

BIRD & BIRD

**THE EVOLUTION OF**  
**NEW ADVERTISING TECHNIQUES**

**DENMARK**

# **DENMARK**

## **- SUMMARY -**

**This summary has been drafted by Bird & Bird Brussels  
on the basis of the national report**

## I. Television

### 1. Definitions

#### ➤ Advertising:

**There is no specific definition of the notion of “advertising” in the Radio and Television Broadcasting Act.**

#### ➤ Sponsoring:

The definition in the Executive Order on Radio and Television Advertising and Programme Sponsorship is quasi similar but somewhat broader to the definition in the directive TVWF. According to the Danish law, sponsoring means “*any contribution, direct or indirect, to the financing of radio or television programmes, including teletext pages, from a natural or legal person not engaged in the broadcasting or production of radio or television programmes, films, phonograms, etc. with a view to promoting the name, trade mark (logo), image, activities or products of the person*”.

#### ➤ Teleshopping:

**There is no specific definition off the notion of “teleshopping” in the Danish law. According to Danish law, teleshopping is categorised as advertising. Therefore the Danish rules on advertising apply in their entirety to teleshopping. Currently, there are no Danish broadcasters broadcasting teleshopping (only broadcasters holding foreign licences).**

### 2. Advertising

**a) Rules on insertion in and between programmes**

Advertising must be inserted in blocks between programmes. Since Danish law does not allow the programmes to be interrupted by advertising breaks, the rules are more restrictive than the provisions contained in the directive TVWF.

## **b) Rules on the maximum amount of advertising**

**Advertising may occupy a maximum of 15% of daily transmissions and a maximum of 12 minutes per hour (cfr art 6.1. of the Executive Order on Radio and Television Advertising and Programme Sponsorship). If the individual licensee is licensed to broadcast for less than one hour, the 12 minutes must be proportionately reduced.**

The Danish rules are more restrictive than directive TVWF.

## **3. Tele-shopping**

Rules on insertion in and between programmes

**The Danish law does not specify the rules on insertion. We assume teleshopping is therefore subject to the general rules on advertising.**

Rules on the maximum amount of teleshopping

Television advertisements, which are in the nature of direct offers to the viewers to buy, sell or rent products and services may not exceed one hour per day and, furthermore, such advertisements must be included in the 15% maximum advertising time set out above (article 6.3 of the Executive Order on Radio and Television Advertising and Programmes Sponsorship).

In addition, the Executive Order on Radio and Television Advertising and Programme Sponsorship provides that the teleshopping may not in the aggregate exceed one hour per day (article 6.3)

The Danish rules are more restrictive than articles 18 and 18a of the directive TVWF as the part of daily transmissions taken up by advertising may not exceed 15% of the total daily transmissions. The Danish law contains no special rules regarding teleshopping blocks.

#### **4. Sponsoring**

**Sponsoring of programme is allowed if clearly identified as such by the name and/or logo of the sponsor at the beginning and/or the end of the programmes. Such credit may not appear in the programme itself. The sponsor's name may appear as moving images containing the sponsor's name and/or trademark (logo), except for programme addressed to children. In no circumstances may the sponsor's name and/or trademark (logo) be accompanied by a special sound background associated with the sponsor or its products. The other rules related on sponsoring are similar to the ones of the directive TVWF.**

#### **5. Product placement – Surreptitious advertising**

**Danish law prohibits the surreptitious advertising. However, products are allowed to be included in programmes if not for marketing purposes. According to the case law and the Consumer Ombudsman, depending on the circumstances, surreptitious advertising may be characterised as contrary to good marketing practice and contrary to the provision on misleading advertising.**

#### **6. New advertising techniques**

##### **a) Split screen technique**

**Is not used in Denmark and there is no specific legislation regarding this technique.**

**b) Virtual advertising**

**Is not used in Denmark and there is no specific legislation regarding this technique.**

**c) Interactive advertising.**

**Is not used in Denmark and there is no specific legislation regarding this technique.**

## **II. Radio**

Basically, the rules regarding the radio advertising are identical to the general rules of television advertising. The Danish Broadcasting Authority and communal aerial installations broadcasting programmes in areas exceeding the area of a single local radio board cannot distribute advertising. The other approved commercial radios are entitled to distribute radio advertising.

The advertising must be inserted in blocks between the programmes. Advertising may occupy a maximum of 15% of daily transmissions and a maximum of 12 minutes per hour. If the individual licensee is licensed to broadcast for less than an hour, the 12 minutes must be proportionately reduced.



### **III. Internet and mobile phone**

**There are no special rules applying to marketing on the Internet, the main rule being that the general rules of Danish law apply.**

It should be noted that, under section 6a of the Marketing Practices Act, suppliers are not allowed to make unsolicited calls via e-mail with a view to sell goods or services. The Nordic Consumer Ombudsmen issued a common position paper on how trading and marketing on the Internet should be carried out in accordance with the existing Danish regulation (the Marketing Practices Act).

There are no specific rules governing marketing via mobile phones, which means that the general rules of Danish law apply.

**DENMARK**

**- REPORT -**

**This report has been drafted by Pernille Fønnesbaek - Advokat**

**Bech-Brunn Dragsted from Denmark**

**in cooperation with Bird & Bird Brussels**

## TABLE OF CONTENT

|   |    |
|---|----|
| TELEVISION .....  | 14 |
| I. Advertising.....   | 14 |
| A. General regulation.....  | 14 |
| 1. General law on consumer protection containing rules on advertising.....                | 14 |
| 2. Specific audiovisual regulation.....   | 20 |
| a) Definitions.....   | 20 |
| b) Authorisation to distribute advertising .....  | 21 |
| c) General rules on the content of television advertising.....                            | 21 |
| d) Rules on duration of advertising and insertion in or between programmes .....          | 27 |
| e) Surreptitious advertising (Article 10 of the Television without Frontiers Directive) . | 29 |
| B. Regulation for Specific Products .....   | 30 |
| 1. Alcohol.....   | 30 |
| 2. Tobacco.....   | 31 |
| 3. Medicinal Products .....   | 31 |
| 4. Cars .....   | 32 |
| 5. Media .....  | 33 |
| 6. Religions, politics and parties, social issues and groups .....                        | 33 |
| C. Self-regulation.....   | 33 |
| II. Teleshopping.....   | 36 |
| A. General regulation.....  | 36 |
| 1. General law on consumer protection .....   | 36 |
| 2. Specific audiovisual regulation.....   | 40 |
| a) Definition, Authorisation and general rules on content.....                            | 40 |
| b) Rules on duration and insertion in and between programmes .....                        | 41 |
| B. Regulation for Specific Products .....   | 41 |
| III. Sponsorship.....   | 41 |
| A. General regulation.....  | 41 |
| 1. General law on consumer protection applicable to all media.....                        | 42 |
| 2. Specific audiovisual regulation.....   | 42 |
| a) Definition .....   | 42 |

|  |    |
|--|----|
| b) Authorisation.....  | 43 |
| c) General rules on the content .....  | 43 |
| B. Regulation for Specific Products .....  | 44 |
| 1. Alcohol, Tobacco and Medicinal Products.....                                  | 44 |
| 2. Cars, media, religions, politics and parties or social issues or groups.....  | 45 |
| IV. Self-Promotion.....  | 45 |
| a) Definition .....  | 45 |
| b) Regulation of self-promotion.....   | 45 |
| V. Other Promotion Techniques .....  | 46 |
| a) Product placement and inevitable advertising .....                            | 46 |
| b) Co-production or co-financing with promotional intent.....                    | 49 |
| c) Merchandising.....  | 50 |
| VI. New Advertising Techniques.....  | 51 |
| RADIO.....   | 52 |
| I. Advertising.....  | 52 |
| A. General regulation.....   | 52 |
| 1. General law on consumer protection containing rules on advertising.....       | 52 |
| 2. Specific audiovisual regulation.....  | 52 |
| a) Definitions.....  | 52 |
| b) Authorisation to distribute advertising .....                                 | 52 |
| c) General rules on the content of radio advertising.....                        | 53 |
| d) Rules on duration of advertising and insertion in or between programmes ..... | 53 |
| B. Regulation for Specific Products .....  | 54 |
| 1. Alcohol.....  | 54 |
| 2. Tobacco.....  | 54 |
| 3. Medicinal Products .....  | 54 |
| 4. Cars .....  | 56 |
| 5. Media .....   | 56 |
| 6. Religions, politics and parties, social issues and groups .....               | 56 |
| II. Shopping .....   | 57 |
| A. General regulation.....   | 57 |

|   |    |
|---|----|
| 1. General law on consumer protection containing rules on distance sale ..... | 57 |
| 2. Specific audiovisual regulation.....                                       | 57 |
| B. Regulation for specific products .....                                     | 57 |
| III. Sponsorship.....   | 58 |
| A. Regulation for specific products .....                                     | 58 |
| 1. Alcohol.....   | 58 |
| 2. Tobacco.....   | 58 |
| 3. Medicinal Products, Cars, Media.....                                       | 58 |
| 4. Religions, politics and parties, social issues and groups .....            | 58 |
| IV. Self-Promotion .....  | 59 |
| V. Other Promotion Techniques .....   | 59 |
| a) Product placement and inevitable advertising, .....                        | 59 |
| b) Co-production or co-financing with promotional intent.....                 | 59 |
| c) c. Merchandising.....  | 59 |
| VI. New Advertising Techniques.....   | 59 |
| CINEMA.....   | 61 |
| I. Advertising.....   | 61 |
| A. General regulation on advertising.....                                     | 61 |
| B. Rules on Specific Products .....   | 61 |
| C. Self-regulation.....   | 62 |
| II. Sponsorship.....  | 62 |
| A. General regulation.....  | 62 |
| B. Rules on Specific Products .....   | 62 |
| III. Self-Promotion .....   | 62 |
| IV. Other advertising techniques.....   | 63 |
| INTERNET .....  | 64 |
| MOBILE PHONE .....  | 67 |

## TELEVISION

### I. Advertising

#### A. General regulation

##### 1. General law on consumer protection containing rules on advertising

###### The Danish Marketing Practices Act

The Danish Marketing Practices Act (Consolidated Act no. 699 of 17 July 2000) (the "Marketing Practices Act") is by far the most essential act containing general rules on advertising in Denmark.

The purposes of the Marketing Practices Act are to regulate competition, to protect consumers and to safeguard the general interests of society. The Marketing Practices Act applies to all private business activities and to similar activities undertaken by public bodies.

###### *Section 1 – "good marketing practice"*

The most important provision is the omnibus clause set out in Section 1. Pursuant to this provision, all business activities must be carried on in accordance with "good marketing practice". The Marketing Practices Act is to be observed in connection with any activity of advertising or marketing regardless of the media chosen for such advertising.

Section 1 reads as follows:

*"This Act shall apply to private business activities and to similar activities undertaken by public bodies. Such activities shall be carried on in accordance with good marketing practices."*

###### *The Consumer Ombudsman*

Pursuant to Section 15(1) of the Marketing Practices Act, it is the duty of the so-called Consumer Ombudsman ("*Forbrugerombudsmanden*") to ensure that the provisions of the Marketing Practices Act are not violated, especially with respect to the interests of the consumers.

The Consumer Ombudsman is authorised to draw up and publish marketing guidelines within specified areas considered important, especially to the interests of the consumers. Under this authorisation, the Consumer Ombudsman has issued a large number of guidelines (more than 50) defining the content of the omnibus clause regarding "good marketing practice" with regard to different areas of marketing. The Consumer Ombudsman has, *inter alia*, issued the following guidelines:

- The Nordic Consumer Ombudsmen's position paper on trading and marketing on the Internet and in similar communication systems (January 1999);
- Children, Young People and Marketing Practices (August 1998);
- Loyalty Programmes in Marketing - Guidelines from the Nordic Consumer Ombudsmen (June 1997);
- Guidelines concerning Distant Selling, etc. in connection with Payment Systems based on Payment Cards (December 1996);
- Guidelines from the Nordic Consumer Ombudsmen concerning Environmentally Oriented Claims in Marketing (March 1994);
- Guidance on Environmental Marketing - The Danish Consumer Ombudsman's Guidelines (April 1993);
- Guidelines regarding Sex Discrimination in Advertising (February 1993); and
- Joint Standards for Television Advertising based on the Legislation on Marketing Practices in the Nordic Countries (August 1991).

The list is not exhaustive.

The Consumer Ombudsman's guidelines are quite extensive and practically cover all main areas of marketing.

All of the guidelines mentioned above, as well as a more detailed description of the Consumer Ombudsman's activities, are available in English on the National Consumer Agency's web site [www.fs.dk](http://www.fs.dk).

The Consumer Ombudsman is authorised to issue orders if an act is in clear contravention of the Marketing Practices Act. However, the final decision of whether an act or omission is contrary to "good marketing practice", or any other provisions of the Marketing Practices Act, falls within the sphere of the Danish courts.

#### *Section 2 - false and misleading advertising*

Section 2 of the Marketing Practices Act, which is of relevance to all kinds of marketing, including advertising, provides as follows:

*"It shall be an offence to make use of any false, misleading, or unreasonably incomplete indication or statement likely to affect the demand for or supply of goods, real or personal property, and work or services.*

*The provisions of the preceding subsection shall apply also to indications or statements which because of their form and reference to irrelevant matters are improper in relation to other persons carrying on a trade or business or to consumers.*

*It shall be an offence to make use of any misleading practices affecting demand or supply in the manner stated in subsection (1) hereof or practices of corresponding effect, if, because of their special form or reference to irrelevant matters, such practices are improper in relation to other persons carrying on a trade or business or to consumers.*

*It shall be possible to substantiate the correctness of indications or statements on real facts."*



This provision applies to all kinds of false or misleading advertising.

#### *Other relevant provisions*

Below is an outline of specific provisions of the Marketing Practices Act that are relevant to mention as they regard the content of advertising messages:

Section 2a of the Marketing Practices Act contains provisions and restrictions on **comparative advertising**, i.e. any advertising which explicitly or by implication identifies a competitor or goods or services offered by a competitor.

Comparative advertising is permitted under the Marketing Practices Act, provided that the comparison:

- (1) is not misleading;
- (2) compares goods or services which meet the same needs or are intended for the same purpose;
- (3) objectively compares one or more material, relevant, verifiable and representative features of these goods or services, which may include their price;
- (4) does not create confusion in the market between the advertiser and a competitor or between the advertiser's trade marks, trade names, other distinguishing marks, goods or services and those of a competitor;
- (5) does not discredit or denigrate the trade marks, trade names, other distinguishing marks, goods, services, activities or other circumstances of a competitor;

- (6) for goods with a designation of origin, relates in each case to products with the same designation;
- (7) does not take unfair advantage of the reputation of a trade mark, trade name or other distinguishing mark of a competitor or of the designation of origin of competing goods; and
- (8) does not present goods or services as imitations or replicas of goods or services which bear a protected trade mark or trade name.

Any comparison referring to a special offer should indicate in a clear way the date on which the offer ends or, where appropriate, that the special offer is subject to availability of the goods and services, and where the special offer has not yet begun, the advertising must indicate the starting date of the period during which the special price or other specific conditions apply.

Section 3 sets out provisions regarding proper *instructions and information* that must be given to the consumer when the order is being placed.

Section 4 contains provisions regarding *guarantees, warranties and similar declarations* given to consumers. Such declarations must be given to consumers only when affording the consumer a considerably better legal position than otherwise provided by existing legislation. Where a guarantee or warranty is given, the supplier must in a clear and unambiguous manner inform the consumer of the contents of the guarantee or warranty and provide the information necessary to make the guarantee or warranty valid. Furthermore, the supplier must in a clear and unambiguous manner state that the consumer's statutory rights will not be affected by the guarantee or warranty.

Section 5 contains provisions regarding misuse of *distinctive business marks*. Pursuant to this provision, no supplier may make use of any trade mark or other distinctive business mark to which he is not legally entitled or make use of his own distinctive business marks in a manner likely to cause confusion with those of other suppliers.

Section 6 provides a prohibition on the use and advertising of *collateral gifts*. Where a supplier sells goods or real property to consumers or performs work or provides services for consumers, he is not allowed to provide any collateral gift or similar inducement, unless such gift or inducement is of negligible value. The advertising of any such gift or inducement other than a gift or inducement of negligible value is similarly prohibited.

Section 6a contains provisions regarding *unsolicited calls to certain customers*.

Section 7 contains provisions regarding *quantitative restrictions* (prohibition setting a ceiling on the number of goods which any individual customer is allowed to buy).

Section 8 lays down a prohibition on the use of *trading stamps* made available prior to a purchase of an article etc.

Section 9 contains restrictions regarding *drawing of lot and prize competitions*. Generally, no attempts must be made to promote the sale to consumers of goods or services offering them the possibility of a prize if they participate in the drawing of lot, prize competition or any other arrangement where the results are wholly or partly dependent on chance, provided that such participation is conditional upon purchase.

The above is not an exhaustive outline of the provisions of the Marketing Practices Act.

### The Danish Price Marking and Display Act

The Danish Price Marking and Display Act etc. (Consolidated Act No. 209 of Marts 28, 2000) (the "Price Marking Act") provides general rules on price marking and display.

Pursuant to Section 1(1), any supplier offering goods for retail sale must by marking, display or other methods clearly indicate the price, including VAT and other taxes, of the product offered.

The Price Marking Act also contains provisions regarding suppliers' display of information to consumers on discounts and special benefits, calculation and display of credit costs etc.

## 2. Specific audiovisual regulation

Pursuant to Danish Consolidation Act no. 701 of 15 July 2001 (the "Radio and Television Broadcasting Act"), Danmarks Radio (the Danish Broadcasting Authority, "DR") and TV2 as well as the stations licensed by the Radio and Television Board are authorised to broadcast audiovisual programmes, cf. Part 5 of the Radio and Television Broadcasting Act.

Television and radio advertising is regulated by Part 8 of the Radio and Television Broadcasting Act and by the Executive Order no. 1348 of 18 December 2000 concerning Radio and Television Advertising and Programme Sponsorship. The Radio and Television Board decides, *inter alia*, cases regarding violation of Part 3 of the Executive Order on Radio and Television Advertising and Programme Sponsorship, cf. Article 31 of the Executive Order.

It is the responsibility of DR, TV2 and those companies possessing a special licence to ensure compliance with the special advertising rules contained in Part 8 of the Radio and Television Broadcasting Act and in the Executive Order on Radio and Television Advertising and Programme Sponsorship.

### a) Definitions

There are no relevant definitions in the Radio and Television Broadcasting Act and the Executive Order on Radio and Television Advertising and Programme Sponsorship of general notions such as advertising and broadcaster as opposed to Directive 97/36/EC of 30 June 1997 of the European Parliament and of the Council (the "Directive Amending the Television without Frontiers Directive") amending the Council Directive 89/552/EEC of 3 October 1989 (the "Television without Frontiers Directive") on the co-ordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, in which Article 1 contains specific definitions of these notions. However,

the definitions are identical to those set out in Danish legal theory. It must be assumed that in cases of doubt, the definitions contained in the Directive will most likely serve as guidance.

b) Authorisation to distribute advertising

Article 2 of the Executive Order on Radio and Television Advertising and Programme Sponsorship specifically lays down that advertising cannot be distributed by DR, which is a public television station, nor by communal aerial installations broadcasting programmes in areas exceeding the area of a single local television board. From that it follows that TV2 and other approved commercial television stations are entitled to distribute television advertising.

c) General rules on the content of television advertising

Joint Nordic Standards for Television Advertising

In August 1991, the Nordic Consumer Ombudsmen and the Directorate of Prices in Iceland set out Joint Standards for Television Advertising based on the legislation on marketing practices in the Nordic countries.

*Nature of the Joint Standards for Television Advertising*

These Joint Standards for Television Advertising governing the content and format of television advertising reflect the views of the Consumer Ombudsmen in Denmark, Finland, Sweden, Iceland and Norway concerning the requirements set for television advertising according to the legislation in the Nordic countries.

The Joint Standards for Television Advertising set a norm for television advertising in the Nordic countries and form part of the legal standard "good marketing practice". They must be supplemented in each country with the special rules applicable to television advertising found in other legislation. The Joint Standards for Television Advertising do to a large extent contain provisions identical to existing legislation and have a subordinate status compared to the specific legislation on television advertising.

The Joint Standards for Television Advertising apply to *advertisers* rather than to *broadcasters*. Broadcasters must comply with the specific rules of the Radio and Television Broadcasting Act and the Executive Order on Radio and Television Advertising and Programme Sponsorship and are subject to control by the Radio and Television Board. Advertisers, on the other hand, are subject to control by the Consumer Ombudsman.

*Ethics and Safety (ad modum Article 12 of the Television without Frontiers Directive)*

Pursuant to paragraph 4 "Ethics and Safety" of the Joint Standards for Television Advertising, advertisements may not

- depict behaviour which can be considered to encourage illegal behaviour;
- encourage practices that can be injurious to the health;
- encourage practices that can be prejudicial to safety in the home, at work, or in traffic, or can contribute to dangerous or irresponsible behaviour; and
- encourage practices that without good reason can be prejudicial to the protection of the environment.

Particular care should be taken that an advertisement

- does not offend good taste and decency;
- does not prejudice respect for human dignity;
- is not offensive or disparaging with regard to sex, race, religion, or nationality; and
- does not offend religious or political convictions.

*Children and Advertising (ad modum Article 16 of the Television without Frontiers Directive)*

Paragraph 7 of the Joint Standards for Television Advertising lays down provisions regarding children and advertising. Pursuant to these rules:

- Advertisements should reflect the fact that all advertisements can be heard or seen by children and young people.

- Special attention should be paid in advertisements to the susceptibility and lack of experience of children and young people.
- Advertisements may not exploit the credulity, trust, or loyalty of children and young people. It may not be suggested that children and young people would be left out of their circle of friends, have less potential for development, or in other ways lose social status if they do not buy the product or service. Advertisements may not be designed so as to tempt children to put themselves in dangerous situations.
- Special care must be taken to avoid misleading children and young people about the kind, size, value, durability, or performance of the product. If it is necessary to acquire accessories (e.g. batteries) in order to use a product as intended or as presented, this must be stated.
- When a product is part of a series comprising a larger entity, it should be clearly stated when the price is given what the total price will be.
- If a product is unsuitable for children under a certain age, information must be given on the lowest age group for which the product is intended unless this is otherwise made clear.
- Information on price may not give children or young people an unrealistic conception of a product's value. Neither may it be given in a way which gives the impression that the product is easily within the reach of any family's economy.
- Advertisements for chocolate, candy, soft drinks, snacks etc. may not give the impression that the product can compensate for an ordinary diet.
- Advertisements may not exhort children or young people to influence anyone to acquire specific products or services.

- Children may participate in advertisements only as a natural part of the milieu presented or if necessary to demonstrate the use of products or services.
- Children may not recommend products or services.
- Figures or persons regularly appearing in programs for children or young people may not appear in advertisements for products or services which are of special interest to children and young people.

### The Executive Order on Radio and Television Advertising and Programme Sponsorship

Articles 7 – 11 of the Executive Order on Radio and Television Advertising and Programme Sponsorship lays down the below general rules on the content of television advertisements:

*General (ad modum Article 12 of the Television without Frontiers Directive):*

- Like any other advertisements, radio and television advertisements must be lawful, decent, honest and truthful and must be presented with an appropriate sense of social responsibility.
- Advertisements must comply with the Marketing Practices Act and in all aspects observe generally accepted ethical advertising rules.
- The advertiser must be identified in the advertisement, possibly by means of trade marks or other similar business identification.
- The employees of the broadcasting company appearing in the company's programmes may not appear in any advertisement broadcast by that company. Likewise, no symbols or standard elements from the company's programmes may appear in the advertisements broadcast.



- No advertisements may incite violent behaviour. They may not include the showing of killings, violence or physical abuse, nor may they unduly play on superstition or fear.
- Advertisements may not be discriminatory on grounds of race, gender, age, religion or nationality, nor may they offend any person's religious or political persuasion.
- Advertisements may not incite behaviour conflicting with the need for safety in the home, at the workplace or in traffic, nor to any other dangerous or irresponsible behaviour, or behaviour that may be harmful to health or the environment. Should the use of a product require certain safety precautions, this shall be stated in the advertisement.
- Advertisements may not show or refer to persons, be it in their private or public capacity, without such persons' prior consent. The same applying to the showing of or reference to anything belonging to a person in a way which gives the impression of a personal recommendation.

*Children and Advertising (ad modum Article 16 of the Television without Frontiers Directive)*

Articles 16 - 23 of the Executive Order on Radio and Television Advertising and Programme Sponsorship provides as follows:

- Advertisements directed at children and young people may not be presented in such a way as to have a mentally or morally detrimental effect on such persons. They may not be presented in such a way that they exploit children and young people's natural credulity and loyalty, or their special confidence in parents, teachers or others. They may not undermine such persons' authority and responsibility.
- Advertisements may not unnecessarily show minors in dangerous situations, or encourage or incite children and young people to stay in or enter dangerous areas, use dangerous products or generally put themselves in dangerous situations.

- Advertisements may not directly appeal to children and young people to persuade others to buy the advertised product, or hold out prizes as a reward for winning new purchasers.
- Advertisements may not undermine social values, for example by conveying the impression that the possession, use or consumption of a product in itself will give children or young people physical, social or other psychological advantages over other children or young people, or that the failure to own, use or consume such a product may have the opposite effect. It is not be permitted for advertisements to be designed to give children and young people the impression that their failure to own, use or consume the relevant product will in any way make them less privileged than other children and young people, or expose them to contempt or ridicule.
- Particular care must be taken to ensure that advertisements will not mislead children and young people as to the size, value, type, durability or performance of the advertised product. Advertisements for toys must give a clear indication of the toy's actual size. Where the use or the shown or described result of the product requires an extra attachment (e.g. batteries), this shall clearly be stated. Where a product forms part of a series, this must be clearly indicated, as must how to obtain the series.
- Statement of prices may not give children and young people an unrealistic idea of the value of the product, e.g. by using the word "only". No advertisement may suggest that the advertised product is easily affordable by any family.
- Advertisements must indicate the degree of skill required to use the product. Where the result of the use of the product is shown or described, the result presented in the advertisement must be reasonably achievable by an average child in the age group for which the product is designed.
- Figures, puppets and similar which are important and regular elements in children's programmes may not appear in advertisements for products of particular interest to

children. Persons affiliated with children's programmes may not advertise products of particular interest to children.

- Advertisements for chocolate, sweets, soft drinks, snacks and similar may not indicate that the product can replace regular meals.
- Children under the age of 14 may only appear in television advertisements where such appearance is either a natural element of the depicted environment, or necessary in order to explain or demonstrate the use of products associated with children.
- Children under the age of 14 may not recommend or provide testimonials endorsing products or services of any kind.

d) Rules on duration of advertising and insertion in or between programmes

➤ Identification

Advertisements must be readily recognisable as such, their content and presentation distinguishing them from editorial or programme material, cf. Section 64 of the Radio and Television Broadcasting Act and Article 3(1) of the Executive Order on Radio and Television Advertising and Programme Sponsorship. The beginning and end of a block of advertisements must be clearly indicated by an acoustic signal or a speaker announcement, or both, as well as an image identification, cf. Article 3(3) of the Executive Order on Radio and Television Advertising and Programme Sponsorship. On teletext a clear image identification is sufficient, cf. Article 3(4) of the Executive Order on Radio and Television Advertising and Programme Sponsorship.

Apart from the fact that in Denmark advertising blocks must be indicated by way of optical as well as acoustic means, the rules correspond to Article 10 of the Directive Amending the Television without Frontiers Directive.

➤ Insertion of advertising

Advertisements must be inserted in blocks between programmes, cf. Section 65(1)(1) of the Radio and Television Broadcasting Act and Article 4(1) of the Executive Order on Radio and Television Advertising and Programme Sponsorship. However, this does not apply to teletext, cf. Article 4(2) of the Executive Order on Radio and Television Advertising and Programme Sponsorship.

Since Danish law does not allow the actual programmes to be interrupted by advertising breaks, the rules are more extensive than the provisions contained in Article 11 of the Directive Amending the Television without Frontiers Directive, which, in certain cases and under certain circumstances, enables broadcasters to interrupt their regular programmes by advertisements.

➤ Amount of Advertising

Advertisements may occupy a maximum of 15% of daily transmissions and a maximum of 12 minutes per hour, cf. Article 6(1) of the Executive Order on Radio and Television Advertising and Programme Sponsorship.

If the individual licensee is licensed to broadcast for less than one hour, the 12 minutes must be proportionately reduced.

Television advertisements which are in the nature of direct offers to the viewers to buy, sell or rent products and services (tele-shopping) may not exceed one hour per day and, furthermore, such advertisements must be included in the 15% maximum advertising time set out above, cf. Article 6(3) of the Executive Order on Radio and Television Advertising and Programme Sponsorship.

The Danish rules are more restrictive than Articles 18 and 18a of the Directive Amending the Television without Frontiers Directive as the part of daily transmissions taken up by advertising may not exceed 15% of total daily transmissions. Also, Danish law contains no special rules regarding tele-shopping blocks. Except for the special rules contained in Article 6(3) of the

Executive Order on Radio and Television Advertising and Programme Sponsorship, tele-shopping is subject to the general advertising rules.

Please note that the rules outlined in Article 6(1)-(3) of the Executive Order on Radio and Television Advertising and Programme Sponsorship do not apply to teletext.

e) Surreptitious advertising (Article 10 of the Television without Frontiers Directive)

Danish legislation does not provide a definition of surreptitious advertisement. However, the Radio and Television Broadcasting Act as well as the Executive Order on Radio and Television Advertising and Programme Sponsorship and the Joint Standards from the Nordic Consumer Ombudsmen for Television Advertising contain relevant provisions:

The Radio and Television Broadcasting Act

Pursuant to Section 64 of the Radio and Television Broadcasting Act, advertisements must be clearly identified so that the content and presentation clearly differ from the ordinary broadcasts.

Executive Order on Radio and Television Advertising and Programme Sponsorship

Articles 3 – 11 of the Executive Order on Radio and Television Advertising and Programme Sponsorship provides the following rules on identification of television advertisements:

- Advertisements must be readily recognisable as such, their content and presentation distinguishing them from regular programmes.
- On television the beginning and end of a block of advertisements must be clearly indicated by an acoustic signal or a speaker announcement, or both, as well as image identification.
- On teletext clear image identification is sufficient.
- Under the Executive Order on Radio and Television Advertising and Programme Sponsorship, subliminal advertising techniques are not permitted.

## Joint Standards from the Nordic Consumer Ombudsmen for Television Advertising

Pursuant to the Joint Standards for Television Advertising,

- Advertisements must be clearly separated from regular programming by a special audio and visual signal.
- Advertisements must be kept clearly separate from regular programming and may not be devised in such a way as to pose a risk of their being confused.
- Situations and programme styles may not be used in a way that may confuse the viewer about whether a regular programme or an advertisement is being shown. Special care must be taken in using extracts from children's programs in advertising. Television personalities may not be used in advertising.
- No technical methods may be used which are intended to influence viewers without their being aware of the message being conveyed. Advertising may not appeal to the subconscious alone, and products or services may not be mentioned or shown in a programme in such a way as to promote sales.

### **B. Regulation for Specific Products**

#### 1. Alcohol

Pursuant to Article 12 of the Executive Order on Radio and Television Advertising and Programme Sponsorship, advertisements for beverages with an alcohol content of 2.8 pct. vol. or more may not be shown.

Advertisements for alcoholic beverages with alcohol content of less than 2.8 pct. vol. may

- not be targeted particularly at minors and especially not show minors drinking such beverages;

- not associate the consumption of alcohol with improved physical performance or driving;
- not create the impression that consumption of alcohol promotes success in the social or sexual area;
- not suggest that alcohol possesses any therapeutic properties, stimulating or sedating effect, nor that it may be used to solve personal conflicts; and
- may not incite excessive consumption of alcohol or present temperance or moderation in a negative light.

## 2. Tobacco

As from 1 January 2002 tobacco advertising in any form is forbidden, cf. Act no. 492 of 7 June 2001 on Prohibition of Tobacco Advertising etc.

There are the following few exceptions :

Until 1 January 2002 only tobacco advertising in radio and television is not permitted, cf. the Executive Order on Radio and Television Advertising and Programme Sponsorship.

## 3. Medicinal Products

Under Danish law, a definition of "medicinal product advertisement" is given in the Danish Medicinal Products (Consolidation) Act (Act no. 656 of 28 July 1995 as amended) issued by the Danish Medicines Agency. The definition is very wide and corresponds to title 8 in Directive 2001/83/EC of 6 November 2001 on the Community Code related to medicinal products for human use.

Under Section 27a of the Medicinal Products Act, advertising for both prescription-only and non-prescription medicines on television is not permitted.

Advertising in other media is subject to the Medicinal Products Act as described below in item B.3 of section I. Advertising under the heading of Radio.

#### 4. Cars

There are no specific rules on television advertising for cars.

However, Article 9(3) of the Executive Order on Radio and Television Advertising and Programme Sponsorship lays down that television advertisements may not incite behaviour conflicting with the need for safety *in traffic*, nor to any other dangerous or irresponsible behaviour or other behaviour that may be harmful to health or the environment.

Furthermore, Executive Order no. 10011 of 4 July 1978 concerning Display and Advertising for Prices on Motor Vehicles provides that any advertisements for the sale by a supplier of cars, caravans, new spare parts and motorcar accessories to consumers should clearly display the following information:

- Cars and caravans: Make, model and net cash price (i.e. price, including all taxes but excluding costs of delivery), and delivery costs, including VAT.
- Used cars: Information on first year of registration.
- Used caravans: Production year.
- If information is displayed that the price may be paid by instalments: Aggregate purchase price (including interest and other additional charges), amount of down payment and the amount, number and time of payment of instalments.
- When displaying information on new spare parts and new accessories: Net cash price (i.e. the price including VAT and any other taxes).



## 5. Media

There are no specific rules on television advertising for media.

## 6. Religions, politics and parties, social issues and groups

Pursuant to Article 9(2) of the Executive Order on Radio and Television Advertising and Programme Sponsorship, television advertising may not be discriminatory on grounds of race, gender, age, religion or nationality, nor may they offend any person's religious or political persuasion.

Additionally, Section 15 lays down that economic interest groups may not be advertised on television such as trade organisations and trade unions, or any religious or political opinions.

### **C. Self-regulation**

On 1 March 2000, a new set of Rules on Marketing of Alcoholic Beverages entered into force. These rules are the result of negotiations between different organisations, including the Danish Ministry of Economic and Business Affairs, the Danish Ministry of Health, the Danish Consumer Council and the Danish Brewers' Association.

The Rules on Marketing of Alcoholic Beverages regulate the marketing of alcoholic beverages with an alcohol content of 2.8 pct. vol. or more and apply to all media.

The content of the Rules on Marketing of Alcoholic Beverages is closely linked to the omnibus clause of the Marketing Practices Act concerning good marketing practice. However, to some extent the Rules on Marketing of Alcoholic Beverages are more detailed, e.g. setting up quite substantial geographic restrictions as to where the advertisement can be shown, prohibiting advertisements showing consumption of alcohol at institutions of tertiary education.

The Rules on Marketing of Alcoholic Beverages focus on three main prohibitions against:

- (1) A general appeal to excessive drinking;
- (2) Marketing aimed at children; and
- (3) Marketing of alcoholic beverages in connection with sports.

In relation to marketing which appeals to children and adolescents the Rules on Marketing of Alcoholic Beverages apply to all alcoholic beverages.

The Rules also establish that marketing of alcoholic beverages with an alcohol content under 2.8% vol. Should only be connected with sports if the products are clearly shown as a low alcohol product.

In order to ensure that companies and organisations observe the Rules on Marketing of Alcoholic Beverages, an independent Committee on Danish Common Standards for Commercial Communications was set up. The permanent committee consists of a representative from the Danish Brewers' Association and a representative from the Danish Consumer Council, whereas the temporary members are chosen among the members of the organisations participating in the negotiation of the Rules on Marketing of Alcoholic Beverages.

In 2000, the committee decided two cases.

In **case I**, Carlsberg Breweries A/S was brought before the Committee for having violated the Rules on Marketing of Alcoholic Beverages in a campaign conducted in the daily papers in Denmark. The full-page advertisements showed a number of young men looking forward to watching the European Football Championships on television in the summer of 2000 while carrying boxes of beers and stocking up refrigerators.

The committee discussed Carlsberg's campaign, drawing in all of the three points mentioned above.

Carlsberg stated that the campaign should be regarded as a humorous one and that they did not violate the Rules on Marketing of Alcoholic Beverages.

The committee decided that the campaign violated the Rules on Marketing of Alcoholic Beverages simply by drawing attention to a potentially large consumption and, therefore, the committee criticized the campaign which Carlsberg simultaneously stopped. Carlsberg took note of the criticism.

In **case II**, Harboe Brewery was brought before the committee at the committee's own initiative. The reason was that they had stated on the labels of two soft drink products (blackcurrant and tonic water) that the products were suitable for mixing with alcohol. Furthermore, Harboe Brewery showed bottles of well-known brands of alcohol on the labels.

The producers of the alcohol brands marketed on the labels of the soft drinks were not brought before the committee. However, the committee informed them about the final decision.

Both soft drinks were visible in the shops and Harboe Brewery simultaneously sold the blackcurrant drink to youth clubs together with other ordinary soft drinks. This made the beverage easily accessible to children, thereby exposing them to the marketing of alcoholic beverages.

Harboe Brewery claimed that the marketing did not violate the Rules on Marketing of Alcoholic Beverages.

The committee held that the marketing did violate the Rules on Marketing of Alcoholic Beverages as Harboe exposed the recommendation of mixing the soft drink product with alcohol to children in connection with their choice and usage of the products. The committee decided that the fact that tonic water is not normally a beverage preferred by children is of secondary importance when considering that the exposure happened directly in connection with other soft drinks enjoyed by children.

Harboe Brewery took note of the criticism and ceased using the labels.

## **II. Teleshopping**

### **A. General regulation**

#### 1. General law on consumer protection

##### The Danish Consolidated Act on Consumer Contracts

Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the Protection of Consumers in respect of Distance Contracts was implemented in Denmark by an amendment to the Danish Consolidated Act on Consumer Contracts (Act no. 781 of 26 August 1996) (the "Act on Consumer Contracts"). Increasing the protection offered to consumers concluding contracts by means of distance communication, the amendment entered into force on 1 June 2000.

The aim of the Directive is twofold. First, the Directive ensures that adequate information about the products is available to consumers before contracts are concluded by means of distance communication; second, the Directive enables consumers to withdraw from a contract thus concluded.

Most of the provisions contained in the Act on Consumer Contracts cannot be deviated from by agreement between the consumer and supplier where such deviation is to the detriment of the consumer.

Tele-shopping is defined as an order placed by a consumer with a supplier, typically by telephone, without the parties meeting at any time. Technically, tele-shopping is a clear example of distance selling since the consumer's decision to purchase is often based exclusively on the product information provided by the supplier in a tele-shopping spot on television.

##### *Scope of the Act on Consumer Contracts*

Distance selling is defined in the Act on Consumer Contracts as a contract concerning goods or services concluded by means of distance communication without the parties to the contract meeting. The contract must be entered into as part of a distance selling system operated by the supplier.

Certain types of contracts, e.g. contracts relating to financial services and contracts concluded for the construction and sale of real property (with the exclusion of leases), are excluded from the scope of the Act on Consumer Contracts. In addition, contracts for the provision of accommodation, transport, catering and leisure services (entertainment, sport or cultural events) are exempted from the extended consumer protection if the specific date or period of time when the service is to be provided is stipulated in the contract.

It should be noted that the burden of proof lies with the supplier when it comes to establishing whether a contract concluded is a consumer contract covered by the Act on Consumer Contracts with its extended consumer protection.

#### *Supplier's obligations*

Consumers concluding a contract by means of distance communication do not have the same access to information about the products they wish to purchase as consumers actually present on the supplier's business premises. Before a contract is actually concluded, the supplier must therefore provide certain information to the consumer.

#### *Information obligation*

The information, which must be provided to the consumer in a clear and comprehensible manner, includes:

- name and address (identity) of supplier;
- description of main characteristics of goods or services;
- price, including VAT and all taxes;
- terms of payment, delivery or performance;
- delivery costs, if any;

- terms of withdrawal;
- cost, if any, of using distance communication; and
- period in which offer or the price remains valid.

The information must be provided within reasonable time before the conclusion of the contract. It must be clearly stated that the information is provided with the purpose of concluding a contract. Although there is no explicit requirement that it should be given in writing, the information must be given in a manner appropriate to the means of distance communication used. As for tele-shopping, information on the television screen would normally be sufficient.

### *Confirmation*

In addition, the supplier must provide the consumer with a confirmation containing the following information:

- supplier's address to which complaints may be sent;
- guarantees and maintenance and repair services;
- withdrawal terms and procedures under the Act on Consumer Contracts; and
- terms regarding termination of contracts of more than one year's or unspecified duration.

Unless the consumer has already received this information, it must be given as early as possible after the conclusion of the contract and no later than when the goods are delivered to the consumer. The information may be provided in writing or in any other durable medium available which is accessible to the consumer.

The above information need not be provided where the consumer orders services to be performed through the means of distance communication if such services are supplied on one occasion only and invoiced by the operator of such means, e.g. various services supplied by telephone such as weather forecasts, horoscopes, news etc.

### *Right of withdrawal*

The consumer is entitled to withdraw from the contract within the two weeks following its conclusion. During this period the consumer may examine the products ordered and then decide whether to keep the goods or accept the services, as the case may be.

With respect to the supply of goods or services made or adjusted to the consumer's specifications, the right of withdrawal only exists until the date when the making or adjustment of the product is begun, provided that the consumer has given the supplier his consent to start this process.

#### *Time limits – supply of goods and services*

With respect to goods, the two-week period starts on the date when the consumer accepts delivery of the goods. If, at this point, the supplier has failed to fulfil his obligation to inform the consumer of his right of withdrawal, the period will not start until the consumer receives such information. In that case, however, the period cannot exceed three months after the consumer's receipt of the goods.

With respect to services, the two-week period starts when the consumer is notified of the conclusion of the contract, provided, as mentioned above, that the supplier at this point has informed the consumer of his right of withdrawal.

#### *Procedure and conditions for return of products*

If the consumer exercises his right of withdrawal, he must return the product to the supplier. In case the consumer decides to ship the products, it is sufficient to hand over the product to the carrier who is engaged to deliver the product to the supplier. The costs incidental to the return of the product are payable by the consumer. The consumer may also exercise his right of withdrawal by simply refusing to receive the product.

Has the supplier agreed to claim the good at the consumer's home address in case of withdrawal, the consumer needs only give notice to the supplier that the right of withdrawal is being exercised. Should the supplier fail to claim the product within three months from the date of the consumer's notification, the consumer may keep the product free of charge.

In order to exercise his right of withdrawal the consumer must return the product in substantially the same condition and quantity as it was delivered. In case the consumer has already started using the product, he cannot withdraw from the contract if the usage has decreased the product's value. On the other hand, the consumer may withdraw, even if the product is damaged or impaired, provided that such damage was not caused by the consumer's negligence or lack of reasonable care.

The supplier cannot advance any claims against the consumer in case of withdrawal. Consequently, the supplier must refund the consumer the sums paid without undue delay after receipt of the product or after notification. The consumer may claim interest if the supplier fails to refund the purchase price within 30 days.

#### *Consumer's rights in case of delay*

The Act on Consumer Contracts also governs the time of delivery and the consumer's rights in case of delay. Unless otherwise agreed, the supplier must deliver the product within 30 days after the order was placed by the consumer. The consumer may withdraw from the contract in case of delay, i.e. when the product is not delivered in its entirety within 30 days or later, if so agreed. This right of withdrawal is available regardless of whether the delay is in fact of any importance to the consumer. The supplier must inform the consumer of this right.

## 2. Specific audiovisual regulation

### a) Definition, Authorisation and general rules on content

Unlike the Directive Amending the Television without Frontiers Directive, Danish law does not contain any explicit definition of tele-shopping. Since in Danish law tele-shopping is categorised as advertising, the Danish rules on television advertising apply in their entirety to tele-shopping. Reference is therefore made to the description of the rules on authorisation, general rules on content etc. above in item A.1 and 2 of section I. Advertising under this heading.



It should be noted that, at present, no Danish television station is broadcasting tele-shopping. Tele-shopping advertising exists only on television stations broadcasting to Denmark but holding foreign licences.

b) Rules on duration and insertion in and between programmes

The provisions of the Executive Order on Radio and Television Advertising and Programme Sponsorship, which were analysed in detail above in item A.1 of section I. Advertising under this heading, contain one provision of relevance only to tele-shopping which lays down further limitations to the duration of tele-shopping.

As noted above in item A.2 of section I. Advertising under this heading, television advertising (1) may not exceed 15% of daily transmissions and (2) the proportion of advertising spots may not exceed 12 minutes per hour.

In addition to those two limitations, the Executive Order on Radio and Television Advertising and Programme Sponsorship provides that tele-shopping may not in the aggregate exceed one hour per day.

**B. Regulation for Specific Products**

There are no specific rules on tele-shopping involving cars, alcohol, tobacco, medicinal products, cars, media, religions, politics and parties or social issues or groups.

However, as tele-shopping is regarded as television advertisements, the rules mentioned above in item B 1-6 of section I. Advertising under this heading will apply.

**III. Sponsorship**

**A. General regulation**

## 1. General law on consumer protection applicable to all media

Sponsorship becomes subject to regulation when taking the form of advertising, in which case the general rules of the Marketing Practices Act are applicable. In relation to sponsorship of radio and television programmes, however, special rules apply, which can be found in the Radio and Television Broadcasting Act and the Executive Order on Radio and Television Advertising and Programme Sponsorship.

## 2. Specific audiovisual regulation

### a) Definition

Article 24 of the Executive Order on Radio and Television Advertising and Programme Sponsorship defines sponsorship as any contribution, direct or indirect, to the financing of radio or television programmes, including teletext pages, from a natural or legal person not engaged in the broadcasting or production of radio or television programmes, films, phonograms etc. with a view to promoting the name, trade mark (logo), image, activities or products of that person.

### *Identification*

It is a principal motive with the Executive Order on Radio and Television Advertising and Programme Sponsorship that a sponsored programme must appear as such. Accordingly, a sponsored programme must be clearly identified as such by appropriate credits appearing at the beginning or end, or both, of the programme, showing the sponsor's name and/or trademark (logo). Such credits, however, may not appear in the programme itself. The sponsor's name may appear as moving images containing the sponsor's name and/or trademark (logo). However, this does not apply where the programme is directed especially at children, in which case the sponsor's name and/or logo must appear as non-moving images. In no circumstances may the sponsor's name and/or trademark (logo) be accompanied by a special sound background associated with the sponsor or its products.

*Which programmes may be sponsored?*

As a general rule, all television programmes may be sponsored, news and current affairs programmes being the important exceptions. These exceptions, however, have a relatively narrow field of application as current affairs programmes cover only programmes directly relating to news of political or social significance such as programmes in the form of news commentaries, reviews of the development in news or political attitudes to news, current events etc. Accordingly, weather forecasts may be sponsored.

b) Authorisation

Generally, all natural and legal persons may sponsor a television programme with the following exceptions:

Television programmes cannot be sponsored by natural or legal persons whose principal activity is to produce or sell:

- Beverages with an alcohol content of 2.8 pct. vol. or more;
- Tobacco products or goods primarily used in connection with smoking;
- Pharmaceuticals.

Nor can political parties sponsor television programmes.

c) General rules on the content

It is a fundamental principle that the sponsor has no influence on the content of the sponsored programme to ensure that its editorial integrity or content will not be affected. This does not mean that the sponsor's products cannot be shown in the sponsored programme, but since the use of the sponsor's products in the programme itself will naturally associate the programme with the sponsor named, a commercial value suggestive of an actual advertisement is more easily obtained by the sponsor than through non-sponsored programmes. Under Section 64 of the Radio and Television Broadcasting Act, radio and television advertising must be readily recognisable as such, their

content and presentation distinguishing them from editorial or programme material. This provision means that surreptitious advertising is not permitted, including product placement.

Thus, if the product does not appear in the sponsored programme as a completely natural part of the programme, this will be contrary to the sponsorship rules contained in the Radio and Television Broadcasting Act and the Executive Order on Radio and Television Advertising and Programme Sponsorship.

A sponsored programme may not in any way exhort the audience to buy or rent the products or services of the sponsor or others. In particular, these products or services may not be singled out for promotion in a special way for promotion purposes. In connection with the obligatory indication of the sponsor at the beginning or end of the programme, a specific description of the products manufactured or marketed by the sponsor is thus not allowed.

Where a sponsored programme includes competitions offering as prizes the products or services of the sponsor or others, the prizes may only be shown and described in a brief and neutral way. This is particularly relevant where the prizes are included in programmes as an element of entertainment since that way the programmes will relatively easily appear as surreptitious advertising for the product in question which is contrary to the identification requirement of Section 64 of the Radio and Television Broadcasting Act. In practice, the provision has been construed so as to make the presentation of the prizes only so extensive as is strictly necessary to hold the competition.

## **B. Regulation for Specific Products**

### 1. Alcohol, Tobacco and Medicinal Products

According to Article 28(1) of the Executive Order on Radio and Television Advertising and Programme Sponsorship, no programmes may be sponsored by natural or legal persons whose principal activity is to produce or sell beverages with an alcohol content of 2.8 pct. vol. or more, tobacco products, or goods primarily used in connection with smoking, or medicinal products. As of 1 January 2002 any sponsorship, including sponsorship of television programmes, is prohibited,

cf. Act no. 492 of 7 June 2001 on Prohibition of Tobacco Advertising etc. , except sponsorship agreements concluded before December 2000 which may continue until July 2003.

## 2. Cars, media, religions, politics and parties or social issues or groups

There are no specific rules regarding sponsorship.

## IV. Self-Promotion

### a) Definition

In the preamble to the Directive Amending the Television without Frontiers Directive, "self-promotion" is described in Recital 39:

*"(39) Whereas it is necessary to make clear that self-promotional activities are a particular form of advertising in which the broadcaster promotes its own products, services, programmes or channels; whereas, in particular, trailers consisting of extracts from programmes should be treated as programmes; whereas self-promotion is a new and relatively unknown phenomenon and provisions concerning it may therefore be particularly subject to review in future examinations of this Directive;"*

### b) Regulation of self-promotion

In Denmark trailers and other advertising of programmes on the channel in question or sister channels are regarded as programmes and, as such, are not subject to the special advertising restrictions of the Executive Order on Radio and Television Advertising and Programme Sponsorship. Trailers etc. may be broadcast at any time during daily transmissions and not only in blocks inserted between the programmes.

However, depending on the circumstances, self-promotion may be in the nature of own advertising for the sale of products and services. This form of own advertising does not differ from regular

advertising and, accordingly, is subject to the special restrictions of the Executive Order on Radio and Television Advertising and Programme Sponsorship. Depending on the circumstances, it may be hard to distinguish programmes, trailers, information etc... from own advertising and thus a concrete assessment of this must be made in each case.

Danish practice concerning self-promotion is in accordance with the provisions contained in the Directive Amending the Television without Frontiers Directive.

## V. **Other Promotion Techniques**

### a) **Product placement and inevitable advertising**

Under Article 3 of the Executive Order on Radio and Television Advertising and Programme Sponsorship, advertising must be readily recognisable as such. Thus, surreptitious advertising is contrary to this provision, including product placement for marketing purposes. However, products are allowed to be included in programmes if not for marketing purposes.

Thus, the Danish rules correspond to the special provisions contained in Article 10(4) of the Directive Amending the Television without Frontiers Directive.

Also, case law has established and the Consumer Ombudsman has assumed that depending on the circumstances, surreptitious advertising may be characterised as contrary to good marketing practice, cf. Section 1 of the Marketing Practices Act, and contrary to the provision on misleading advertising, cf. Section 2 of the Marketing Practices Act.

As an example, reference is made to decision U.1997.792S by the Maritime and Commercial Court in Copenhagen:

A supplier and a local television station were charged under the Danish Press Liability Act with having violated the Danish Marketing Practices Act by broadcasting a

programme on electro therapy treatments described as a consumer advice programme. However, the programme concerned only one supplier's activities and sale of electro therapy devices and treatments, in which connection the supplier's address, telephone number and opening hours were mentioned and shown several times. Also, for the transmission of, and for his participation in, the programme, the supplier had paid an amount of DKK 18,000. Consequently, the programme was deemed to constitute an advertisement.

From the judgement it can be seen that The Maritime and Commercial Court concluded that the local television broadcast was suited to affect demand and that it must be categorised as misleading and improper towards other businesses and consumers, cf. Section 2(3) and (1) of the Danish Marketing Practices Act.

However, for formal reasons, the Maritime and Commercial Court did not find it possible to hold the supplier responsible pursuant to Section 20(1) of the Danish Press Liability Act for violation of the cited provisions of the Danish Marketing Practices Act, and consequently the court found for the supplier. Therefore, the court also found for the television station.

However, distinguishing surreptitious advertising from the regular/legal use of products not for marketing purposes can be difficult.

When determining whether surreptitious advertising is being made for a product or a supplier, the Radio and Television Board evaluates whether the product is being highly praised or described in particular detail, whether the product is given long and heavy exposure by the camera and whether the broadcaster has accepted consideration or the like for showing the product.

An example of surreptitious advertising can be seen in the 1998 decision of the Radio and Television Board:

The Radio and Television Board approached TVDanmark/Kanal 2 concerning its broadcasting of morning television programmes since the board wished to evaluate whether some of the programmes contained surreptitious advertising.

The morning television programme consists of several shorter programmes, where the presenters appear together with children guesting the studio. In several of these shorter programmes there are quizzes and competitions offering prizes to be won by the children.

Leading up to some of the competitions there is an extensive presentation of the prizes. In addition, some of the prizes are mentioned and described several times by the studio presenters, for example that it is "cool to wear Batman sneakers".

Also, it should be noted that in the advertising breaks between those shorter programmes some of the products given as competition prizes are being advertised.

The board found that, as a main rule, presenting the prizes to be won in a competition is legal. However, Article 27(2) of the Executive Order on Radio and Television Advertising and Programme Sponsorship lays down that in such cases the description of the products in question cannot go beyond the information which is reasonably required to hold the competition etc.

In this case, the Radio and Television Board found that the exposure and description of the prizes clearly went beyond what was necessary to hold the competition.

Also, it was noted that this was a children's programme with prizes for children and, consequently, special considerations to protect the children should be made. This in itself should mean that the programme should be even more wary of describing the prizes.

Thus, the board found that several of the programmes contained surreptitious advertising for the prizes described etc.

**Remark:** This decision was made according to some older competition rules. The relevant rule now states that in children's programmes, it is not allowed to show any prizes. They can only be shown in a neutral form.



An example of permitted inevitable advertising can be seen in the Radio and Television Board's decision of 31 January 2001:

The Radio and Television Board was to evaluate whether a television feature on a fair in Herning contained surreptitious advertising for Varta Batteries.

Varta Batteries had not paid any consideration to Mediehuset Fyn, Front TV or other producers involved and had been contacted by a journalist at his own initiative for a comment on the future requirements to batteries.

The feature appeared as a part of the television coverage of the fair and, according to the information available, was intended to identify the most recent technical developments regarding, among other things, batteries. The board found that it was natural for local television stations to cover fairs held in the area, including to show products etc. exhibited there, although features in such television coverage are unquestionably of commercial value to a supplier or a product.

With respect to the feature in question, the board did not find that it exceeded the boundaries of what is permissible. The board noted that, as an illustration to the interview, the feature contained a number of panning shots of visitors to the fair and that the feature seemed to be neither particularly aggressive nor massively exposing the supplier and/or product.

However, the board also stated that in general great vigilance should be exerted as regards features of this type and that television coverage of fairs etc. should aim to present a plurality of suppliers or products.

Thus, this case serves as an illustration that it is legal to present products in programmes etc. so long as the broadcasts are not commercial.

b) Co-production or co-financing with promotional intent

See sections III. Sponsorship under this heading.

c) Merchandising

Despite the effectiveness of merchandising as a special promotion technique, merchandising is not subject to any special regulation under Danish law.

Television programmes that in some way or another involve characters ("products") also available as merchandise are thus subject to the general rules on advertising.

When it comes to applying the rules on advertising to the field of merchandising, the key issue to address is whether the television programme or elements thereof should be categorised as advertising because it relates to products available as merchandise.

The Radio and Television Board dealt with the issue in a case concerning the so-called Pokémon cartoons. The Danish Consumer Agency had asked the board to determine whether a rap song in the programme was an instance of surreptitious advertising.

In principle, the board endorsed the television station's point of view that the station had no influence on which characters etc. were being merchandised and that the merchandising, which took place subsequent to the creation of the programme, should not prevent the broadcasting of the cartoon.

However, the board found that a special feature of the Pokémon cartoons was that each programme was interrupted by a Pokémon rap song introducing a new Pokémon character and that there had in fact been a simultaneous launch of the merchandise and the cartoon.

The television station gave no plausible reason why each episode of the cartoon was interrupted nor why a new Pokémon character was introduced other than to promote the sale of the merchandise. In the board's opinion, the chorus of the rap song, "gotta catch 'em all" contained a direct invitation to purchase the merchandise, especially the Pokémon collection cards.

On these grounds, the board concluded that due to the close interaction between the programme and the products the cartoon as a whole was an instance of surreptitious advertising.

The decision of the Radio and Television Board illustrates that television programmes relating to merchandise are, in general, not seen as advertising where the broadcaster is without influence on whether the merchandise is marketed and where such marketing is taking place after the creation of the programme. However, the interaction between the programme and the merchandise may become so close that the programme or an element of it constitutes (surreptitious) advertising. This will be the case if the programme becomes "product oriented" instead of story telling or informative and employs means capable of exhorting viewers to purchase the merchandise in a manner comparable to traditional, recognisable advertising.

## **VI. New Advertising Techniques**

At present, there are no television or radio broadcasters in Denmark using new advertising techniques such as split screen techniques, interactive advertising, virtual advertising etc. On the part of legislators or the Radio and Television Board, there are no plans to introduce any particular regulation of this area.

## RADIO

### I. Advertising

#### A. General regulation

##### 1. General law on consumer protection containing rules on advertising

See item A.1 in section I. under the heading of Television.

##### 2. Specific audiovisual regulation

Pursuant to the Radio and Television Broadcasting Act, Danmarks Radio (the Danish Broadcasting Authority, "DR") and the stations licensed by the Radio and Television Board are authorised to broadcast audiovisual programmes, cf. Part 5 of the Radio and Television Broadcasting Act.

Radio advertising is regulated by Part 8 of the Radio and Television Broadcasting Act and by the Executive Order on Radio and Television Advertising and Programme Sponsorship. The Radio and Television Board decides, *inter alia*, cases regarding violation of Part 3 of the Executive Order on Radio and Television Advertising and Programme Sponsorship, cf. Article 31 of the Executive Order on Radio and Television Advertising and Programme Sponsorship.

##### a) Definitions

There are no relevant definitions in the Radio and Television Broadcasting Act or the Executive Order on Radio and Television Advertising and Programme Sponsorship.

##### b) Authorisation to distribute advertising

Article 2 of the Executive Order on Radio and Television Advertising and Programme Sponsorship specifically lays down that advertising cannot be distributed by DR and communal

aerial installations broadcasting programmes in areas exceeding the area of a single local radio board. From that it follows that other approved commercial radio stations (cf. Sections 43 and 56 of the Radio and Television Broadcasting Act) are entitled to distribute radio advertising.

c) General rules on the content of radio advertising

Basically, the rules on the content of radio advertising are identical to the general rules on the content of television advertising as set out in the Executive Order on Radio and Television Advertising and Programme Sponsorship. These rules are described above in item A.2.c of section I. Advertising under the heading of Television.

However, the provision (Section 8) stating that employees of the broadcaster appearing in the broadcaster's programmes may not appear in any advertisement distributed by that broadcaster and that no symbols or standard elements from the broadcaster's programmes may appear in the advertisements broadcast, does *not* apply to radio advertising.

d) Rules on duration of advertising and insertion in or between programmes

Advertisements must be readily recognisable as such, their content and presentation distinguishing them from editorial or programme material, cf. Section 64 of the Radio and Television Broadcasting Act and Article 3(1) of the Executive Order on Radio and Television Advertising and Programme Sponsorship. The beginning and end of a block of advertisements must be clearly indicated by an acoustic signal or a speaker announcement, or both, cf. Article 3(2) of the Executive Order on Radio and Television Advertising and Programme Sponsorship.

Advertisements may be broadcast at any time during daily transmissions, cf. Article 5 of the Executive Order on Radio and Television Advertising and Programme Sponsorship. Please note that this differs from television advertisements, which must be inserted in blocks between the programmes.

Advertisements may occupy a maximum of 15% of daily transmissions and a maximum of 12 minutes per hour, cf. Article 6(1) of the Executive Order on Radio and Television Advertising and Programme Sponsorship.

If the individual licensee is licensed to broadcast for less than one hour, the 12 minutes must be proportionately reduced, cf. Article 6(2) of the Executive Order on Radio and Television Advertising and Programme Sponsorship.

## **B. Regulation for Specific Products**

### 1. Alcohol

Reference is made to item B.1 of section I. Advertising under the heading of Television above.

### 2. Tobacco

Reference is made to item B.2 of section I. Advertising under the heading of Television above.

### 3. Medicinal Products

#### The Medicinal Products Act

Section 26 of the Medicinal Products Act sets out an omnibus clause concerning the content of pharmaceutical advertising. Accordingly, all advertisements for medicinal products must be adequate and objective. Information in advertisements must comply with the summary of the product characteristics as approved by the Danish Medicines Agency. The advertisement may not be misleading nor exaggerate the effects of the product.

Pursuant to Section 27,

- Advertising directed at the public for prescription-only medicines is not permitted;

- Advertising non-prescription medicines to be used only after a doctor's diagnosis of the patient or drugs to be used only under a doctor's supervision is not permitted;
- Advertising drugs comprised by the Danish Consolidated Act on Euphoriantics no. 391 of 21 July 1969 with later amendments is not permitted.

Under Section 27b, it is prohibited to advertise drugs that cannot be sold or delivered in Denmark.

It is prohibited to advertise medicinal products prepared in accordance with the instructions of a doctor to be used for a specific patient, cf. Section 27c.

#### Executive Order concerning Advertisements for Medicinal Products

Executive Order no. 793 of 10 September 2001 concerning Advertisements for Medicinal Products implements Council Directive 92/28/EEC of 31 March 1992 on the Advertising of Medicinal Products for Human Use (the "Executive Order on Advertising of Medicinal Products").

Pursuant to Article 1 of the Executive Order on Advertising of Medicinal Products, pharmaceutical advertising may not be surreptitious of nature. It must be clearly stated in the advertisement that it is an advertisement and that a medicinal product is being advertised.

Also, such advertisements must include the following information:

- Name of product and, if consisting of only one active ingredient, generic term;
- Explicit request to read instructions printed on label or leaflet;
- Easy-to-read presentation of effect and any adverse side-effects;
- Other information necessary for correct and suitable application; and
- Request to contact doctor or pharmacy in case of doubt.

Section 2 provides a number of provisions regarding information that may *not* be published in pharmaceutical advertisements:

Most importantly they may not:

- give the impression that it is unnecessary to consult a doctor;
- state that the effect of the product is guaranteed or without adverse side-effects or better or as good as other kinds of treatment, including other medicinal products;
- give the impression that people's general well-being may be affected by using or not using the product;
- give the impression that the product has been certified by public authorities; and
- only or primarily be aimed at children.

Reference is made to Article 2 of the Executive Order on Advertising of Medicinal Products for a complete overview of the restrictions concerning advertising for such products.

Finally, Part 2 of the Executive Order on Advertising of Medicinal Products comprises a set of special rules on advertising targeting doctors, veterinaries, nurses etc.

#### 4. Cars

Reference is made to item B.4 of section I. Advertising under the heading of Television above.

#### 5. Media

No specific rules apply.

#### 6. Religions, politics and parties, social issues and groups

Pursuant to Article 9(2) of the Executive Order on Radio and Television Advertising and Programme Sponsorship, radio advertisements may not be discriminatory on grounds of race, gender, age, religion or nationality, nor may they offend any person's religious or political persuasion.



Please note that Section 15, laying down that advertising economic interest groups on television such as trade organisations and trade unions, or any religious or political opinions is not permitted, does *not* apply to radio advertising.

## **II. Shopping**

No equivalent to tele-shopping exists on any local or national Danish radio station.

### **A. General regulation**

#### **1. General law on consumer protection containing rules on distance sale**

The Act on Consumer Contracts also covers 'radio-shopping'. If a consumer concludes a contract on the basis of a supplier's "shopping spot" on the radio, the consumer is therefore protected by the provisions of the Act on Consumer Contracts, provided that the contract is concluded by means of distance communication without the parties to the contract meeting. Reference is made to the outline of the provisions of the Act on Consumer Contracts in item a. of section II. Tele-shopping under the heading of Television above.

#### **2. Specific audiovisual regulation**

Radio-shopping is not subject to specific regulation in Denmark. Radio-shopping is categorised as advertising and, therefore, covered by the general rules on radio advertising described above. The special limitation on the duration of tele-shopping to a maximum of one hour per day (cf. item A.2.d of section II. Tele-shopping under the heading of Television above) does not apply to radio-shopping.

### **B. Regulation for specific products**

As advertising techniques on radio similar to tele-shopping would be regarded as radio advertisements, the rules set out in item B. of section I. Advertising under this heading above would apply.

### **III. Sponsorship**

Reference is made to section III. Sponsorship under the heading of Television above as the rules concerning sponsorship of radio and television programmes are almost identical. However, a few minor exceptions apply.

With respect to radio stations broadcasting under licence under Part 5 of the Radio and Television Broadcasting Act (programme services broadcast by satellite or cable systems to areas), Part 5a (national and regional terrestrial programme services with special authorisation) or Part 6 (local radio service), they may, as opposed to other radio stations, including the national radio station DR, broadcast sponsored current affairs programmes. In the same way, these radio stations may broadcast programmes subsidised by political parties.

#### **A. Regulation for specific products**

##### 1. Alcohol

The rules are identical to the ones applicable to television, cf. item B.1. of section III. Sponsorship under the heading of Television above.

##### 2. Tobacco

Reference is made to item B of section III. Sponsorship under the heading of Television above.

##### 3. Medicinal Products, Cars, Media

No specific rules.

##### 4. Religions, politics and parties, social issues and groups

Pursuant to Article 28(2) of the Executive Order on Radio and Television Advertising and Programme Sponsorship, programmes which are subsidised by political parties may not be broadcasted.

However, with the exception of programme activities on the fourth and fifth radio channels, this does not apply to licensees pursuant to Part 5 (Programme services broadcast by satellite or cable systems to areas), Part 5a (National and regional terrestrial programme services with special authorisation) or Part 6 (Local radio and television services) of the Radio and Television Broadcasting Act.

#### **IV. Self-Promotion**

Reference is made to section IV under the heading of Television above.

#### **V. Other Promotion Techniques**

##### a) Product placement and inevitable advertising,

Reference is made to section V under the heading of Television above.

##### b) Co-production or co-financing with promotional intent

Reference is made to section V item a. and b. under the heading of Television above.

##### c) c. Merchandising

Reference is made to section V item c. under the heading of Television above.

#### **VI. New Advertising Techniques**

Reference is made to section VI under the heading Television above.

## CINEMA

### **I. Advertising**

#### **A. General regulation on advertising**

There are no special rules governing cinema advertising. Therefore, this form of advertising is subject to the general rules applicable to marketing in Denmark, including in particular the provisions of the Marketing Practices Act. In this connection, reference is made to item [ ] of section [ ] under the heading of [ ].

However, it should be noted that in August 1998 the Consumer Ombudsman issued a set of guidelines governing how advertising aimed at children and young people should be drawn up so as to be in accordance with the Marketing Practices Act (The Consumer Ombudsman's Guidelines regarding Children, Young People and Marketing Practices, August 1998). These guidelines are also applicable to cinema advertising, expressly stating that advertisements and trailers shown in connection with children's movies should contain no violent, frightening or pornographic scenes. In addition, such advertising must comply with the rules set out in the guidelines.

#### **B. Rules on Specific Products**

There are no specific rules regarding alcohol, tobacco, medicinal products, cars or media applicable for advertising in Cinemas.

However, pursuant to the Consumer Ombudsman's Guidelines regarding Children, Young People and Marketing Practices, cinema advertisements and trailers (advertisements for upcoming films) shown in connection with children's movies should comply with items 4 and 5 of these guidelines.

It is expressly stated in the guidelines that no violent, frightening or pornographic scenes should be shown in cinema advertisements or trailers.

### **C. Self-regulation**

Dansk Reklame Film A/S has acquired the rights to provide advertisements to practically all of the cinemas in Denmark.

Dansk Reklame Film A/S distributes 35mm advertisements of 10 minutes' duration to cinemas. Every other week the advertisements are circulated among the screens. Dansk Reklame Film A/S also produces local advertisements.

## **II. Sponsorship**

### **A. General regulation**

There are no rules concerning sponsorship of movies and, consequently, the general rules concerning advertising are applicable to the extent that sponsorship takes the form of advertising. Reference is made to section IV. Other Advertising Techniques below.

### **B. Rules on Specific Products**

There are no specific rules that apply to sponsorships with respect to Cinemas. The general rules on the specific products apply.

## **III. Self-Promotion**

Self-promotion in the form of trailers advertising upcoming films is widely used in connection with cinema advertising. However, no special rules apply to this form of marketing. Accordingly, it is subject to the general regulation described above in item A of section I. Advertising under this heading. Also, trailers are included in the 10-minute block of advertising, cf. above item C of section I. Advertising under this heading.

#### **IV. Other advertising techniques**

##### *Surreptitious advertising/product placement*

On 15 June 1995 the Consumer Ombudsman issued a statement concerning the issue of surreptitious advertising, including product placement, in feature films.

The Consumer Ombudsman stated that, in his opinion, there was no need for a set of guidelines to govern surreptitious advertising/product placement in feature films as the existing rules already provide that advertising which is not readily recognisable as such, including surreptitious advertising in feature films, is contrary to good marketing practice, cf. Section 1 of the Marketing Practices Act and Article 11 of the International Code of Marketing Practices.

## **INTERNET**

There are no special rules applying to marketing on the Internet, the main rule being that the general rules of Danish law apply, including in particular the Marketing Practices Act.

However, it should be noted that under Section 6a of the Marketing Practices Act, suppliers are not allowed to make unsolicited calls via email with a view to selling goods or services.

### **The Common Nordic Position**

In December 1998 the Nordic Consumer Ombudsmen issued a common position paper on how trading and marketing on the Internet should be carried out in accordance with the Marketing Practices Act (the Nordic Consumer Ombudsmen's position paper on trading and marketing on the Internet and in similar communication systems, January 1999).

The common position addresses marketing which from an overall point of view is aimed at the Nordic market.

According to the common Nordic position, marketing should be drawn up and presented so as to make it clear to the consumer that it is, in fact, marketing. Marketing material should thus be distinguishable from other material. Information about the supplier's name, physical address, form of organisation and email address, if any, should be easily accessible to the consumer in a clear and comprehensible manner.

Where a supplier uses hyperlinks to material other than his own, the supplier is generally liable also for the content of such material. In addition, suppliers should not use hyperlinks to material that does not comply with the legislation of the Nordic country in question and the recommendations put forward in the common position.



In connection with trade and marketing, the supplier should, in a clear and comprehensible form, provide all relevant information so as to enable the consumer to evaluate the goods and services marketed and any offers made.

Marketing material on the Internet should be updated on a constant basis and bear dates. If the marketing material is valid for a limited period of time, this should be clearly stated in the material.

The supplier should retain relevant marketing material that has been published on the Internet for an appropriate period of time.

### *Children and young people*

In August 1998 the Consumer Ombudsman issued a set of guidelines concerning marketing aimed at children and young people (Children, Young People and Marketing Practices, August 1998), which also apply to marketing on the Internet.

According to these guidelines, marketing initiatives on the Internet aimed at children and young people must meet certain minimum requirements as well as the other requirements set out in the guidelines.

Thus, there should be a clear distinction between advertising, entertainment (including playing and games) and the possibility of buying (concluding a contract) via the Internet. Further, there should be a clear distinction between marketing aimed at children and young people and marketing of products and services intended for adults only.

Children and young people should not be exhorted to buy products or enter into other contracts via the Internet and there should be appropriate measures ensuring that children and young people do not purchase and conclude contracts via the Internet.

Also, children/young people should not be promised a reward (money, gift etc.) for staying on a home page or participating in one of its activities and parents should be encouraged to participate in and/or watch their children's activities on the Internet.

In addition, marketing should not include links to other web sites that do not comply with the guidelines.

Suppliers should employ current techniques enabling parents to limit the amount of material their children can access on the Internet.

Also, it should be noted that the common Nordic position paper issued by the Nordic Consumer Ombudsmen contains a set of guidelines for marketing on the Internet aimed at children and young people.

## **MOBILE PHONE**

There are no special rules governing marketing via mobile phones, which means that the general rules of Danish law apply.

Under Section 6a(1) of the Marketing Practices Act, a supplier of goods, immovable or movable property or work or services is not allowed to make unsolicited calls by means of electronic mail or automated calling systems (i.e. automatic calls to telephone subscribers automatically leaving an advertising message) with a view to selling his goods or services.

Marketing via mobile phones is a relatively new phenomenon in Denmark. As a consequence, no firm guidelines have been developed with respect to regulation of such marketing, nor has the Consumer Ombudsman issued any actual guidelines in this respect.

As examples of marketing via mobile telephony, however, can be mentioned marketing initiatives where the consumer subscribes to a database and then – most often against payment – receives SMS advertisements within certain specified areas of consumption. However, this form of marketing has not yet been particularly developed in Denmark.

In one matter before the Consumer Ombudsman, a company held prize competitions requiring the participants to submit their responses via SMS messages. Those submitting the quickest answers won.

The Consumer Ombudsman notified the company that, in his opinion, it was unfortunate that so important a means of communication as the telephone was developing into a play and games instrument.

Also, the Consumer Ombudsman noted that the competition would typically appeal to children and young people, who would most likely not be sufficiently aware of the cost of participation and, consequently, there was a risk that they would lose track of their consumption.

Participation in the competition could be stopped by the company barring the user's access to send SMS messages. In that connection, the Consumer Ombudsman noted that SMS messages was included in the subscription agreement with the company. Therefore, it would be contrary to good marketing practice if the only way to stop participation in the competition resulted in a restriction in the regular use of the mobile phone.

In connection with this prize competition, the Consumer Ombudsman pointed the company's attention to Section 9(1) of the Marketing Practices Act, prohibiting the promotion of goods or services by means of prize competitions which are conditional on purchase if the result is wholly or partly dependent on chance.

In the opinion of the Consumer Ombudsman, participation in the prize competitions was conditional on purchase as a number of SMS messages were required to participate. However, prize competitions conditional on purchase are legal if the prize is given to the best performance. On the present basis, the Consumer Ombudsman was not able to assess the ramifications of the competition as the differences in the performances would probably be hard to discern so that an element of chance would exist. Therefore, it would not be possible to characterise the competitions as competitions requiring an actual effort on the part of the participants. However, the Consumer Ombudsman assumed that through technical means a winner could be found in the individual competitions.

Finally, the Consumer Ombudsman noted that this constituted a form of loyalty programme as the competition was an attempt to bind customers. In loyalty programmes no prize competitions should be offered.

The company in question then notified the Consumer Ombudsman that it would make it possible for the consumer to bar only the access to send SMS messages to the competition. With respect to the prize competitions, the company was of the opinion that they complied with the Marketing Practices Act.

\* \* \*