to promote them.

Par 3.1 describes the unacceptable categories:

Advertisements for products or services coming within the recognized character of, or specifically concerned with the following are not acceptable:

(a) breath-testing devices and products that purport to mask the effects of alcohol

(b) betting tips

(c) betting and gaming (except football pools, bingo and lotteries permitted under the [National Lottery etc Act 1993](#) and the Lotteries and Amusements Act 1976 as amended. See also 11.6)

(d) all tobacco products. Also non-tobacco products or services which share a brand name with a tobacco product where these are prohibited by law from advertising in other UK media

(e) private investigation agencies

(f) guns and gun clubs

(g) escort agencies

(h) pornography

(i) the occult etc.

(j) commercial services offering individual advice on personal or consumer problems

Other unacceptable categories can be found under other sections relating to specific products or subjects such as medicines, religion etc ...

Par. 3.2 also prohibits the **indirect promotion** of unacceptable products and services.

- Alcohol (Article 15 TVWF Directive)

Television advertising for alcoholic beverages is permitted providing it complies with the following criteria: (par.11.8 ITC Advertising Standards Code)

Par.11.8.1 contains rules for all advertising:

Advertisements:

(a) must not imply that drinking is conducive to social success or acceptance or that refusal is a sign of weakness. Nor may they imply that the success of a social occasion depends on alcohol

(b) must not link drinking with daring, toughness, bravado, aggression or anti-social behavior

(c) must not suggest that alcohol can contribute to sexual success or that drinking can enhance sexual attractiveness

(d) must not suggest that regular solitary drinking is acceptable or that drinking can overcome boredom, loneliness or other problems

(e) must not suggest that alcohol has therapeutic qualities nor offer it as a stimulant, sedative or tranquillizer. There must be no suggestion that physical or other performance may be improved by alcohol

(f) must not suggest that a drink is to be preferred because of its alcohol content nor place undue emphasis on alcoholic strength. (This does not apply to low alcohol drinks. See 11.8.3)

(g) must not show, imply or encourage immoderate drinking. This applies both to the amount of drink and to the way drinking is portrayed. References to buying rounds of drinks are not acceptable. (See 11.8.3 for exceptions for low alcohol drinks)

Note to 11.8.1(g):

Scenes showing drinks being consumed in one swallow, or a few large swallows, are unlikely to be acceptable.

(h) must not link drinking with the use of potentially dangerous machinery, with behavior which would be dangerous after consuming alcohol (such as swimming) or with driving

Specific rules on **Alcoholic drinks are contained in par. 11.8.2:**

Advertising for alcoholic drinks:

(a) must not appeal particularly to people under 18. Specifically:

(1) anyone associated with drinking must be, and must look, at least 25 years old. (See 11.8.3 for exceptions for low alcohol drinks)

(2) advertisements must not include personalities whose example people under 18 are likely to follow or who have a particular appeal to them

(3) children must not be seen or heard

(b) must not be advertised in a context of aggressive or anti-social behavior

(c) must not publicize sales promotions entailing multiple purchase which appear to encourage excessive consumption. (See 11.8.3 for exceptions for low alcohol drinks)

(d) must not normally show alcohol being drunk in a working environment

The Code also contains specific exceptions for Low alcohol drinks (11.8.3):

Exceptions to 11.8.1 and 11.8.2 apply to advertisements for drinks containing 1.2% alcohol by volume or less so long as the low alcohol content is made clear. (The exceptions are not granted if the advertising might promote a product of higher alcoholic strength or might conflict with the spirit of the rules) :

(a) 11.8.2(a)(1): Anyone associated with drinking must be, and must look, at least 18 years old

(b) The advertisements need not comply with 11.8.1(f) and (g) or 11.8.2(c)

Finally, there are scheduling restrictions applicable in relation to alcoholic drinks which cannot be advertised in or adjacent to **children's programs** or programmes directed at or likely to appeal to audiences below the age of 18.

This regulation is more detailed than art.15 Directive TVWF.

- **Tobacco (Articles 13 and 17 TVWF Directive)**

Par.3.1.(d) of the ITC Advertising Standards Code **prohibits** all forms of television advertising for all tobacco products. (Directive TVWF – art.13)

It is specified that the prohibition extends to non-tobacco products or services which share a brand name with a tobacco product where these are prohibited by law from advertising in other UK media.

Coverage of tobacco sponsored events, or events at which there is branding, signage or advertising for any tobacco company, must be consistent with the current rules and legislation in place at the time of the event.

- Medicines (Article 14 TVWF Directive)

Par.8.2. contains the general principles governing the advertising of medicines, treatments and health claims. These also apply, where relevant, to veterinary products and services.

Advertisements for the following are not acceptable:

(a) medicinal products or treatments available only on prescription (POM)

(b) products for the treatment of alcohol and substance misuse or dependence

(An exception is made for smoking deterrents.)

(c) hypnosis-based procedures (including techniques commonly referred to as hypnotherapy), psychiatry, psychology, psychoanalysis and psychotherapy

(An exception is made for clinics and institutions and certain types of publications, where these have been approved by the ITC after consulting its medical advisors.)

(d) services that offer to prescribe or treat remotely (see 8.1.3(b))

Par. 8.2.2 concerns homeopathic medicinal products

(a) Only homeopathic medicinal products which are registered in the UK may be advertised

(b) The only information which may be included is that which is allowed to appear on product labeling. Advertisements may not, therefore, include medicinal or therapeutic claims or refer to a particular ailment

Par. 8.2.3 mentions that *no medicinal claims may be made for products that do not hold a marketing authorization under the Medicines Act 1968*

Par. 8.2.4 describes the mandatory information to be mentioned in the advertising:

Advertisements for medicinal products must include the following information:

(a) the name of the product

(b) the name of the active ingredient, if it contains only one

(c) the indication (ie what the product is for)

(d) wording such as 'always read the label' or 'always read the leaflet' as appropriate

Par. 8.2.5 lists certain unacceptable references :

(a) Advertisements must not refer to the fact that a medicinal product has been granted a marketing authorization. Nor may they contain any reference to the European Commission or the Medicines Control Agency (MCA) unless the MCA requires it

(b) No advertisement may suggest that a medicinal product is a food, cosmetic or other consumer product

(c) Advertisements for medicinal products must not offer to donate money to charity.

Other specific rules on advertising for medicines are the following:

Par. 8.2.6: Conditions requiring medical attention:

No advertisement may give the impression that a medical consultation or surgical operation is not necessary for conditions for which qualified medical advice should be sought (either instead of self-treatment or prior to it)

Par. 8.2.7: Self diagnosis

No advertisement for a medicinal product may contain any description or case history which could lead to a wrong self-diagnosis

Par. 8.2.8: Guarantee of efficacy

No advertisement for a medicinal product may claim that its effects are guaranteed

Par. 8.2.9: Cure

Unless allowed by a marketing authorization, words, phrases or illustrations that claim or imply the cure of any ailment, illness, disease or addiction, as distinct from the relief of its symptoms, are unacceptable

Par. 8.2.10: Claims of recovery

No advertisement for a medicinal product may make improper, alarming or misleading claims of recovery

Par. 8.2.11: Appeals to fear and exploitation of credulity

(a) Advertisements must not, without good reason, make viewers anxious that they may be suffering from disease or ill-health or might do so if they do not respond to the advertising

(b) No advertisement may falsely suggest that any product is necessary for the maintenance of physical or mental health, whether by people in general or by particular groups, or that health could be affected by not taking the product

Par. 8.2.12: Side effects

No advertisement for a medicinal product may suggest that it has no side effects

Par. 8.2.13: Comparisons

No advertisement for a medicinal product may suggest that its effects are better than, or equivalent to, those of another identifiable medicinal product or treatment.

Par. 8.2.14: 'Natural' products

No advertisement for a medicinal product may suggest that its safety or efficiency are due to it being 'natural'

Par. 8.2.15: Medicines and children

No advertisement for a medicinal product or treatment may be directed at people under the age of 16

Note:

See also Section 7 for additional rules about advertising for products or services likely to interest children and [ITC Rules on the Amount and Scheduling of Advertising](#) for scheduling restrictions.

Par. 8.2.16: Unacceptable images

No advertisement for a medicinal product may use improper, alarming or misleading images of changes in the human body which have been caused by disease, injury or a medicinal product

Par. 8.2.17: Celebrity testimonials and presentations

No advertisement for a medicinal product or treatment may include a testimonial by a person well known in public life, sport, entertainment etc, or be presented by such a person

Par. 8.2.18: Analgesics

A 'tension headache' is a recognized medical condition and analgesics may be advertised for the relief of pain associated with this condition. However, no simple or compound analgesic may be advertised for the direct relief of tension. There must be no references to depression

Par. 8.2.19: Smoking deterrents

Advertisements for smoking deterrents:

(a) must make clear that the indispensable factor in giving up smoking is will-power and that the products are no more than an aid to breaking the habit

(b) must not claim that smoking is made safer whilst the habit is being reduced

- **Minors (Article 16 TVWF Directive)**

Section 7 of the ITC Advertising Standards Code contains a set of rules on advertising and children (people of 15 and under are regarded as children). The rules are generally accompanied by detailed notes and examples to facilitate their application.

Par. 7.1 aims to protect children against misleading advertising:

7.1.1 Children's inexperience

Advertising must not take advantage of children's inexperience or their natural credulity and sense of loyalty

7.1.2 Unrealistic expectations

Advertisements for products of interest to children must take account of the level of experience of those in the relevant age groups so as to avoid arousing unrealistic expectations

7.1.3 Product characteristics

If advertisements for products of interest to children show or refer to characteristics which might influence a child's choice, those characteristics must be easy for children of the appropriate age to judge

7.1.4 Expensive toys

Except in the case of television services carrying advertising directed exclusively at non-UK audiences, advertisements for expensive toys, games and comparable children's products must include an indication of their price

7.1.5 Prices

Where advertising for a children's product contains a price, the cost must not be minimized by the use of words such as 'only' or 'just'

Par. 7.2 prohibits pressure to purchase on children:

7.2.1 Direct exhortation

Advertisements must not directly advise or ask children to buy or to ask their parents or others to make enquiries or purchases

7.2.2 Unfair pressure

Advertisements must not imply that children will be inferior to others, disloyal or will have let someone down, if they or their family do not use a particular product or service

7.2.3 Children as presenters

Children in advertisements must not comment on product or service characteristics in which children their age would not usually be interested

7.2.4 Direct response

Advertisements which offer to sell products or services by mail, telephone, email, internet or other interactive electronic media must not be aimed at children

Par. 7.3 aims to protect children against advertising causing harm and distress:

7.3.1 Mental harm

Advertisements must not contain material which could lead to social, moral or psychological harm to children

7.3.2 Physical harm

Advertisements must not contain material which could lead to physical harm to children

7.3.3 Bullying

Advertisements must not encourage or condone bullying

7.3.4 Vulnerability

Advertisements must neither encourage children to go off alone with strangers nor show them doing so

7.3.5 Sexuality

Advertisements must not portray children in a sexually provocative manner

7.3.6 Distress

Advertisements likely to cause distress to children must not be shown in children's programmes, or in programmes likely to be seen by significant numbers of younger children

7.3.7 Use of scheduling restrictions

Appropriate timing restrictions must be applied to advertisements which might harm or distress children of particular ages or which are otherwise unsuitable for them

Note: Specific Scheduling Restrictions

See the [ITC Rules on the Amount and Scheduling of Advertising](#) for mandatory scheduling restrictions which relate to young viewers and which apply to all advertising in the following categories:

- (a) alcoholic drinks and liqueur chocolates
- (b) condoms
- (c) lotteries, pools or bingo
- (d) matches
- (e) medicines, vitamins or other dietary supplements and including:
 - 1. advertising in any category in which children are shown having any of these products administered to them
 - 2. advertising for products which cannot easily be distinguished from a medicine or where the advertising itself could cause such confusion
- (f) merchandise based on children's programmes
- (g) personalities or other characters (including puppets etc) who appear regularly in a current or recent children's programme on any UK television channel. Restrictions apply where such characters present or endorse products or services of particular interest to children. (The restrictions do not apply to public service advertisements or to characters specially created for advertisements)
- (h) religion, faith or systems of belief
- (i) sanitary protection etc
- (j) slimming products, treatments or clinics
- (k) 15+ and 18+ rated films and videos.

- Cars, motorbikes and automotive products

The ITC Advertising Standards Code states in par.11.9 that:

“No advertisement may encourage or condone dangerous, inconsiderate or irresponsible driving or motorcycling”;

“Advertisements for cars, motorbikes or other automotive products must not:

a) encourage or condone fast or irresponsible driving nor

b) refer to speeds over 70 mph nor

c) demonstrate power acceleration, handling characteristics etc except in a clear context of safety. Any references to such characteristics must not imply excitement or competitiveness.”

A set of detailed notes further explain the application and interpretation of these rules.

- Media

In 2002 the ITC adopted a new set of rules on promotions and cross promotions which came into effect on January 11, 2002.

The overall aims of the new rules on programme, channel and related service promotion are to reach a balanced outcome allowing benefits to be gained, while minimising the potential inconveniences/disadvantages. Benefits include:

- Information to viewers about programmes and related services likely to be of interest to them; and
- Increased understanding about digital television, and progress towards digital switchover.

The problems/disadvantages could include:

- Irritation among viewers about the amount and nature of promotions;
- The impact on editorial integrity if informative promotions included within programmes become advertising; and
- Competition concerns, if promotions are used as advertising for channels or platform service providers in a way that might threaten competition.

The new rules are set out in full below:

1. *ITC licensees may, outside advertising time, and subject to the following rules,*
 - *promote programmes, events and strands being shown by that licensee, and*
 - *make reference to any other channel or related service (such as a website) that they provide.*
2. *Promotions outside advertising time should provide information of value to viewers and should avoid creating significant viewer annoyance. The amount of promotion on all ITC-licensed channels will be periodically reviewed by the ITC, such reviews being informed by surveys of viewer attitudes and an assessment of the extent to which such promotions might affect competition in the relevant television market.*
3. *To promote fair and effective competition while ensuring continuing informational benefits for viewers, there will be special restrictions for Channel 3 licensees, Channel 4 and Channel 5:*
 - a) *Promotions for other channels and related services provided by these licensees, such as websites, are permitted, but must not give an excessive amount of airtime to a particular channel, service, or suite of channels/services.*
 - b) *Specific promotions for any particular platform service provider, including ITV Digital, will not be permitted, outside of paid for advertising minutage, although generic promotions for digital television are allowed*
 - c) *Short, factual, generic mentions of the platform on which a promoted channel or service can be found will be permitted (e.g., DTT, DSat, Cable).*
 - d) *If a programme or service is carried on all main platforms, platform service providers can be mentioned by name (e.g. Sky, ITV Digital, Telewest etc) providing such mentions are of a factual nature and are non-discriminatory (i.e. all main service providers carrying the programme or service must be mentioned).*
 - e) *Licensees may broadcast outside advertising minutage material promoting digital television generically, i.e. without favouring particular service operators.*
 - f) *Promotions outside advertising minutage may not include any information on prices of products or services.*

- g) *These rules remain subject to the existing restriction for Channels 3, 4 and 5 that promotional material shown in centre breaks must not exceed 20 seconds per break.*
4. *Channel 3 licensees will be allowed to make non-financial arrangements for the promotion on the ITV network of 'ITV-branded' programmes, channels and related services in ITV regions where such services are available.*
5. *The primary place for cross-promotions and other promotions is within promotional airtime and not programmes. In-programme promotions should not compromise the editorial integrity of the programmes within which they are placed by any means, or lead to advertising substituting for programme content. Any in-programme mention of other programmes or services:*
- *must provide information likely to be of value to the viewers of the programme containing the promotion,*
 - *must not constitute a call to make a specific purchase.*
6. *Where it is of general interest to viewers and consistent with the style of the programme, it will be acceptable for programmes to contain:*
- *Short factual references to forthcoming programmes/content of obvious interest on the same channel or other channels (e.g. it would be acceptable for one sport programme to be promoted on another).*
 - *Mentions of and visual references to interactive features which might enhance viewer enjoyment of the current and upcoming programmes on the same or related channels.*
 - *Editorial features about forthcoming programmes on the same or related channels, which are of value to viewers in their own right.*
7. *Additionally, certain multi-item programmes of more than one hour's duration (including sport, provided the action is not interrupted) may include taped material that is relevant to the subject matter of the programme.*

NB Material allowed for in this section will not be deemed to be in breach of Section 8.4 of the ITC Programme Code.

8. *Programme end-credits will not be defined as falling within the definition of in-programme time for the purposes of these rules.*

Guidance

9. Special guidance for digital channels

Digital channels which can be shown to have market power in their relevant market will, if requested by a particular distribution platform, be expected to provide a feed clean of interactive icons referring to the interactive service, if that interactive service is not available on the platform concerned. It is not intended that this rule supersede the existing BSkyB undertaking to the OFT on this subject.

Definitions

10. *To be considered as ‘provider’ of another channel or service, a promoting channel must hold or be beneficially entitled to at least 30 per cent of the shares in the promoted channel or service, or possess 30 per cent or more of the voting power in the promoted channel or service.*
11. *Since the public view and general industry opinion are the best indicators of whether or not levels of promotion are ‘excessive’, and since these tend to change over time, no further definition of this term is believed to be useful at the current time. The ITC will monitor and respond to feedback, surveys and complaints which indicate significant changes in these opinions.*

• Politics

According to section 4 of the Advertising Standards Code advertising of a political nature is not permitted:

“No advertisement:

- (a) *may be inserted by or on behalf of any body whose objects are wholly or mainly of a political nature*
- (b) *may be directed towards any political end*
- (c) *may have any relation to any industrial dispute (with limited exceptions)*
- (d) *may show partiality as respects matters of political or industrial controversy or relating to current public policy”*

- **Religion**

In Section 10, the ITC Advertising Standards Code contains special rules applicable for religious advertising.

10.1 Application of rules

The rules in Section 10 apply to:

(a) advertising by, or on behalf of, any organisation or individual whose objectives are or appear to be wholly or mainly concerned with religion, faith or other philosophies or beliefs

(b) any other advertising which appears to have a doctrinal objective

(c) advertising for commercial products or services which draw on or reflect doctrine

10.2 Unacceptable advertisers

No advertising is acceptable from or on behalf of any body which is subject to 10.1 and

(a) which practices or advocates illegal behavior or

(b) whose rites or other forms of collective observance are not normally directly accessible to the public (see notes below) or

(c) which has been shown to apply unreasonable pressure on people to join or participate, or to obstruct or penalize people who wish to leave or cease contact or

(d) which does not provide written assurances that no representatives will call on any respondent without prior arrangement. (See note below)

10.3 The occult, psychic practices and exorcism

With very limited exceptions, advertisements for products or services concerned with
(a) the occult or (b) psychic practices are not acceptable

10.4 Superstition

No advertisement may exploit the superstitious

10.5 Acceptable categories

Doctrinal advertising is acceptable only for the following purposes:

(a) publicizing events such as services, meetings or festivals

(b) describing an organization's or individual's activities or publicizing their name or contact details

(c) offering publications or merchandise

10.6 Fund-raising

Subject to 10.7, doctrinal advertisements must not include appeals for funds

10.7 Religious charities

Advertising for religious charities may include appeals for funds if the charities reliably demonstrate:

(a) that any proceeds will be devoted solely to the benefit of identified categories of disadvantaged third parties

(b) that the conveying of that benefit will not be associated with any other objective (e.g. proselytizing)

Note to 10.7:

The advertising must also comply with 11.3 (Charity Advertising).

10.8 References to beliefs

Advertising must not be used to expound doctrinal beliefs nor suggest that viewers should change their behavior or beliefs

10.9 Services and ceremonies

Doctrinal advertisements must not appear to involve viewers in services or ceremonies

10.10 Benefit claims

Testimonials and references to individual experiences or personal benefits associated with a doctrine are not acceptable

10.11 Counseling

No doctrinal advertisement may offer counseling

10.12 Denigration

No advertisement may denigrate other doctrines

10.13 Vulnerable viewers

No advertisement may exploit children, or the hopes or fears of any other vulnerable category of viewer (eg the elderly, or those who are sick, separated or bereaved)

10.14 Use of fear

No doctrinal advertisement may play on fear. References to the alleged consequences of not subscribing to a particular doctrine are not acceptable

10.15 Children and young people

(a) In general, no doctrinal advertising is acceptable if it is likely to appeal particularly to people under 18. Nor may it appear in breaks in or adjacent to programmes intended principally for them or likely to appeal particularly to them

(b) The only exception is advertising for publications, merchandise or other items provided there is no recruitment or fund-raising link

10.16 Identification

Doctrinal advertisements must make clear the identity of the advertiser and, where different, the body on whose behalf the advertisement is being broadcast

10.17 Advertising on specialized religious channels

The ITC accepts that the characteristics and expectations of audiences for “specialized religious channels” justify the relaxation of some rules for those channels.

All the above mentioned rules are generally completed with detailed notes that specify their application and interpretation.

- **Other categories of products and services**

The ITC Advertising Standards Code also contains specific rules in relation to advertising for the following products/services:

- **Food and dietary supplements (par 8.3)**
- **Slimming (par 8.4)**
- **Finance and investment (section 9)**
- **Other categories (section 11), including:**
 - premium rate telephone services
 - distance selling
 - Charities
 - Homeworking schemes
 - Instructional courses
 - Lotteries, pools and bingo
 - Introduction and dating services

b. Conclusion

Articles 13-16 Directive TVWF are included in the ITC Advertising Standards Code but this includes more detailed rules and also includes a large set of products and areas which are not regulated or not forbidden by the Directive (betting, guns, pornography, escort agencies, breath testing devices, cars, the media, politics, religion, ...). The ITC rules in relation to the categories also covered by the Directive are always far more detailed. For example for minors not only the content of the advertising is regulated but the ITC also imposes a detailed set of rules on the scheduling of advertising directed at children or the scheduling of advertising around children's programmes or before a certain hour of the day.
