

FINAL REPORT

STUDY ON THE DEVELOPMENT OF NEW ADVERTISING TECHNIQUES

CARAT CRYSTAL**BIRD & BIRD****CARAT CRYSTAL**

Bruno LIESSE
bliesse@carat.be
Guy COECK
gcoeck@carat.be
Chaussée de la Hulpe 189
1170 Brussels

BIRD & BIRD

Agnès MAQUA
agnes.maqua@twobirds.com
Ilse HENDRIX
ilse.Hendrix@twobirds.com
Rue de la Loi 15
1140 Brussels

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I. INTRODUCTION

The study on the development of new advertising techniques falls within the scope of re-examining the Directive on “Television without frontiers”¹ (hereinafter TVWF Directive or Directive), and in particular within the scope of the application of Article 26 of the TVWF Directive which stipulates that by 31 December 2000 at the latest and every two years thereafter, the Commission shall submit to the European Parliament, the Council and the Economic Social Committee a report on the implementation of the Directive, and shall if necessary formulate new proposals with a view to adapting it in line with changes in radio and television broadcasting, in particular having regard to recent technological developments.

It is precisely in this context and for that purpose that the Commission entrusted Bird & Bird and Carat Crystal with the joint preparation of the study on the development of new advertising techniques and its impact on the reviewing of the Directive.

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¹ European Parliament and Council Directive No 97/36/EC of 30 June 1997, amending Council Directive No 89/552/EC on the co-ordination of certain legislative, regulatory and administrative provisions in the Member States concerning radio and television broadcasting activities.

II. OBJECTIVES OF THE DIRECTIVE

The Commission's audiovisual policy is based on two axes:

- the regulatory aspect, whose instrument is the TVWF Directive,
- mechanisms for the financial support of media programmes.

The present study focuses on the regulatory aspect.

The purpose of the TVWF Directive is to create conditions favourable to the free circulation of television broadcasts in the Community (the Directive applies to all forms of transmission intended for the public, television programmes, except for communication services that transmit data or messages on the basis of an individual request).

It provides that Member States shall not impede the reception or retransmission of television broadcasts coming from other Member States for reasons related to the fields co-ordinated by the Directive, that is to say, the promotion of European projects or ones by independent producers, advertising, the protection of minors, public order and the right of reply.

The Directive is an instrument of co-ordination and not harmonisation, in particular as regards publicity, to enable the free circulation of programmes. The basic principles of the Directive are:

1. Monitoring by the broadcasting State (of both the Directive's provisions and the national provisions applicable).
2. Freedom of reception in the Member States.

As regards the rules relating to advertising, the Directive aims to provide general protection.

In effect, to ensure that the interests of televiewing consumers are protected in a complete and sufficient manner on the European scale, television advertising has been subjected to a certain number of minimum rules. Nevertheless, the Member States still have the right to impose stricter or more detailed rules for television broadcasting bodies that relate to their competence.

Thus, the Directive pursues the following protection aims:

- **Consumer protection** is ensured, in particular by the principles of the identification of advertising or the separation of advertising spots from programmes (Article 10).
- **Protection of the integrity of European works** is ensured by the insertion of advertising or tele-shopping spots between the broadcasts, or by the rules governing programme breaks (Article 11).
- **The protection of minors** is ensured by the provisions of Article 16, which specifies that television advertising shall not embody any moral or physical detriment to minors and must accordingly respect certain criteria.
- **The protection of health** is ensured by the ban on advertising tobacco products, and by restrictions on the advertising of medicines available on medical prescriptions and alcoholic drinks (Articles 13, 14 and 15).

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III. METHODOLOGY ADOPTED

The study relating to the development of new advertising techniques has two aspects, which are examined at the same time and in parallel:

- **Carat** considered the economic panorama in ten European countries (Belgium, Denmark, Finland, France, Germany, Great Britain, Italy, the Netherlands, Spain, Sweden)² and
- **Bird & Bird** considered the legal panorama carried out in the 18 Member States of the European Economic Area.

Having regard to the objectives pursued, which are on the one hand to analyse the present situation in the various national advertising markets and on the other hand to analyse probable developments in advertising, sponsorship and tele-shopping techniques in the various media (television, radio, cinema and the Internet), and this at both the legal and economic levels, the study was carried out in several phases.

In effect, wishing to achieve efficiency and perfect coherence in terms of the responses provided by the other Member States, the first phase of the study was carried out in three Member States referred to as "laboratory States" Those states are regarded as interesting, both:

- because of the maturity of their national advertising market (UK),
- and because of their cultural complexity (B),
- and because of the extent of the regulatory system applicable in the advertising sector (F).

² These 10 principal markets represent in effect the greatest proportion of the activity studied, and offer every guarantee of correctly grasping the evolutions of the new communication technologies and their impact on commercial communications and related sectors.

At the end of this first phase a working framework emerged, which made it possible to establish guidelines serving as a basis for extending the study to the other EEA territories.

The working framework adopted therefore responds to a desire to be able to compare the various reports easily and may therefore deviate from the traditional national regulatory schemes, to the advantage of a quest for harmonisation.

Starting from a comparison of the two reports by Bird & Bird and by Carat, it has proved possible to highlight the impact that technological changes have or could have in legislative and regulatory terms.

That is the objective of the present final report, which marks out the major orientations that emerged during the seminar on 17 January 2002.

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IV. COMPOSITION OF THE STUDY

1. PRESENT ADVERTISING PANORAMA

A. At the economic level

a. *Inventory of the indicators and description of the attached reports and of their content*

With a view to re-examining the “Television without frontiers” Directive and prior to the legal report, it seemed useful to collect all the quantitative indicators and technical information that could contribute towards a description at the economic level of the various modes of advertising activity used, in the various markets studied, in the case of four media: television, radio, the cinema and the Internet.

In effect, an analysis limited to the theoretical description of the advertising methods and their applications would not have yielded a proper account of the forces in play, the tendencies and the crucial questions relating to the numerous aspects of the Directive.

The collection of data covered ten countries (see p. 7) and was the subject of the publication of attached reports containing a basis of important information over the period 1996 to 2000, whose structure is described below (see the European Commission site, URL: www.europa.eu.int/comm/avpolicy/stat/studi-en.html).

The aim of this chapter is not to reproduce the content of the national economic reports, but to extract the main facts and lessons drawn from them.

The content of the attached reports is composed of the following:

1.1 Introduction

The series of data presented in the tables and diagrams of the attached reports constitute the raw material for analysis and are devoid of any subjective or legal interpretations. This broad “snapshot” of the markets is based on the sources available (official or private) and has certain limits relating to emergent advertising techniques or the most recent media entities, both absent from the studies and inventories. Certain methodological variations from one country to another may also render the comparisons sometimes arbitrary.

The structure of the various reports is as follows:

1.2 General evolution of advertising investments accorded to the media

Pan-European vision

General indicators

Advertisers in each economic sector and major investors

Buying and selling middlemen

1.3 TV television (10 countries studied)

General indicators

Categories of advertising methods: definitions

General information, by registered broadcaster

Commercial offer

Audience data

Advertising investments in the media (details)

1.4 Radio (10 countries)

General indicators

Categories of advertising methods: definitions

General information, by broadcaster listed

Commercial offer

Audience data

Advertising investments in the media (details)

1.5 Cinema (10 countries)

General indicators

Commercial offer

Audience data

Advertising investments in the media (details)

1.6 Internet (10 countries)

Introduction

General indicators

Audience data

Advertising investments in the media (details)

Commercial offer

Comments:

- On the content of points 1.3 to 1.6 above (description of the data for each medium and country), reference should be made to the attached reports. These observations, in the form of tables and diagrams prepared to a standard framework, in effect show extremely variable results depending on the media and countries studied; the purpose of these chapters was to put at the disposal of Bird & Bird all the source information

for the legal aspect of the study. Readers of the present report can of course obtain free access to them for any further information or clarification.

- The countries covered by the study are: Belgium, Denmark, Finland, France, Germany, Great Britain, Italy, the Netherlands, Spain and Sweden.
- URL address of the Commission's site:
www.europa.eu.int/comm/cvpolicy/stat/studi-en.html

b. Main observations and tendencies

1. On the measurement of advertising investments in the mass media

- The overall figures presented in this chapter are based on the **gross** rates for “media space” and not on the investments effectively **invoiced** to advertisers or their middlemen (purchasing centres and advertising agencies). The margin between the budgets actually invoiced and the information published in official monitors may on the one hand be substantial, and on the other hand can vary widely from one country to another or one medium to another. The effective receipts of the media production companies (sales middlemen for the media, which are their “proxies”) related to invoiced advertising space are declared inaccessible.
- However, this discrepancy between “amounts actually invoiced” and the investments published also depends on the valuation methods in the monitors, i.e. the way in which the gross rate is defined (the “space value”).
- A parameter that can cause marked variation of the difference between the actual cash flow and the figures published in the monitors (or “advertising dipsticks”) is whether or not **rebates** of any type are considered:

- Standard tariff discounts (package offers, promotional offers).
 - “Agency commission” (commission expressed as a percentage and paid to middlemen except in some countries, see above).
 - Non-standard tariff discounts (negotiations and/or specific offers).
 - Specific tariffs: “non-sectorial”, public benefit campaigns, generic campaigns, humanitarian and charitable causes, public services or government campaigns, etc.
 - Exchanges (intra-media or related to conjoint commercial activities).
- We stress this point since a significant part of the advertising or “commercial” activities carried out in **non-standard** advertising formats (excepting sponsorship) is not counted in the official monitors. The same is true of **exchanges** in most cases.
 - Although some countries propose indicators of net advertising receipts, they are regarded as unofficial and/or based on a limited sample of the market or on an extrapolation method (general weighting of the results, without exhaustive recording of actual values). Moreover, the methodologies vary markedly from one country to another, and this makes it impossible to carry out any comparative analysis, leaving aside the problem of how objective the results are.
 - It should be noted that the proportion of “supports” (or the entity of a medium, such as TF1 or CNN in the case of television) and advertising methods not covered by the official or private barometers (such as that of the IAB for Internet in most countries) is increasing, and that an ever larger margin of reliable information is left out of account by the analyses.
 - It could be useful in this connection to consider the benefits of harmonisation between the **indicators** of the European markets in relation to media investments, or their adoption, co-ordination, or a definition of their scope by a public body. In many areas the professional associations show their **methodological, financial and organisational limits**. Disregarding the fact that they have very limited powers of

intervention with the suppliers of such information, who represent most of their source of funding (media producers, advertisers and advertising space purchase middlemen, depending on the case).

- It should also be pointed out that advertising methods that do not fit explicitly in the field of the TVWF Directive are missing from the indicators relating to advertising investments (and from those relating to media audiences), such as certain forms of sponsorship, product placement or split screen (or shared screen; see the definition given in Part B). This phenomenon largely inhibited data collection for the purposes of the present chapter, and no more pertinent solution can be found than to establish a framework imposed by a public or professional body in line with a framework desired by the European Commission.

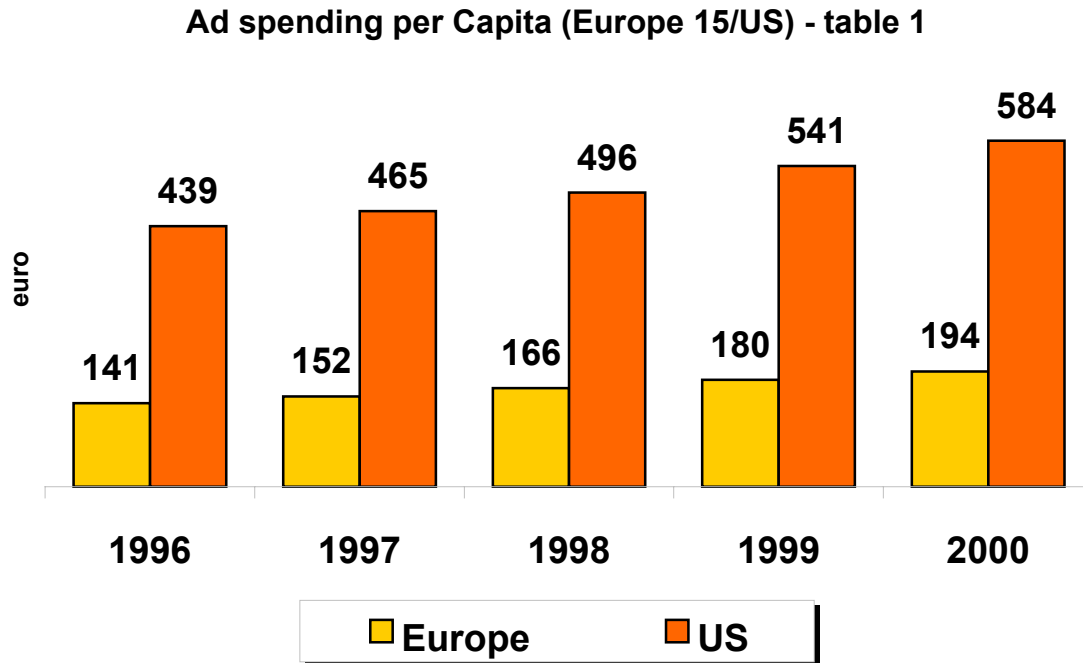
2. *On the evolution of advertising investments in the mass media*

- Before going into the technical aspects and the opinions stated by numerous experts concerning the evolution of the audiovisual media and advertising (Part II, economic aspect), it seemed necessary to shed some light on the purely economic trend of the evolution of advertising revenues. The summary below is based on a selection of general indicators sufficient to extract the fundamental elements (the complete data, country by country, are also published on the Commission's site).

Overall view

- (Table 1) On the basis of an intercontinental view, we see that the United States devote more effort to marketing than anywhere else in the world: on their own, they would represent around 50% of the advertising budgets invested in the mass media each year, to say nothing of their interests outside their own territory. The advertising expenditure per person, expressed as "media space" alone (creation and production

costs are excluded from these sums) is therefore equivalent in the United States to three times the amount invested per capita in Europe.

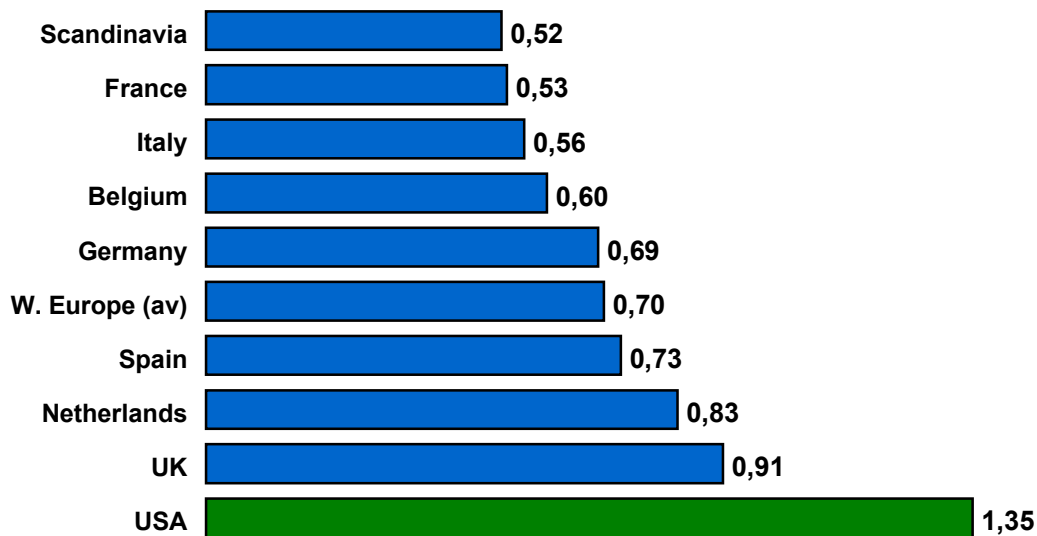


Source: Carat Network

- To be quite clear, it must be said that all the American macro-economic indicators* are higher than the European norms, but it is clearly apparent (Table 2) that advertising pressure is substantially greater than in Europe.

*Gross and net revenue per capita, GDP per capita, etc.

Display advertising in % of the GDP 2000 (table 2)



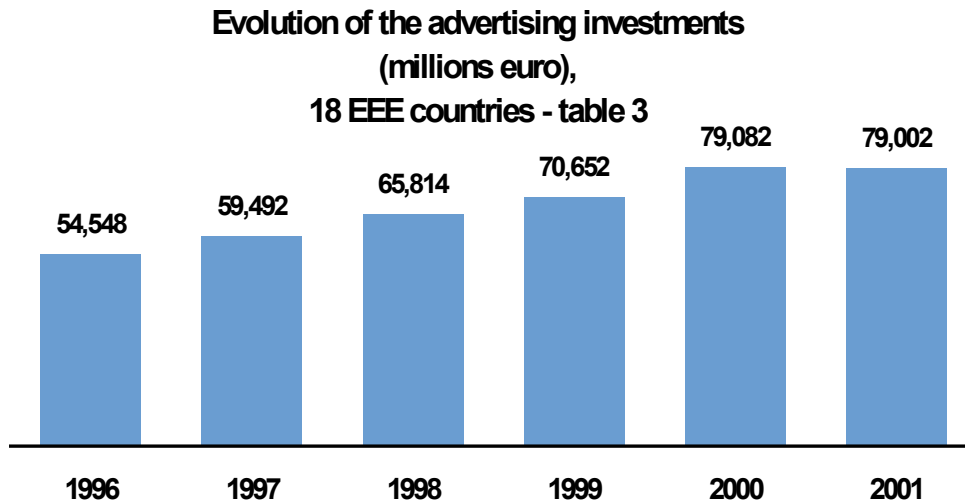
Source: Carat Network

- The explanation does not lie in the cost of advertising space in the media, leaving aside their **fragmentation** (because the fragmentation of the media, and hence of their audiences, inevitably leads to an inflation of advertising costs). The reason for the difference relates rather to virtually unfettered but no doubt essential liberalisation of the offer of advertising space in the United States, which is the consequence of very sustained demand for the marketing of “fast-moving goods” and also most services. The success of the mass media as a vehicle for advertising in the United States is largely based on sustained economic liberalism, but also on a certain scatter of the population and of distribution, a phenomenon less prevalent in Europe except in certain regions.

In Europe (the Europe of 15)

- (Table 3) The countries of the European Union had become used to a growth of advertising revenues at positive rates between 3 and 10% for more than 15 years, the average being nearly 7% per year and almost 10% for television. Thus, the evolution

of advertising activity is well above the average growth rates of the economy and of the gross domestic products.



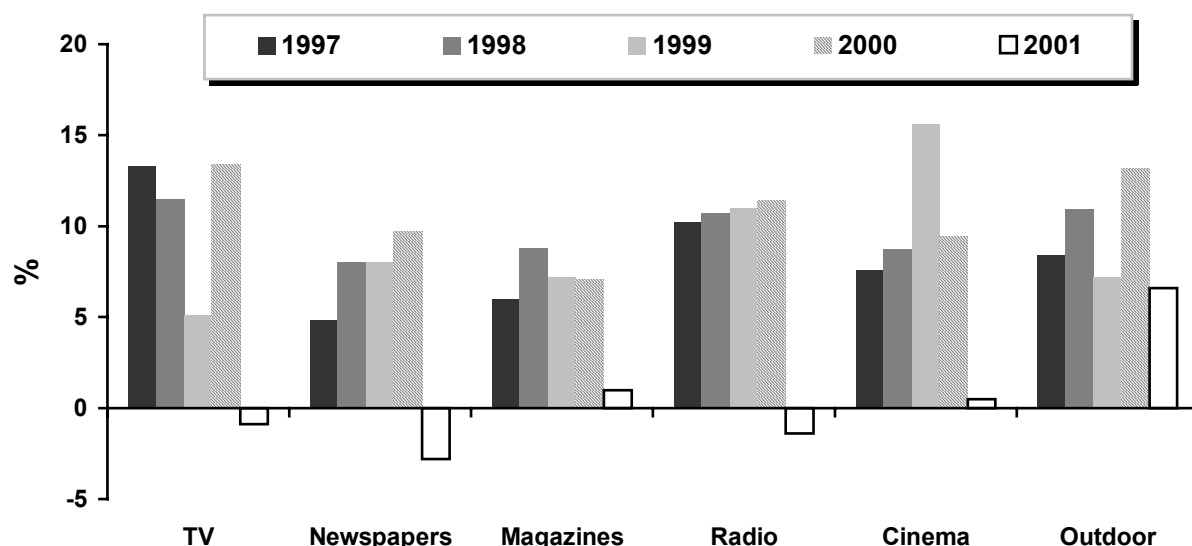
Source: Carat Network

- This is largely due to the fact that the heavy, primary and secondary industrial sectors, which count a great deal towards the growth of the economy and the GDP, have virtually no recourse to the mass media and are regarded as more stable and more moderate in their evolution.

On the recent downward trend towards a future crisis in the sector

- The objective trend of advertising investments in the mass media is definitely downwards in all ten of the countries studied, a phenomenon that has become (negatively) historical in light of the initial forecasts for 2001 (cf. Table 4 and its exceptionally **negative** index for 2001). All the media and the EU countries have been adversely affected by the world's economic situation, which was deemed "worrying" in 2000 and has recently become particularly "weak", *inter alia* because of the downturn in **trade** brought about by the dramatic events of 11 September 2001 in America.

**Advertising investments - Year on year growth by medium
18 EEE markets (table 4)**



Source: Carat Network

In some countries the **press** has sustained very heavy losses, since the markets turned to audiovisual advertising as a “safe haven”, while in other markets it is **audiovisual** advertising that has sustained the greatest loss of revenues. And there is no need to mention the **Internet bubble**, which has had a major impact on advertising activity in the media.

- The projected figures for **2002** remain very pessimistic: the countries of the Union will be affected to differing extents, but the situation is truly one of crisis (Table 5); it must be considered on the basis of a probable recovery that will bring the market to about 3% for the financial year 2002, that growth will in reality amount to **virtually zero**. In effect, the inflation of advertising space tariffs is generally from 2 to 3%, depending on the country and the media. Accordingly, this inflation will largely

absorb the value added in 2002. This means more clearly that the media, their producers, broadcasters and distributors will be facing another year of crisis.

European advertising investments evolution

All figures in Euro Mo at 2001 average exchange rate

Table 5

	2000	2001	2002	01 vs 00	02 vs 01
Austria	1.681	1.821	1.914	8,3	5,1
Portugal	1.100	1.168	1.234	6,2	5,6
Belgium	1.809	1.844	1.884	1,9	2,2
Italy	7.676	7.814	8.049	1,8	3,0
Ireland	770	781	781	1,4	0,0
Netherlands	3.862	3.862	3.914	0,0	1,4
Greece	788	780	796	-1,0	2,0
Denmark	787	779	787	-1,0	1,0
Germany	18.590	18.320	19.040	-1,5	3,9
France	8.584	8.424	8.550	-1,9	1,50
UK	15.002	14.582	14.950	-2,8	2,5
Spain	5.025	4.774	4.870	-5,0	2,0
Finland	871	827	803	-5,0	-3,0
Sweden	1.580	1.390	1.418	-12,0	2,0
Lux	n.a.	n.a.	n.a.		
Total	68.125	67.166	68.990	-1,4	2,7

Source: Carat Network

- The downturn due to “11 September” has not been limited to the production of **direct** effects. Its influence also reaches as far as the **medium term**. Moreover, an advertising recession had been apparent for several months, especially in the daily press and on the Internet. The financial forecasts for 2002 should really be more pessimistic than the 2.7% in the table above.
- From the status of the main advertisers it is apparent that except for the “public services”, there is an undeniable predominance of **multinationals** among the list of

largest advertisers, taking all categories together. These holdings account for on average (in the 15 countries of the Union) over 70% of advertising investments in the media, and have a direct and negative influence on the balance of the sector in the event of an economic downturn.

- The sizeable reduction of advertising budgets in progress, whereas previous crises (1991-1998) had brought about no such recession, can also be explained by **shorter decision-making paths** – and therefore more “rapid” because more centralised ones – and by greater parallelism between stock-market evaluations and the will to control profit margins. The situation should not therefore change before the beginning of 2003, depending on trade and the evolution of prices.
- This same phenomenon of **increased concentration** also accentuates the notion of crisis within the **media** and intensifies the usual collateral effects – massive lay-offs, abandonment or “freezing” of new or high-risk activities, restructurings, mergers, bankruptcies, etc. The media and advertising groups have become internationalised and globalised. Several large integrated groups are also quoted on the stock-market. These two conjoint elements (concentration/quotation) unfortunately result in an acceleration and exacerbation of the effects of poor trade.
- The recent dismantling of the “Kirch empire” in Germany, the collapse of ITV Digital in the United Kingdom, the withering of Canal+ in France and of the Vivendi group as a whole, or again the profound difficulties of RMBi in Belgium or the major losses sustained by the RTL group in 2001, illustrate clearly the fragility of the media when squeezed between the jaws of increasing operating costs and unstable or inadequate advertising revenues.

Impact of the recession on advertising techniques and indirect influence of regulation

Relative importance of the new advertising techniques

- The “**de-formatting**” of advertising that corresponds to marketing’s constant search for new forms of promotional activity in the mass media – non-itemised and without standard tariffs – is apparently part of the rationale of this regressive tendency, as a logical consequence of the impossibility for the media of increasing their revenues sufficiently nowadays in the usual contexts, according to the media producers (cf. point A.c.1). The development of new advertising techniques, whether it takes the form of new types of activity in the media regarded as traditional or activities regarded as classical via new media technologies such as WAP or the GPRS or UMTS protocol, also stems from the quest for new compensatory revenues.
- However, the volume of business achieved by these new advertising techniques is still **very marginal** (from 0.5% to at most 3 or 4% of receipts, depending on the country). It must be noted that these techniques are as yet not listed and identified in any official way, and would indeed present no **visibility** in the event of an attempt to itemise them.
- A possible review of the **TVWF Directive** that creates a stricter and more restrictive framework at the level of certain advertising methods (cf. Part IV, 2, B, legal level) or certain frameworks such as hourly quotas, would have a logically aggravating influence on the financial equilibrium of the media and the supports which depend directly on their advertising revenues. We are thinking more particularly about the new media segments (dot.com, niche or thematic TV, pay-TV and interactive TV, etc.) and about the new supports in general, which are all the more fragile because they have not been around for long and in most cases are not “paid up”, or even about media and supports directly linked to the concept of the consumer’s purchasing power (pay TV again, the cinema, paying websites, etc.).

- In this context it would seem preferable to **redefine** specific frameworks or rules, or even to adjust existing rules, in light of the developing new modes of activity, as opposed to purely and simply banning new techniques or even establishing increased control of the emergent advertising methods (cf. Part IV, 2, B).

c. *Television advertising formats*

1. *Basis of “de-formatting” and of the dynamics of advertising methods*

The prime vocation of advertising, source of the dynamics

“Advertising is the first visible sign of a market economy.”
(Samuelson)

Objectives of the dynamics of formats

- The **diversification of advertising formats** has always been necessary in a market economy context, i.e. a context of free competition. This dynamic logically seeks to increase the effectiveness of advertising messages, its ultimate motivation being to encourage commercial approaches and purchases, or at least to uphold a trade mark with positive attributes.
- It must therefore be understood that the intentions of the marketing services of advertisers, including the framework of what the Directive calls “sponsorship”, is not disinterested. Without results, advertisers can quickly call into question an advertising method, an operational choice, a medium or one of its “supports” (cf. point b.1, “measurement of investments”).

- In that respect they have at their disposal quantitative indicators which allow them to adopt such decisions, such as media audience measurements or advertising impact measurements via consumer surveys. The increase in television advertising revenues over the past 15 years illustrates this clearly, but could in theory take a quite different course in the coming 10 years, if there is a modification of TV consumption behaviour or its objective performance, or indeed as a result of various constraints stemming from increased self-regulation or from a legal framework that is evolving towards the restriction of advertising applications in a given medium.
- In effect, the existing equilibria are fragile despite the impressive scale of current audiovisual structures (cf. point b. 2, "evolution of investments"). For example, when the Internet emerged in the major European markets at the end of the 1990s, several experts predicted that a large volume of the advertising budgets from top-rank advertisers ("fast-moving goods", detergents, the automobile sector, etc.) would be transferred to "netvertising" or interactive advertising on the web.
- These budgets were supposed to come from television, which would therefore suffer an advertising haemorrhage, and also from the daily press which, according to Bill Gates, should be "dead in 3 or 4 years". The same view was expressed by the former President of Proctor & Gamble (at the end of 2001 the same company cut its staff engaged in Internet activities by 75%...). This might have been possible, but it did not happen. On the one hand because performance in terms of media audiences did not live up to expectations or forecasts, and on the other hand because trade performances were largely below those promised.

Two development axes

- This desire to find new advertising applications is marked by two major groups of trends:

(1) Creativity on the basis of current components (so far as permitted by law): variation of spot duration, multi-spots or “duo-spots”, “preferential” sites, billboards (spots of short duration linked to a sponsorship contract), “DRTV” (direct response TV spots, including referral to a call number or a website), etc.

(2) Modes that are innovative at the technical level (but which may raise tricky questions at the legal level): here we are thinking of the “split screen”, advertising in an “off-stream” environment (discontinuous and interactive audiovisual broadcast), or insertions of virtual advertising. In this connection the reader is referred to Part 2 relating to the panorama of new emerging advertising techniques.

The three actors involved

- Several actors share in the motivation to develop creative formats. Each is striving for his corporate objective and considers that such developments are part of his central activity. Efficacy is combined with the concept of competition: to be more effective, more visible, and different. Thus:
 - **advertisers** operate in a rationale of competition which leads them to test differentiated routes of access to reach consumers/televiewers;
 - the **media** and their **producers** are reactive or proactive, depending on the case, but play an important part in these developments in order to secure their advertising revenues, which are their main source of income;
 - finally **advertising agencies** and **media agencies** suggest and/or implement these modes of action, whose creation is an inherent part of their activity and their added value.

An inevitable and constant dynamic

- The evolution of advertising formats is linked:

(1) To the development of the new possibilities and therefore new technologies (digitalisation, composite imaging), although these remain means and not an end in itself.

Composite, or as they are called, virtual images are a clear example. They were initially designed to give programme or content information (in particular the visualisation of distances on football pitches or the creation of advertising masks along the track of automobile races). In contrast, the PVR (programming video recorder) can be as much a constraint for advertisers (by the possible elimination of advertising) as an advantage (fine selection of the target envisaged by the campaign).

(2) To the evolution of televiewer behaviour

In this respect one can mention a probable lack of interest in advertising “breaks” compared with the actual programmes, the “zapping” effect, its captivity for the mobile visual or acoustic elements, etc.

(3) To the legal and self-regulation constraints

(4) To the necessary diversification of ways to communication with consumers, due to the pressure of competition.

- This evolution of advertising formats is nevertheless limited (besides being so by legal frameworks) by the constant preoccupation not to forfeit the consumer/televiewer’s acceptance. In effect, a mode of action inappropriate because of its persistence, its “interference” or its aggressiveness could lead, depending on the protagonists concerned:

- to loss of audience in a programme or medium;
- to a decline in the positive perception of a trade mark or product;
- to questioning of the effectiveness of the advertising or media advice.

The “rejection” of effect is all too real, leaving aside the extravagance of excessive advertising pressure. Again, advertisers are equipped with studies and points of reference which enable them, most often on the basis of surveys, to avoid such errors. Starting from consumer surveys, it can be assumed that such methods – at the level of their content or form – are approved or tolerated by those primarily involved.

Powerful and voluntary self-regulation

- Aside from the inevitable exceptions sometimes observed and censured by the professional associations, self-regulation in the field of audiovisual advertising is therefore particularly motivated both by the maturity of the sector and by the quest for a certain efficacy.

At the **quantitative** level: advertisers, purchasing middlemen and the media recognise the rule of advertising non-saturation (expressed by the hourly quotas in the Directive); an excess of commercial messages would harm their marginal effectiveness.

At the **qualitative** level: the new advertising formats must respect the sensitivities of consumers, who are perceived as more and more critical or “consumerist”, at least in Western Europe.

This being the case, and from an economic point of view, strict compliance with the rule of quotas combined with the virtual elimination of all forms of advertising format evolution or development would have several detrimental consequences.

- (1) The fixed and variable operating costs of the media and the producers representing them are affected by an inflation rate above the general average. This applies as much to the major broadcasters (galloping costs of rebroadcasting rights and production resources) as to the new broadcasters known as “niche” or thematic broadcasters, producing and broadcasting in analog mode or having tried the digital mode, and who must demonstrate their financial viability in the short term.
- (2) The new technologies are considered costly for consumers (equipment modification). If interactive TV or services cannot be mostly or totally subsidised by advertising, they will only be able to address a social elite which is in any case not very interested in many of these services.
- (3) Advertising investment is marked by a historical decline. Again, the well established “free to air” TV broadcasters can tolerate this situation as little as the more recent and specialised broadcasters. The former are losing a variable proportion of their audiences and hence of their advertising revenues, while the latter rarely achieved financial equilibrium in the financial year 2001 and 2002 is turning out even more difficult.

2. *Technical description of television advertising formats*

- The national economic reports have made it possible to draw up a description of the main advertising formats in use and registered in the countries of the Union (analysis adjourned in December 2001). It should be noted that as indicated below, the local legal frameworks vary a great deal: what is allowed in one country is not necessarily so everywhere in Europe. We find new forms of advertising expression either related to new technological possibilities, or stemming from the creativity of the professionals concerned. This derives from a *de facto* evolution notably integrated in

the measures and norms of the EGTA and that could profitably be analysed and reflected upon for a possible evolution of the Directive. These reports can be consulted on the Commission's website (www.europa.eu.int/comm/cvpolicy/stat/study-en.html).

B. At the legal level

a. The rules of the TVWF Directive at the core of the study

The main rules of the TVWF Directive that relate to advertising are contained in Chapter IV of the Directive, except for the definitions given in Article 1.

These are in particular:

- Definitions (Article 1)
- Rules of identification and insertion (Articles 10 and 11)
- General rules on content (Article 12)
- Rules on volume (Articles 18 and 18 bis)
- Specific sectors and targets (Articles 13 to 16)
- Sponsorship (Article 17).

1. Definitions (Article 1)³

It is appropriate to take note of all the definitions currently in the – modified – Directive of 1989, since they are likely to be reviewed in the light of the evolution of new advertising techniques.

“TELEVISUAL BROADCASTING”:

- initial transmission:
 - by cable/wireless
 - terrestrial/by satellite
 - unencoded or encoded
- of television programmes
- intended for reception by the public

This definition aims to cover all forms of broadcasting that can be received by the general public, including Nvod or teletext, except for services provided on individual demand (e.g. VOD, interactive services such as videoconferences, videotext, electronic databanks, etc.).

In this connection one might ask how appropriate it is to retain in this definition non-exhaustive examples of services envisaged or excluded.

It should be pointed out that even if the transmission of some services can be regarded as “television broadcasting”, the rules on advertising contained in Chapter IV of the Directive may not necessarily apply, since they are designed for the broadcasting of advertising messages associated with “regular” television programmes (for example: teletext contains no television programmes).

³ The rules given in boxes summarise the text of the TVWF Directive, but do not reproduce its text in full.

To avoid legal uncertainties or classification problems it could be recommended to insert into the Directive a precise definition of televised programmes. There is in effect no doubt that the Directive envisages the traditional, linear audiovisual programme.

Television programmes could thus be distinguished from other services accessible via the television or offered by broadcasters. Those services could be covered by all or some of the Directive's rules.

“BROADCASTING BODY”:

- The natural or legal person
- who has editorial responsibility for the composition of the schedule of television programmes
- and who transmits them or has them transmitted by a third party

The notion “composition of schedules of television programmes” should be examined in light of the contents that are or will be made available to the public without necessarily being integrated by the broadcaster in a schedule of programmes.

“TELEVISED ADVERTISING”:

- Any form of announcement broadcast
- whether this be
 - against remuneration or a similar payment
 - or for self-promotion purposes
- by a public or private undertaking in connection with a trade, business/craft/or profession
 - in order to promote the supply of goods or services – including immovable property – or rights and obligations, in return for payment.

This extremely broad definition was extended to self-promotion when the Directive was reviewed in 1997.

One might ask whether it would be appropriate to give a specific definition of self-promotion. In effect the description of self-promotion in advertising may seem inadequate while even at the level of computing advertising time, self-promotion is excluded from the maximum time devoted to advertising. This is all the more true since as a general rule self-promotion spots are clearly distinct from screens dedicated to advertising spots.

Moreover, self-promotion by and for the broadcaster is all the more important for him because as a general rule he can only rely on his own signal to ensure his promotion on television.

“SURREPTITIOUS ADVERTISING”

- The verbal or visual presentation of:
 - goods
 - services
 - the name
 - the trade mark
 - or the activities
- of a producer of goods/a provider of services in programmes,
- when
 - presented intentionally by the broadcasting body
 - for advertising purposes
 - at the risk of misleading the public

Surreptitious advertising is banned by the Directive in that it can mislead the public.

It is therefore a consumer protection measure in the same way as very many other provisions of the Directive.

The same is true of product placement, which is generally regarded as banned surreptitious advertising. It must be noted that this involves cumulative conditions applicable when the dissemination in programmes takes place for advertising purposes.

“SPONSORSHIP”:

- Contribution by a public or private enterprise that does not carry out activities of television broadcasting or the production of audio-visual works
- to the financing of televised programmes
- for the purpose of promoting its name, trade mark, image, activities or achievements

So sponsorship is clearly defined as a promotional technique distinct from televised advertising. This technique is characterised by the funding of televised programmes.

Nevertheless, it is not infrequent for a sponsor not to finance a specific programme, or even for the sponsor to be approached *a posteriori* when the programme has already been produced.

Thus, the direct relationship between the sponsor and the financing of the programme sponsored is in some cases fictitious.

“TELE-SHOPPING”:

- The broadcasting of direct offers to the public,
- with a view to providing goods or services
- in exchange for payment

The rules on advertising were laid down in the Directive of 1989; in contrast, the introduction of tele-shopping is one of the important axes of the 1997 reform.

The rules relating to tele-shopping broadcasts are not examined in the present report, since such broadcasts do not constitute an advertising technique. Nevertheless, the definition of tele-shopping is important for the description of tele-shopping spots which are counted in as advertising time.

It is appropriate to examine whether the notion “direct offers to the public” should not be more broadly defined. In practice the offer of goods or services for sale, with a mention of the price and an indication of a telephone number or website for placing the order, certainly constitutes a direct offer to the public.

Let it be noted that in the United Kingdom, the ITC refused a tele-shopping channel licence to a channel offering fixed assets, and to an advertising channel because of the absence of a “direct offer”. The ITC considers that such channels do not satisfy the definition of a tele-shopping channel or a self-promotional channel, and should also have the possibility to obtain a licence.

In conclusion, and at this stage, it should be pointed out that the definitions in force in the Member States are sometimes more detailed than those laid down by the Directive.

Thus:

- In **Greece**, televised broadcasting includes services provided by individual request when these are accompanied by the transmission of audiovisual works.
- In the **Netherlands**, televised advertising includes not only advertising messages as such, but also advertising expressions likely to influence the public in a positive way where a particular business is concerned.

As regards existing advertising techniques, we are of the opinion that the current definitions should preserve a general character, since these definitions are sufficient to cover the said techniques.

In contrast, the question arises of knowing whether it is appropriate to provide new definitions as new advertising techniques emerge. We shall return to this point in the context of the chapter devoted to new techniques.

*

2. *Rules on identification and insertion (Articles 10 and 11)*

This aspect of the rules aims both to protect the interests of consumers, with a view to avoiding any risk of confusion between the advertising and the programmes, and to protect the beneficiaries of rights in order to ensure respect for the integrity of the work.

“RULES ON IDENTIFICATION”:

Advertising and tele-shopping:

- must be easily identifiable (and must be distinguished by optical and/or acoustic means)
- must not be isolated, other than exceptionally
- must not use subliminal techniques
- are banned if surreptitious

The rules on identification for advertising seem satisfactory, inasmuch as they offer a certain flexibility to the Member State and therefore to the broadcaster concerning his competence to opt for a visual separation (whether in space or in time).

In this respect the TVWF Directive does not prohibit the juxtaposition of programmes and advertising, provided that these types are clearly identifiable as such (e.g. association of the mention of “advertising”) and clearly distinguished from the rest of the programme (e.g. specific frame). Thus, for the rules of identification a “temporal” separation does not seem necessary, spatial separation being sufficient.

This definition seems to accept the split screen technique, which will be considered later (Chapter IV, 2, B, a, 2).

**“RULES ON INSERTION – GENERAL RULES”:
(Article 11(1))**

- Insertion BETWEEN broadcasts
- Insertion DURING broadcasts subject to certain conditions:
 - respect of the particular rules laid down in paragraphs 2 to 5 of the same article
 - respect of the five criteria whose purpose is to safeguard the beneficiaries of rights

Advertising and tele-shopping spots must be inserted between broadcasts. That is the basic principle. It is possible, however, to insert advertising or tele-shopping spots DURING broadcasts provided that certain specific rules are respected and provided that the integrity of the work is not compromised.

In other respects the Directive lays down rules on the insertion of advertising:

- in broadcasts composed of autonomous parts,
- in audiovisual works.

**“RULES ON INSERTION – SPECIFIC RULES”:
(Article 11(2) – broadcasts composed of autonomous parts)**

- Field of application:
 - broadcasts composed of autonomous parts
 - sport broadcasts, and
 - events and spectacles of similar structure that include breaks
- The rule: insertions may be made during the broadcast, but between the autonomous parts

The question of what exactly “autonomous parts” means deserves consideration. However, it seems difficult to confine this concept within a restrictive definition bearing in mind the diversity of the broadcasts and events envisaged.

**“RULES ON INSERTION – SPECIFIC RULES”:
(Article 11(3) – audiovisual works)**

- Field of application: audiovisual works. For example: long footages and tele-films.
- The following are expressly excluded from the definition of audiovisual works:
 - Series
 - Serials
 - Entertainment broadcasts
 - Documentaries

The rule specified in Article 11(3), which for all that is very complex, can be summarised as follows:

Audiovisual work < 45 min	no interruption
Audiovisual work > 45 min < 90 min	1 interruption
Audiovisual work > 90 min	2 interruptions
Audiovisual work > 90 min + 20 min	3 interruptions

The fabric of rules relating to advertising breaks is certainly complex and should be simplified.

“RULES ON INSERTION – SPECIFIC RULES”:

Article 11(4) – interval between breaks

- A period of at least 20 min must pass between each break within a broadcast
- This provision applies to all broadcasts except:
 - broadcasts composed of autonomous parts
 - sport broadcasts
 - events and spectacles of similar structure that include breaks

In this connection it should be pointed out that most Member States have imposed respect for the 20-minute interval between the advertising screens inserted into broadcasts not consisting of autonomous parts.

“RULES ON INSERTION – SPECIFIC RULES”:

Article 11(5) – specific bans

- Religious services: no interruptions
- tele-journalism, political information broadcasts, documentaries, religious broadcasts, broadcasts for children:
 - less than 30 min: no interruptions
 - over 30 min: refer to Article 11(1 and 2)

In conclusion, whereas the rules of identification for televised advertising and tele-shopping seem satisfactory, the rules relating to breaks should in contrast be simplified.

As for the rest, the TVWF Directive is a directive that aims to co-ordinate certain provisions concerning the performance of televisual broadcasting activities. It allows the Member States every flexibility to provide for more detailed or stricter rules in the areas covered by the directive, and this, while respecting the Treaty (Article 3).

There are many Member States which have in fact adopted generally more detailed rules concerning advertising breaks.

In this respect the following examples can be mentioned:

- **Netherlands:**

Advertising breaks must be at least 2 minutes long.

- **Portugal:**

The screen separating advertisements from the programme must show the word “advertisement”.

- **France:**

Pursuant to the law of 30 September 1986 as amended, audiovisual works must not be interrupted more than once, except when a dispensation has been granted by the CSA at the broadcaster’s request. The dispensation may only relate to works lasting longer than 2 h 30 min.

- **Belgium**, and more precisely the Flemish Community:

It is not permitted:

- to interrupt children’s programmes with advertising,

- to broadcast advertising within a period of 5 min before or after children's programmes.

- **Austria, Norway, Germany and Sweden:**

It is not permitted to interrupt children's broadcasts, regardless of their length.

- **Denmark:**

There is a general ban on the interruption of programmes.

Finally, we will return later to the compatibility of maintaining these provisions that regulate advertising breaks with the development of the new advertising techniques, and vice-versa.

3. *General rules on content (Article 12)*

It is not permitted

- to undermine respect for human dignity,
- to show racial, sexual or national discrimination,
- to encourage behaviour detrimental to:
 - health and safety
 - the environment

This provision summarises general principles that already existed in the legislation of most Member States and that occur in the European Convention on Human Rights.

4. *Rules on volume (Articles 18 (1 and 2) and 18 bis)*

These provisions can be summarised as follows:

MAXIMUM VOLUME OF ADVERTISING			
Volume/day (Article 18 (1))		Volume/hour (Article 18 (2))	Tele-shopping (Article 18 bis)
<ul style="list-style-type: none"> • Tele-shopping spots • Advertising spots • “Other forms of advertising” 	<ul style="list-style-type: none"> • Advertising messages 	<ul style="list-style-type: none"> • Tele-shopping spots • Advertising spots 	<ul style="list-style-type: none"> • Windows for the use of tele-shopping broadcasts (minimum 15 min)
20% of the daily time	15% of the daily time	20% per hour	Max. 3 h per day. 8 windows per day

Most Member States apply the Directive’s rules to commercial channels. Among the exceptions is Sweden, where the volume of advertising is limited to 9 minutes/hour and to 10% of the daily broadcasting time.

Nevertheless, a stricter regime often applies to public or quasi-public channels (for example ITV).

Examples that can be mentioned are:

- **Germany:**

ARD and ZDF can broadcast a maximum of 20 minutes of advertising per day (advertising is banned after 8.00 p.m., on Sundays and on public holidays).

- **United Kingdom:**

Terrestrial chains can broadcast on average a maximum of 7 minutes of advertising per hour.

- **Portugal:**

RTP-1 can broadcast a maximum of 7 minutes 30 of advertising per hour. RTP-2 cannot broadcast commercial advertising.

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In conclusion, although the rules on content pose no specific problem since they reflect pre-existing provisions, it is appropriate to wonder whether the rules relating to volume are always up to date and whether they might present certain difficulties of application in light of the development of certain advertising or broadcasting techniques (for example, in an environment other than continuous audiovisual flow).

In this respect let it already be noted that the amendments of Article 18 brought by the 1997 Directive allowed precisely the restricted development of new forms of advertising, such as promotions, “infomercials” or “publi-reports”, and the insertion of tele-shopping spots into advertising screens. These new, longer-lasting advertising films account for the increase in the daily volume of advertising from 15 to 20%.

Inspection of Article 18(1 and 2) indicates that the percentage per hour (i.e. 12 minutes) applies exclusively to advertising spots and tele-shopping spots, to the exclusion of other forms of advertising which may therefore be added to the 20% per hour, while of course respecting the maximum daily volume.

Finally, a few examples of the regulations applicable in certain Member States can be mentioned:

- **France:**

For Hertzian radio broadcasting, the time devoted to the broadcasting of advertising messages must not exceed 6 minutes/hour of antenna time as a daily average.

- **Great Britain:**

There is no extra broadcasting time beyond the daily maximum of 20% for the broadcasting of tele-shopping windows on terrestrial television services.

- **Austria:**

For public broadcasters, the law requires there to be days when no advertising is broadcast: the law specifies “Good Friday”, “1 November” and “24 December”.

5. *Self-promotion (Article 18(3))*

- | |
|---|
| <ul style="list-style-type: none">- Definition: messages broadcast by a broadcasting body concerning:<ul style="list-style-type: none">- its own programmes- associated products derived directly from those programmes- A form of televised advertising- Excluded from the advertising volume |
|---|

In this connection see the comment made in the context of the definitions (cf. above, section III, B, a.1) on the need to distinguish between self-promotion and advertising.

6. *Specific sectors and targets (Articles 13 to 16)*

It should also be recalled that the Directive lays down specific rules for the sectors of tobacco, alcohol and medicines.

- **TOBACCO:**
Advertising and tele-shopping are banned
- **MEDICINES AND MEDICAL TREATMENTS:**
Medicines on prescription: advertising banned
Medicines: tele-shopping banned
- **ALCOHOL:**
Authorised subject to the respect of specific criteria (in particular, the protection of minors)

Similarly, the Directive contains specific rules relating to the protection of minors.

“MINORS”: (Article 16)

- No moral or physical harm must be inflicted on minors
- It is obligatory to respect certain criteria:
 - Minors must not be incited to purchase a product/service.
 - They must not be incited to persuade their parents or third parties.
 - The particular trust that minors have in their parents, teachers or other persons must not be exploited
 - Minors must not be shown in a dangerous situation.
- In addition, tele-shopping must not incite minors to enter into contracts for the sale or hire of goods or services.

So far as certain specific products are concerned, some stricter rules applicable in certain Member States may be mentioned:

Alcohol

- **France:**

Alcoholic drinks containing more than 1.2 degrees of alcohol must not be advertised on television (Decree of 27 March 1992).

- **Finland:**

Strong alcoholic drinks must not be advertised directly or indirectly.

Medicines

Although advertising is banned for medicines available on prescription, it should be noted that a given medicine may or may not be available on prescription, depending on the Member State.

Minors

We refer to the study on the impact of advertising and tele-shopping on minors, published on the Commission's site: (www.europa.eu.int/comm/avpolicy/stat/studi-en.htm#finalisedstudies).

7. *Sponsorship*

Conditions to be satisfied by sponsored programmes:

- Absence of influence by the sponsor on the content
- Clear identification of the sponsor by his name/logo at the beginning and end of the programme
- No incitement to purchase (no specific promotional reference to a product/service)

While fully aware of the legitimate importance of sponsorship for the financing of programmes, the European legislator has stipulated certain restrictions in order to:

- ensure respect of the integrity of a work, and
- avoid confusion.

Thus, the TVWF Directive requires the sponsor to be identified clearly. Nevertheless, although mention of the sponsor is obligatory in order to inform the consumer that the broadcast is sponsored, this is still only a minimum rule.

In other words, mention of the sponsor may be repeated during the sponsored broadcast without the sponsor having any influence on the content and programming that could compromise the independence and editorial responsibility of the Television Broadcasting Body.

Thus, the Directive does not create any obstacle for the following techniques:

- | | |
|--------------------|--|
| “Inserts” | mentions during superposition, including by means of virtual techniques. |
| “Reminders” | mentions before or after an advertising break. |
| “Trailers” | mentions during a trailer. |

Having regard to the general content of the co-ordination directive which, by its very nature, contains a collection of minimum rules, the wording of Article 17 is appropriate enough for the restricted forms of sponsorship required to ensure the direct or indirect financing of televised programmes.

It should be mentioned that in the case of broadcast games in which the prizes offered consist of the sponsor's products or services, the specific verbal or visual mention of the name/logo/product/service is permitted provided that this mention complies with national provisions established for such prize presentations. Most national legislations consider that the presentation of the prize offered by the sponsor on the occasion of the game cannot be

regarded as product placement provided that the conditions laid down by the national law are respected.

“SPONSORSHIP”:

- **Restriction/sponsors:**
 - Tobacco companies: banned
 - Pharmaceutical companies: only promotion of the name and image
- **Restriction/programme:**
 - Sponsorship of JTs or political information broadcasts is banned
- **Exclusion from the advertising volume.**

In conclusion, as will be seen below, interest in the techniques of sponsoring televised programmes and broadcasts has been growing since the review of the Directive in 1997.

Besides, sponsorship is clearly of interest for broadcasters and for the entire cycle of televised programme production in the search for funding, the more so when extremely high prices have to be paid to acquire the rights of first broadcasting for audiovisual works or even sports events.

It is therefore essential for all those concerned to preserve this financing technique while at the same time guaranteeing the viewer, who must be clearly informed, the greatest possible transparency and at the same time respecting the prerogatives of the beneficiaries of rights.

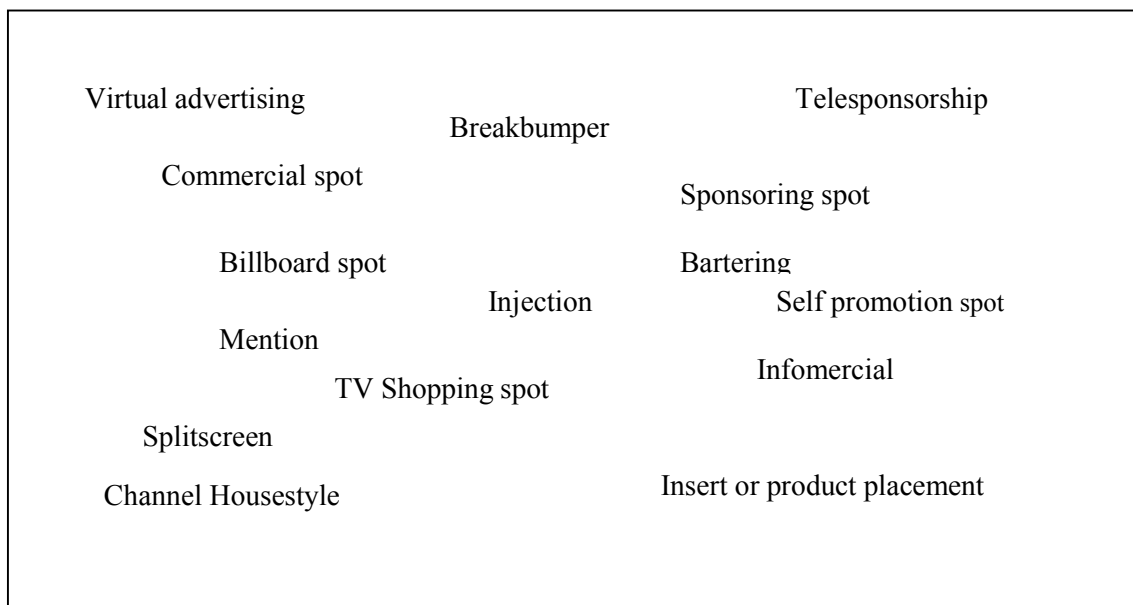
The present wording of Article 17 seems to satisfy that aim.

For the sake of information, the more detailed provisions applicable in various Member States are mentioned below (see the examples that follow).

b. *Evolution of existing advertising techniques*

Before going on to identify new advertising techniques (virtual advertising, interactive advertising or the split screen technique), it is important to stress that the study has made it possible to draw attention to a considerable diversification of formats⁴, whether these be in advertising or sponsorship.

We have in fact found a multiplicity of new advertising or sponsorship formats in the commercial offers presented in the various countries examined. Creative designers have shown abundant imagination in multiplying these formats during the past few years.



⁴ Technical comment concerning the use of English: most of these definitions are based on technical and not legal criteria. In this respect, their naming is usually Anglophonic, since they have emerged from international advertising spheres which have themselves adopted English as the *lingua franca*.

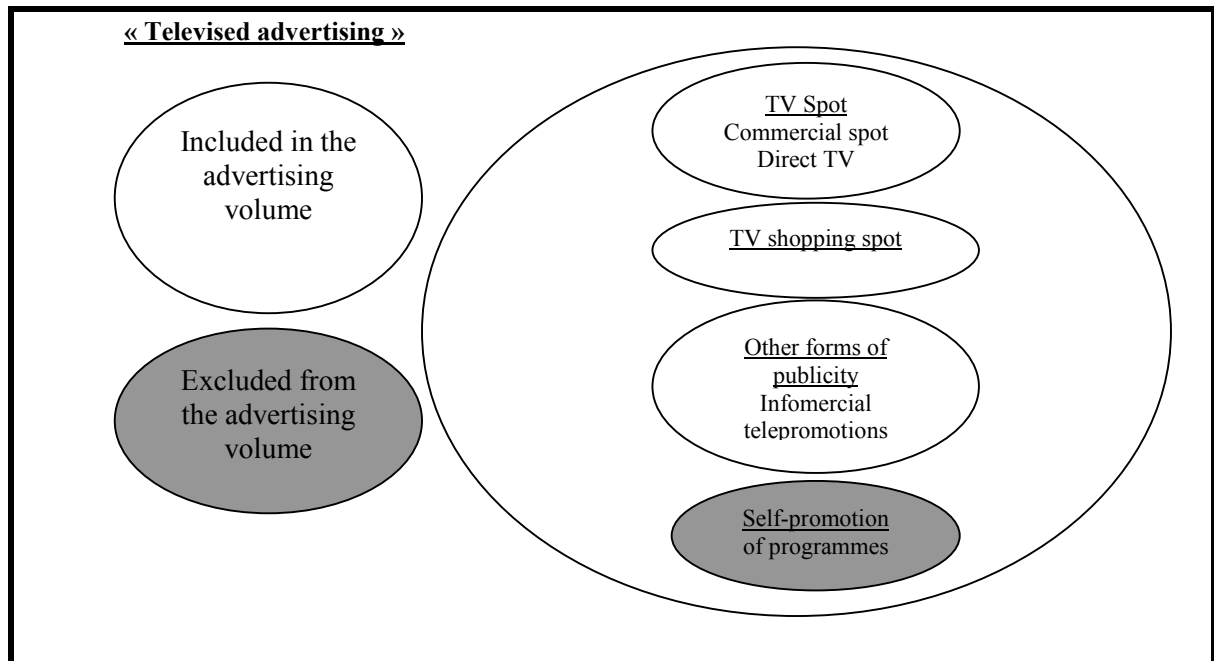
Since, having regard to the stipulations of the TVWF Directive, we must choose between on the one hand televised advertising and on the other hand sponsorship, we may wonder how to classify these multiple advertising formats in the present state of Community legislation.

If an advertising format cannot be classified in any of these categories, it may well be deemed surreptitious advertising and may therefore be banned.

1. Televised advertising

As indicated earlier, the definition of televised advertising (Article 1) includes advertising spots, tele-shopping spots, the other forms of advertising, and self-promotion.

Accordingly, depending on the category to which they belong, the advertising formats will or will not be included when calculating the maximum advertising volume permitted by Article 18(1 and 2) of the TVWF Directive.



The concept “other forms of advertising” is of particular interest, notably for advertising films of long duration, such as “*Dauerwerbesendungen*” (long advertising transmissions), “telepromotions” or even “infomercials”.

As regards the “self-promotion” of programmes and associated products, which are not counted in the computation of advertising times, it is appropriate to examine the need to provide a definition distinct from that of televised advertising, to which this technique cannot be likened bearing in mind the problem of fragmentation in the European audiovisual market. Similarly, if channels exclusively devoted to the self-promotion of a broadcaster, a group of broadcasters or even advertisers (channels dedicated exclusively to advertising) are to appear, then it would be appropriate to make sure that the consumer is informed about the characteristics of such a channel.

2. *Sponsorship*

Besides what has already been said about sponsorship, we noted a multiplicity and variety of sponsorship formats whose development has increased over the past few years.

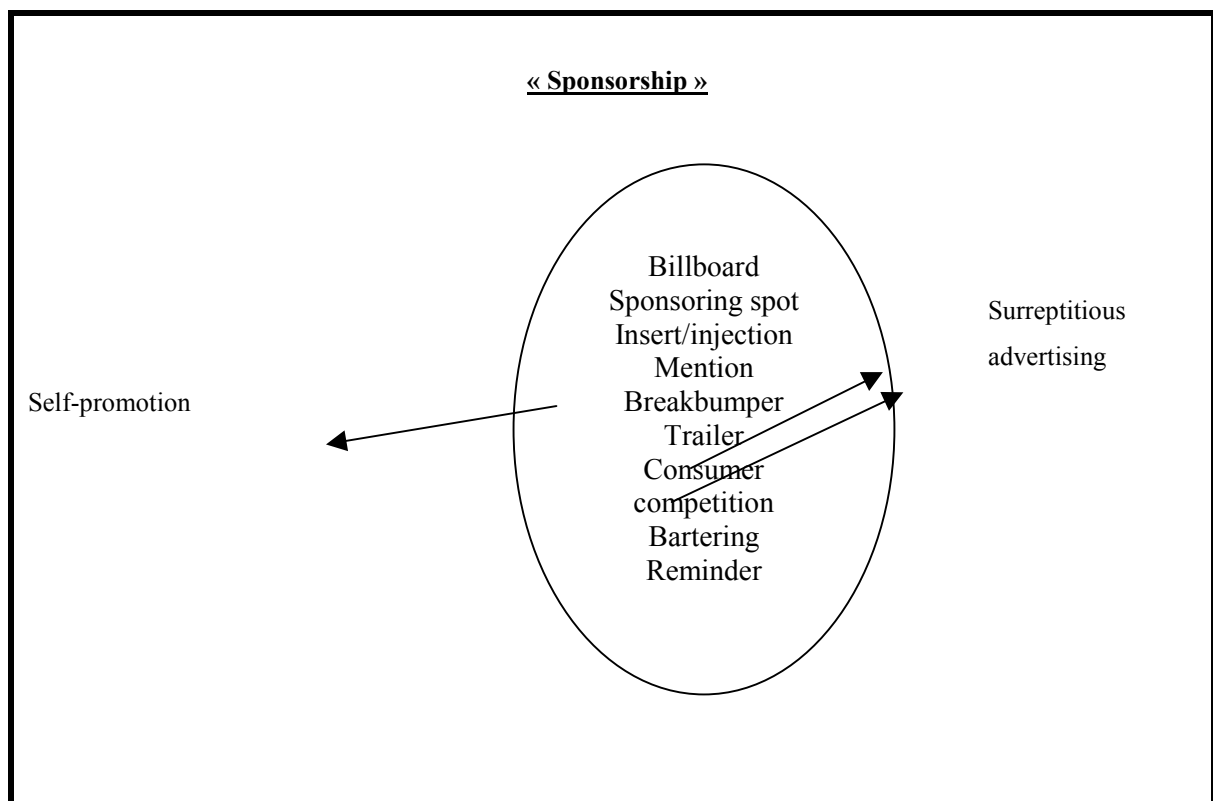
In effect, the forms of sponsorship include the following formats: “billboard”, sponsoring spot, “reminder”, “insert”, “injection”, “trailer”, “mention”, “breakbumper”, “consumer competitions” and “bartering”.

These various formats were identified and defined within the scope of the economic study carried out by Carat. In addition, the various definitions accepted were compared with those formulated by the sector via the EGTA.

In the case of “bartering” and “consumer competitions” care is needed. In effect, as the law stands at present, both those formats could be regarded as surreptitious advertising if they are carried out under conditions that do not

respect sponsorship methods of the type indicated in Article 17 of the TVWF Directive.

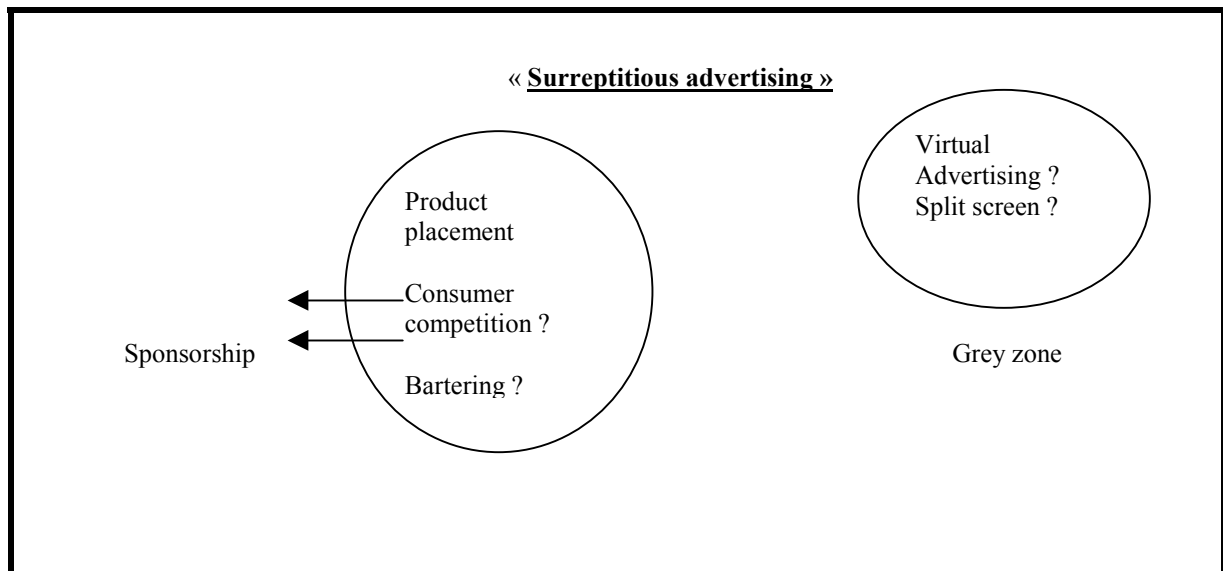
Self-promotion “trailers” are at the intersection between sponsorship and self-promotion, but this is not very relevant since neither self-promotion nor sponsorship are counted when computing advertising transmission times.



3. *Surreptitious advertising*

Advertising is regarded as surreptitious when the advertising presentation of the product or service takes place unintentionally and with the risk of misleading the consumer about the nature of such a presentation (Article 10 (4)). This often happens in the case of “product placement” which, in most

Member States, is regarded as surreptitious advertising since it does not respect the principle that advertising should be identified as such.



Surreptitious advertising is not an advertising technique, but a description to which the sanction of banning is attached. This concerns any form of advertising that fails to respect statutory provisions.

The principle of separation between editorial and commercial content often seems ill-defined. The distinction risks becoming even less clear in the context of the development of virtual techniques, which allow a product easily to be inserted in any programme element.

The same applies to interactive advertising, which could allow a viewer to interact with a view to acquiring products present in the televised programmes (e.g. sports cars, clothing worn by the hero, etc.).

The distinction between editorial and commercial content risks becoming even more tenuous when the Internet is easily accessible on television. The aim is to avoid creating a legal vacuum by establishing a distinction between the concept of a programme and that of other television services. In any case, at present all broadcasting activity is regulated by the TVWF Directive, and this, even when interactive advertising is used inasmuch as it is still within a television broadcasting environment.

In conclusion, it is immediately apparent that the evolution of existing advertising techniques motivates the framing of certain comments on the current text of the TVWF Directive (1997 version):

▪ **On the content of the notion “other forms of advertising”:**

The concept “other forms of advertising” is not defined in the Directive, whereas it occurs clearly in Article 18(1) in connection with calculating the daily volume of advertising.

This concept, which is not taken into account when calculating advertising time per hour, seems to respond adequately to the need for flexibility required by a sector that is in full course of evolution in terms of both what is on offer on television and the de-formatting of the advertising forms offered.

It should be noted that the decree by the Court of Justice of the European Communities on “*telepromozione*” (telepromotion) (Decree of 12 December 1996, RTI and others vs. Ministeri delle Poste e Telecomunicazioni) gives an indication concerning the concept “other forms of advertising”. In effect, the Court likens “*telepromozione*” to advertising in the form of a direct offer to the public.

The pronouncement of the decree stipulates: “*The TVWF Directive (in its 1989 version), and in particular its Articles 1(b) and 18, must be interpreted in the sense that in Community regulations, where the possibility of increasing the maximum percentage of daily transmission time devoted to advertising and bringing it up to 20% is concerned, the*

expression “forms of advertising such as offers made directly to the public”, which occurs in Article 18, has the character of an example so that other forms of promotions too can be envisaged, such as “telepromotions”, which, like offers made directly to the public, take up a longer time than advertising spots by virtue of their presentation methods”.

As things stand, it does not therefore seem appropriate to define it more broadly.

▪ **On sponsorship**

Article 17 of the Directive lays down the methods required for the operation of legitimate sponsorship. In particular, it is stipulated that sponsored televised programmes must be clearly identified as such by the sponsor’s name and/or logo, at the beginning and/or at the end of the programmes (see earlier).

Article 17 of the Directive constitutes a necessary minimum, and Member States can adopt stricter or more detailed rules. That is the reason why formats such as “inserts”, “mentions” or “trailers” are currently used in some Member States.

Thus, the study reveals various possible ways of identifying the sponsor, depending on the specific national rules.

These rules may relate to:

- **The location of the sponsorship message:**

Included in the credits of the sponsored programme, before and/or after the programme or the advertising breaks, in a trailer for the sponsored programme, in a self-promotion spot or even during the sponsored programme.

- **The content of the sponsorship message:**

mention of the sponsor’s name and/or logo, presentation of the sponsor’s products, information about the sponsor or his products (address, opening hours, Internet site,

etc.), association of the sponsor with a visual or acoustic mention, with fixed or animated images or with a slogan.

- **The duration of the message:**
limited or unlimited.

Thus, the study brings out some striking differences:

- **Insertion of the message**

- **Germany, Belgium (Flemish community), United Kingdom, Denmark:**

the use of animated images is expressly authorised by the national laws.

- **Portugal, Sweden, Germany, United Kingdom, Ireland (the BCI codes), Belgium:**

the national legislation stipulates expressly that the message can be inserted at the beginning and/or at the end of the programme or as a “breakbumper” during the advertising breaks.

- **Germany and Belgium:**

insertion into trailers is allowed.

- **France:**

the sponsor’s identification (for example, logo) during the programme is permitted provided that this is done in a discreet way.

- **Duration of the message:**

- **United Kingdom:**

- mention of the sponsor at the beginning of the programme (15 seconds maximum with 1 sponsor and 20 seconds maximum with several sponsors);

- mention of the sponsor at the end of the programme and in the break credit titles of a sponsored programme (10 seconds maximum).
- **Ireland (RTE):**
 - maximum 10 seconds (one sponsor) or 15 seconds (several sponsors);
 - maximum 7 seconds during advertising breaks.
- **Belgium (Flemish Community):**
 - maximum 10 seconds;
 - at most 6 messages per hour.
- **Germany:**

A sponsorship message must be reasonably short.
- **Mention of the product or of a slogan:**
 - **United Kingdom:**

a product may be mentioned if this would clarify the link between the sponsor and the programme.
 - **Ireland (RTE):**

the use of a slogan is not permitted but a product of the sponsor can be presented.
 - **Belgium (Flemish Community):**

it is permitted to show a product and to use visual or acoustic signs associated with the sponsor.
- **Obligation to explain the link with the sponsor**

applicable in **Germany, Ireland (RTE)** and in the **United Kingdom**.

- **Use of a sponsor's name as the title of a programme (or part of the title)**

This technique is already used in some countries (for example, Toyota uses it and includes its name in adventure or nature programmes).

- **Germany**, for example, expressly allows the name or trade mark of a sponsor to be used in the title of a televised programme. The technique is particularly useful for promoting printed products by broadcasting a televised programme under the name of a specific periodical or review. The advantage of the technique is all the greater when the broadcaster belongs to a media group which also comprises press titles.
- In the **United Kingdom** a specific rule has been adopted for the regulation of “masthead programmes”. these programmes are made or financed by newspaper editors. The ITC rules aim to avoid excessive exposure of a particular title and to ensure that the programme is not a televised version of a specific edition. Thus, the televised programme must not refer to the content of the press product, and reference to its title must be limited.

In conclusion, the study showed up a large variety of sponsorship forms (billboards, sponsoring spots, reminders, inserts/injections, trailers, mentions, breakbumpers, consumer competitions, etc.) which are, in fact, very highly valued by the various countries and broadcasters for providing the funding for their programmes (for example programme acquisition, programme production, etc.).

The conditions laid down by the Directive for the legitimate operation of sponsorship should always guide this usage.

In practice, it is found that the sponsor's intervention can take place upstream when the programme has not yet been produced, or downstream when the programme has been

completely financed. It is then appropriate to look into the link between the sponsor and the programme.

- **On self-promotion**

The Directive only mentions “the self-promotion of programmes and associated products derived directly from these programmes (Article 18(3), 1st indent). What of the self-promotion of the channel as such? Ought not there to be a supplementary definition of self-promotion or an amendment of Article 18(3) of the Directive or even its Article 19 bis?

In effect, as regards more particularly channels devoted exclusively to self-promotion, Article 19 bis of the Directive specifies in a deliberately open way that the related provision “may in particular be revised in line with Article 26”.

In effect, self-promotion, which is not expressly defined in the Directive, can be understood not only as any promotions by a broadcaster or group of broadcasters of his (their) own programmes, but also as the self-promotion by an advertiser of his own products on his own channel. Besides, the current wording of the Directive does not seem to exclude this interpretation at the outset and hence appears to allow the establishment of channels dedicated exclusively to the promotion of products from a single advertiser.

- **On product placement**

Despite the taboo that surrounds this form of advertising on TV, which is regarded by some countries as a form of surreptitious publicity, this technique is widely used in other media such as cinema and the Internet (see earlier).

In conclusion, owing to the emergence of new techniques (interactive advertising, virtual advertising) on television, the possibilities for product placement are becoming more numerous. It would be appropriate to consider whether it might be opportune to legalise the technique subject to certain conditions.

2. PANORAMA OF THE NEW EMERGING ADVERTISING TECHNIQUES

A. At the economic level

a. *Evolution of media technologies*

This part of the report is based mainly on a “self-administered” inquiry carried out among top-level decision-makers in the areas of broadcasting, the buying and selling of advertising space in the media, and advertising in the European Union countries. The objective of the inquiry (non representative) was to back up the economic reports based on the local indicators (reports in Part I on ten countries studied) by the opinion of specialists in the identification of **trends** and **perspectives** related to the new technologies examined below.

On the subject of evolving techniques and broadcasting it is also worth reading the study carried out by Arthur Andersen (www.europa.eu.int/comm/avpolicy/stat/studi-en.htm).

1. Television

- Evolution of interactive digital TV (paying or free) and their potential

The development of the supply is deemed **high**. But things are not as simple as that, because an increase in the number of broadcasters is not necessarily matched by increased demand and therefore of subscriptions and audiences. The number of digital interactive services and channels proposed would rapidly exceed the desired level; over the period 2000 to 2001 the Internet provides a significant example in this context, in a negative sense. The development of audiences for these digital interactive TV (DITV) services forecast in the next 3 or 4 years is assessed as “**only moderately high to high**”, so no true consensus is observed according to the markets and the sources.

Explanatory comments:

- The state of broadcasting technology and of the operational character of the services**
- Two concepts emerge between, on the one hand, the principle according to which the technology is ready and the broadcasters are operational (or advancing at a moderate to high rate); and on the other hand, the countries in which these developments are proceeding clearly more “slowly” in terms of both supply and demand.
- The supply of these **satellite** broadcasters is on a growth platform higher than that broadcast by *digital radio* techniques. However, the multiplication of distribution channels facilitates access to these new channels, even if access to that choice varies greatly between one country and another in the Union.
- Only a **limited number of broadcasters** will be able to offer the state of the art in terms of interactive services in the coming two or three years, in other words a complete and functional range of services, in view of the technical complexity and the burden of investments to activate this “tool”. Parallelism may once more be

established with the mobile telecommunications intended for the public at large: a certain *purge* of the market can be predicted and this would happen in a natural way via the choice made by consumers and the law of profitability.

- The point made below, on the evolution of on-line services, should also be noted.
- **Evolution of audiences and of the number of subscribers**
- The content of these channels and the profiles of those to whom they are addressed (telev viewers/audiences) will become **specialised** and not “generalist” in the near future, notwithstanding a few contrary examples such as the United Kingdom or Spain. According to the markets and the subscriber profiles there is a demand for **paying** digital TV and for **specific** programmes. The volume of subscriptions 3 to 4 years hence will be a function of the public’s **investment cost/expectations** ratio and will vary markedly depending on the country. The figures cannot be predicted in view of the evolution of subscription tariffs, which is a factor of prime importance but one that is unknown or very unstable at present.
- Most of the public are at present **satisfied** with “free to air” broadcasters accessible at no cost (or for an annual tax or licence fee), a tendency reinforced by a certain **inertia** of the market in the face of an added value of DITV which is **not recognised** at present. This, subject to possible disappointment concerning programming by the existing major “generalist” broadcasters (a phenomenon regarded as **real** but **not critical** at the present stage, in several countries). The evolution of broadcasters who propose interactive services will in that case be encouraged, but its potential will still be limited to specific population groups.
- Also worth noting is the increase in the number of **free** thematic channels, beyond the maintenance of existing generalists and the progression of “pay-TV” supply. The audiovisual supply in many European Union countries can be said to be approaching saturation.

- **Financial and economic factors**
- In theory there need be no advertising on these channels, depending on their strategy (or “business model”, based for example exclusively on income from subscriptions and any public grants), or the level of advertising pressure may be less than on free channels. Although the **volume** of traditional advertising would in all such cases be **smaller** than via the traditional broadcasters, the advertisements will also be more “personalised” and virtually more interactive. Advertising professionals are interested in the possibility of **more accurately targeting** their advertising campaigns towards a given socio-demographic or socio-economic profile, as a function of an audience that can be better identified according to such criteria. This comment does not take into account the commercial actions carried out other than by broadcasting in linear video flow (cf. Part B.a.1 “interactive advertising”).
- The business **crisis** observed constitutes a brake on the progress of digital interactive TV (DITV) and will continue to do so until the end of 2002, but that brake remains indefinable in its extent and duration inasmuch as balancing the finances of DITV could become even more difficult despite the improvement of general macro-economic indicators.
- Finally, a change of **equipment** would be necessary for a high proportion of households, while the average consumer is still rather conservative and resistant to such investment, especially at times when the trade situation is not good.

Apart from logistical and technical aspects, the **economic** factor is therefore of outstanding importance. In this respect, the launching of **free** channels via the digital radio technique (or via any other broadcasting method) could logically have a profound influence on their progression and overturn pessimistic forecasts. Moreover, this type of broadcasting would be accessible to the greatest number. On the other hand, in this case the “business model” may

be **fragile** in view of the low advertising revenues these channels would receive at first, for a very onerous programming and broadcasting effort.

Accordingly, whether DITV is free or paying, the experts believe that to achieve **financial balance** will become increasingly difficult. In France, for example, severe worries have been expressed about the viability of these numerous new broadcasters in the short term. In the United Kingdom the stagnation of ITV has jolted the market. Digital channels, especially those to which access is free, are directly **dependent** on their advertising revenues and subscriber channels on their subscriptions (apart from any grants and subsidies). Current experience (Canal+, BskyB, RTL group, Kirch, etc.) points to the **fragility** of these two resources and to the difficulty markets have in absorbing too great a supply: high channel fragmentation inevitably leads to a reduction of respective revenues. It must also be mentioned that State intervention (government funding) will play a crucial role in the virtual progression of digital TV.

Experts even refer to the **Internet bubble**, which could be repeated with paying digital channels. They anticipate a possible crash towards the end of 2003 or the beginning of 2004, if not sooner.

The markets could therefore organise themselves, whether voluntarily or not, into oligopolies or monopolies, and the advantage of state intervention to avoid these situations (via reinforced subsidies to companies in difficulty or the legal blocking of attempts to control the market) is not clear. The increasing or excessive number of broadcasters stems from a rather **imprudent liberalisation** of this activity. If the procedure of granting broadcasting licences had been more exacting, requiring better **guarantees and fundamentals** concerning their **future commercial success**, the number of initiatives would have been smaller and the balance of the sector less worrying.

- **Evolution of interactive on-line services**
 - The broadcasting of “pay per view” programmes
- Forecasts about the development of demand for “on-line” audiovisual services are, as with the previous point, again lukewarm or rather **moderate** where the next 3 to 4 years are concerned. Opinions are on the whole pessimistic, since these services depend directly on the penetration of DITV into households.
- Everything depends on the attractiveness of the content and the evolution of equipment in households. The spread of ADSL connections (or any other numerical reception method) is assessed as **slow** and **gradual** by most experts, and remains limited to a profile of consumers with relatively high incomes and who are culturally “innovators”. This is a short-term view, namely between now and the end of 2003 or half-way through 2004. The real expansion could occur by 2010 when the cost of the equipment and the service itself will have come within the reach of the middle and popular classes. Here, the reference is to the Internet.
- Besides the ability and motivation of households to invest in and renew equipment, the disparity of wiring schemes and the capacity of operators/distributors to propose offers that are attractive compared with the competition vary greatly from one country to another, and so slow up the process of development.
- It is also pointed out that telecommunication operators, who play the part of middlemen in the technique concerned, want to be certain about the profitability of the service before investing in it. Their present “sensitivity” to returns risks delaying this evolution or, depending on the country, may accelerate it.

- Commercial information and the buying of products and services on-line, **other than in a continuous video flux**

The consensus of the specialists is clearly pessimistic in this field of application. Little progress is likely to be made in the coming 3 to 4 years. This would depend on the evolution of the “platforms” of such **information society services** (cf. point B.a.1). This is not the only criterion but the conditional point of departure.

- The **technology** is far from being operational in terms of pass-band, demand management and security, among others. *Security* refers to the management of personal data and of the process of paying “on-line” when purchasing a product or service.
- No possibility of tangible progress is perceived until the technical networks (“platforms”) evolve fundamentally, but the existence of a more or less large consumer potential in due course is acknowledged.
- As a point of reference, **electronic commerce** via the Internet has revealed a demand for buying on-line, although this is mainly observed in a limited range of sectors (publishing, IT, games, share dealing, information, travel) and by a certain profile of users (greater purchasing power, professionals in the sectors concerned, students).

There is some disappointment or dissatisfaction among the professionals concerned in this area: initial forecasts were much higher than what has actually happened in Europe. Numerous crashes occurred in 2000 and 2001, and entire sectors fell prey to serious financial crises.

- The sectors corresponding to product purchasing via digital television and its on-line services are widely different: the sectors of equipment (home and office), maintenance products, travel, electrical and electronic equipment, “gift products”, food, etc. are aimed at [*sentence uncompleted in the French original*].

- This being the case, although the penetration and use of the Internet in the home is spreading in the European Union countries, and despite its slowing down, this medium and the related services are benefiting from a lead that will be difficult to catch up with in the short term by IDTVs that wish to count on those services, for the many reasons stated in this chapter.
- On that subject, advertising professionals are being very sceptical and prudent about **advertising activities** on IDTV; the recent decline of Netvertising (advertising on websites) and the questioning of its effectiveness has led them to be more pragmatic; they do not see themselves going in for a new “bubble” whose financial consequences would be damaging.
- The **content** (range of services offered, applications, range of information available) plays an important part in this evolution; with some exceptions, it has still not **succeeded** at present. Producers and distributors seem to envisage an investment in the application only once the networks have been correctly implemented and they have access to a sufficient audience to make their business profitable. This has not happened yet.
- In the opinion of many, the other forms of communication and purchasing will remain dominant in the long term and more **competitive**. Even on the basis of effective technology there must still be an added value in this mode of action compared with existing modes. Experts point to the significant advance of **tele-shopping** broadcasts (and channels) in recent years, and the success they have enjoyed.
- Finally, experts take it as read that these services must be accessible **at no cost** to have any chance of being viable. They also mention the fact that the offers should be better than those made by other communication channels.

- **Evolution of the convergence between television and the Internet**

Estimates are conservative: this access will progress **only a little** in the medium term. On the basis of the available information it seems that there is no significant demand for this equipment, which is already available.

- The structure of the content of Internet pages is at present not organised as a function of their possible access via the television: the link between the two media does not seem voluntary and this technology is **still largely non-functional**.
- The possible “transfers” are rare and do not constitute a significant market. The experts questioned consider that the two terminals (personal computers and television sets) are still regarded as quite different and respond to different needs; the market has little faith in a convergence and still less in a merging between the two *terminals*, despite the numerous mentions of this in the press and among the professional circles involved.
- However, some exceptions can be envisaged in the medium term, such as the connection of video game consoles to a website by the television cable (or some other connection). This case, even though marginal, would automatically arouse the interest of advertisers and would perhaps raise regulatory questions relating to the “change of media environment”.
In this connection see point B.a.1 on “interactive advertising”.
- Surveys and studies have demonstrated the minimal interest of the public at large in this technique (according to the international management of Zenith Media). A problem to be stressed is the low relative proportion of homes equipped with two or more television sets: in practice, the conjoint viewing of a programme precludes transfer to a non-continuous video flux, whether this be an “IDTV pages” or a “web pages” environment.

2. *Internet*

- **Evolution of the convergence between the Internet and television**

- Evolution of the broadcasting of audiovisual programmes via a website

- This integration is linked to the access of homes and, more plausibly, offices to **high flow-rate** technology. The mode of TV programme consumption (in continuous video flow) via a personal computer is perceived as specific and in the medium term is unlikely to concern other than **certain types of programmes**: broadcasts of selective information, “short programmes”, etc.

In the short term there is unlikely to be a **significant evolution** in the volume of this consumption, *inter alia* because the technical network of the web is not up to it. In the opinion of the experts consulted, this will remain true at least for the next 3 to 4 years.

- As mentioned earlier and except for very specific cases, alternative means for viewing audiovisual programmes (namely the traditional television set) remain more than competitive. In effect, an innovation that does less than an existing technology has no objective reason to develop, and specialists agree in saying that the very high flow rate needed for viewing the “video stream” on the screen of micro/mini-computers will only become available in the “**long term**”, namely 4 to 5 years. It will also be necessary to measure its possible expansion, since this technology could be limited to specific audience circles.

At the content level, access to a “video stream” programme schedule via micro-computers (not to be confused with the viewing of a passive video document of the MPEG type and consisting of pre-recorded programmes) would not meet the **expectations** of private consumers. For that reason, its spread will only be limited in volume even after the technical constraints have been resolved.

- This evolution will entail high flow rate, but also a complete replacement of existing domestic IT equipment.
- It remains true that a certain volume of flow and exposure (absolutely not identifiable and very small) of programmes on *video stream* – direct or deferred – via the Internet is already operational today and is used for advertising. In the case of such an application the problem of **regulating** the advertising activity is consistently mentioned by the specialists, as well as the implications relating to the management of programme **rights**.
- However, self-regulation in this related field is considered **sufficient**, the more so since the audience volume considered is small. It is noted that the said self-regulation varies between countries and that the large markets “set the example”.
- Finally, the convergence between **radio** and the Internet is also mentioned and regarded as a **more urgent** reality, because more complementary and more evidently appropriate to existing needs and technology. In this field the fact that regulation is lacking is accepted, just as pirate radio stations exist which evade all the rules (legal or professional).
- **Evolution of advertising techniques on the Internet**
 - On the development of such advertising techniques over the next 3 to 4 years

This evolution is deemed “high to very high” in the business year 2001 and the same in the short term future.

- The effectiveness of these forms of advertising will increase with their level of interactivity, their originality and hence their visibility (cf. point 1.A.c.1 “basis of the

de-formatting and dynamics of the advertising methods”). The wish to diversify these modes of action and their content by original means is **strong**, and is present in all the European Union countries, purely in order to achieve commercial results, which can be measured by a participation rate such as:

- on-line approaches for the purchase of products or services;
 - participations in the competitive games presented;
 - gathering of information about a product or company;
 - registrations by means of a form for various later applications.
-
- Thus, in most cases the mode of action differs from “classical” and passive advertising such as that observed in the cinema, on the radio or on television (other than the techniques linked with interactive digital TV and its services outside a continuous video flow). The boundary between the development of a product or trade mark and the purchasing process has literally disappeared.
 - “Bannering” (or the advertising banner) is said to have lost its status as the reference technique. The proportion of actions carried out in this form is declining visibly, a trend that will continue in the months and years ahead to make room for more interactive and more complex techniques.
 - “Rich media” (productions based on the audiovisual mode) is regarded as a favourite advertising technique, at the centre of the current efforts. The broadcasting of advertising spots comparable to the classical format should see a large expansion, inasmuch as the platforms are improving (high flow rate) and the needs of particular population groups are increasing.
 - Assessment of the self-regulation of these advertising techniques
 - This field is regarded by many noted specialists as “progressively regulated” and not as “sufficiently regulated”. Some opinions consider that self-regulation is sufficient,

but these diverge depending on the country and the nature of the activity of the person questioned.

- The extremely fragmented nature of the media and the large and very diversified number of advertising or commercial actions make the identification of abuses a complex procedure and the reaction times longer.
- It is recognised that the EGTA and the IAB have nevertheless done important and effective work in this field.
- It is also necessary to stress the difficulty of controlling the actions that take place on localised sites with a certain impunity outside the European Union countries.
- The legal frameworks establish considerable consumer protection, without a direct link with the Internet. Common law is deemed sufficient, such as the laws on misleading and untruthful advertising, etc. The specialists questioned consider that the regulation on the content of advertising messages on the Internet is sufficiently advanced, but it is rather the **technical** character of the medium that makes it difficult to monitor, and the possible malpractices. Moreover, the sites that offer “unattached local advertising” (enabling the broadcasting of an advertisement relating to a geographically determined market) are not all registered by the professional associations. Besides, some are based outside the European Union. Self-regulation may accordingly be weakened because of this.
- **Access to the Internet from mobile terminals**

Preliminary comment: several communication supports have recently made it possible to access the Internet via mobile “supports” or terminals, thanks to the WAP or GPRS access protocols. Mobile telephone terminals, portable personal computers and new forms of hardware supports (PDAs, for “Personal Digital Assistant”) at present enable access to the Internet.

- On the development of such modes of access over the next 3 to 4 years

Their development will be real but still moderate. Several countries mention a penetration of 20 to 30% of Internet access among their respective populations via the existing GSM protocol. The same countries also mention the apparent delay in establishing GPRS technology, which is expected by the beginning of 2003 at least.

- The unsuitability of the equipment currently used by end-users (similarly to the situation of IDTV, or high flow-rate for Internet) will entail a complete change of the terminals used. This modification of the consumer's equipment will govern the process of access to the new web applications on mobile telephony screens, with the cost factor being the most important element. Nevertheless, the new supports are now being actively sold in most European markets with visible success, in particular among people with high purchasing power and young people (16 to 25 years of age).
- Several experts stress the fact that the new protocols (G2/G3) still do not offer totally guaranteed functionality or are still incapable of a wide range of applications, and point to a real competitiveness for Internet applications by mobile telephony and PDAs. Most expect to see a separation and specialisation of applications (on mobile telephones and PDAs) or a total convergence between the two supports, depending on the populations or population groups that use them.
- Specialists consider that it will take about 10 years for PDAs with permanent Internet connection to become commonplace or to achieve a penetration of at least 25% among the adult population.
- The WAP protocol seems to have proved less successful, if not technically then at least commercially, in several countries. This also explains the mistrust and doubts in peoples' minds concerning the new generations of modes of access. The failure of

WAP is also linked to the absence of content appropriate for it. The implementation of technology has outstripped that of content, and as a result consumers have not developed an interest in using this new technology.

- Drawing conclusions from that failure, at the dawn of the launch of the UMTS standard, in parallel with the implementation of infrastructure the operators are collaborating with the owners of content in developing an array of services that is likely to retain the interest of consumers.
- WAP applications have also been limited by the narrow pass band of the protocol. This rapidly became evident during the emergence of UMTS while WAP was still hardly operational. It was logical for operators and their content-providing partners to wait for the new UMTS protocol, whose pass band is clearly wider, so as to avoid duplicated investment. Owing to the slowness of its development, the WAP concept was already outdated before it saw the light of day.

3. *Mobile telephony*

Modes of commercial or advertising interaction between the user of a mobile telephony terminal and the operator or a company involved via the operator's service

- **Advertising messages transmitted by SMS on the operator's own behalf**
- Their development is perceived as “high or very high” by all the people consulted. Several specialists add the numerous vocal applications via the terminal's message system.
- European telecommunications operators are almost all in a financially precarious situation. In view of this, modes of action that aim to retain the loyalty of the customers will remain in place from now until the end of 2005.
- The **boundary** between information from a telecommunications operator about his own services and products and a pure act of advertising is not clearly drawn. Typically, some actions resemble a prospective and commercial campaign, not an informative one.
- **Advertising messages transmitted by SMS on behalf of a third party (advertiser)**
- Messages and campaigns of this type will meet with increasing success.
- The financial fragility of the operators mentioned earlier will also motivate them to increase their income by the “temporary rental” of their subscriber lines, in the form of advertising revenues similar to the selling of “media space”.

- Young people are likely to be a favourite target of advertising agencies and advertisers via this technique.

- **Permanent or temporary advertising strips on the terminal screen**

- These show messages produced by the operator or for a third-party company. The intrusion of “external” advertising may be the object of a reduced communication tariff (“cross-subsidiation”), of *airtime* on offer (free minutes) or of game competitions.

- This advertising technique is perceived as less widespread, with less development potential than the SMS actions described earlier, because of the inadequacy of users’ equipment in the short term. It will only be able to expand in parallel with the development of appropriate terminals and it is therefore too early to evaluate this tendency.

- **Assessment of the self-regulation of these advertising techniques**

- These modes of action are regarded as “progressively regulated” or “sufficiently regulated”. In all the European Union countries the legal frameworks provide serious to “very sustained” protection of personal information, and an elementary protection of respect for privacy. Those two frameworks sufficiently delimit the possible development of such advertising techniques.

- Moreover, the professionals start from the principle that an operator will never wish to displease his subscribers, since he wants to retain their loyalty. Besides obligatory respect for the legal framework, the “Opt-in” or “Opt-out” method (coined for interactive advertising techniques on the Internet) will be systematically applied in

order to avoid irritating the consumer, who could otherwise discontinue his subscription contract as soon as he experienced a feeling of advertising saturation.

- However, numerous cases are mentioned in which the details of consumers are used without prior warning, such as recourse to e-mail addresses via the Internet. Self-regulation and the legal frameworks will again encounter technical difficulty in the detection of abuses.

4. *Radio*

- **Text advertising messages on the screens of receivers**

- On the development of these advertising techniques over the next 3 to 4 years

This development will be *insignificant* because the technique is **inappropriate** for advertising strategies. At the risk of repeating ourselves (cf. our comments on GSM, the Internet and IDTV), the platforms and the configuration of the receivers are not up to such broadcasts in the European Union countries.

The broadcasting mode of this type of advertising technique involves a paradox:

- The reading of texts on a radio receiver fitted in a vehicle would in practice be difficult and dangerous for the driver, and only possible for the front passenger.
- The way radios are listened to at home does not correspond to any wish by the listener to view the screen of the receiver; “radio is based on listening, not on viewing”.

In general, this application will remain limited to non-commercial information messages linked to the programmes broadcast (mention of the performer whose work is being broadcast, weather forecasts, traffic jams, etc.). Some advertising activities are known, but their volume remains marginal and unquantifiable.

- **Interactive and other advertising techniques via digital radio receivers**
 - On the development of such advertising techniques over the next 3 to 4 years
- Specialists do not believe in a tangible evolution of such services, mainly because they are neither necessary nor competitive compared with the traditional or other emergent means.
- As with the other emergent media technologies, these advertising services and techniques will depend directly on the provision of compatible transmitters and receivers, and therefore on the willingness of broadcasters and consumers to invest in the innovation concerned. Until now the experts find that digital radio only attracts very little interest from listeners. Personalisation of the programming could meet the needs of a proportion of audiences, but this will have no impact on advertising techniques.

5. *The cinema*

- **Production of “off screen” advertising**

- On the development of these advertising methods over the most 3 to 4 years

This development is deemed by most to be “only moderate” or sometimes “high”, depending on the markets.

- Advertising professionals see in this an interesting alternative to the promotional methods implemented on the large scale, and this with a view to selectiveness and efficacy.
- This method is still relatively unstructured and should not be regarded as a medium in the strict sense. Nevertheless, several markets seem to be organising themselves; the potential for activity is still large, but the development of that activity remains slow.
- The distributors and cinema operators may find new sources of advertising revenues in this, such as the marketing applications mentioned under point 3 (advertising authorised by telecommunication operators for *third-party* advertisers). Since the cinema business in Europe is deemed “weak”, the motivation for cinematographic distribution of “off-screen” actions is regarded as strong.
- **Evolution of the showing of films in the cinema in digital format**
- According to the most optimistic opinions, from 2004 or 2005 several complexes in large cities will be able to adapt to this form of distribution but this method of operation will be selectively used in the cinematographic complexes with the highest volumes and/or in the major markets, depending on the respective willingness to

innovate. The pioneering countries, namely Germany, Great Britain and France, will therefore be the most important.

- The technology is already operational but its practical implementation depends on the complete process of cinematographic production, the first step being for film distributors to acquire the appropriate equipment.
 - *The problem of mixed productions would make it necessary for operators to acquire both types of projection equipment, which does not seem very realistic at present. The difficult situation of the cinema business in Europe can only inhibit the tendency further.*
 - *Some countries have been in the “test” phase since 2000 but have not followed up their developments. These digital projections are more a matter of promotion and enhanced image for the multiplexes than the product of a tangible desire to make the technique more commonplace.*
- In theory this digital distribution could eventually enable a more targeted projection of advertising as a function of the content of films, complexes or auditoria, or of periods/moments of projection. The sector is not worried about possible regulatory action in the matter, inasmuch as this possible selection of advertising messages would cause the audience to perceive them as less onerous. Besides, the financial balance of the project – in other words, profitability – would be doubtful according to the opinions expressed.
- Moreover, the nature of advertising distributed via this new management would not have to change: an interaction between the advertising message on the screen and the public in the auditorium seems necessarily inapplicable.

b. New specific advertising techniques

1. Limit of the indicators available

As the reports attached to Part I bear witness, the indicators available to media and advertising professionals, such as the professional associations in the field and public authorities, are mainly based on two types of content:

- (1) Indexes related to **media audiences**, which can give a *quantified* estimate of viewers who see the advertising, as in the case of television; in this respect every country in the European Union has measurement tools which are comparable between themselves, regarded as official and considered reliable, and which can compute the audience volumes of programmes by type and of the types of advertising listed (sponsorship and “classical” advertising are the two types of advertising messages recorded).
- (2) Indexes related to approved **advertising investments** (“gross budgets”), i.e. ones calculated on the basis of the official tariff for the media space considered and not on the amount actually invoiced to the advertiser or the purchasing middleman responsible for the campaigns.

Unfortunately, these indicators **take no account** of the various emergent forms of new advertising techniques such as interactive advertising, split screens or insertions of so-termed “virtual” advertisements.

- By definition, technical innovations are subject to considerable delay before being integrated in the usual indicators, because of the need to **adapt** the existing information gathering methods and tools. But it is reasonable to believe that the **motivation** to “plot” the audience volume and advertising investment of **split screens** or **virtual advertising** is not clear, bearing in mind that these modes of action

correspond to cases of a limited kind operated within a regulatory framework which is still uncertain.

- In any case, these two applications were very marginal over the period studied (from 1998 to 2001 inclusive) and were limited to rare contexts of markets, sectors (or programme types) and broadcasters. Since the use of **split screens** for advertising purposes should increase (cf. following point), this technique could satisfy an advertising standard and be integrated in the audience measurement tools and the “monitors” for following investments.
- The difficulty remains of collecting audience data on **insertions of virtual images**, granted that these apparitions are in many cases fortuitous and unpredictable. This type of action is incompatible with *audience measurement means* currently available in the European Union countries, which operate on the principle of “time and date measurement” (a method which only gives data for programmes that are clearly pre-identified and can be “timed” automatically).
- On the other hand, interactive advertising can perfectly well be integrated in the audience measurement tools applicable for the Internet and, to a certain extent, television (entailing the availability of audience measurement techniques compatible with digital reception technology). But since the interactive environment is non-linear (in most cases not involving the activity of the broadcaster of the initial audiovisual programme), the advertisements concerned have no reason to be recorded in the official statistics of the television channels.

2. *New specific advertising techniques*

As explained below in the analysis by Bird & Bird (“interactive advertising”), when the televiewer changes media environment and moves from the linear to the interactive mode, we depart from the field of application of the TVWF Directive.

On the other hand, the basic transmitters enable the transfer of linear programming to “information society services” which (and whose programmes) satisfy the criteria that define the status of “broadcaster”. For that environment the indicators, rules and traditional legal frameworks are applicable.

As mentioned earlier, interactive advertising outside a linear video flow is still not registered by the existing measurement tools and their activity is outside the scope of the Directive. Accordingly, no closer economic study is either necessary or possible, since the problem relates to the legal sphere.

B. At the legal level

a. *Development of the new advertising techniques*

In the context of the study three new advertising techniques have been clearly identified and their application and regulation examined for each Member State.

These are:

- interactive advertising,
- split screens,
- virtual advertising.

It is immediately apparent that the situation differs appreciably from one country to the next, as regards the use and real importance of certain techniques and the attitude of the national administrations (permissive or restrictive). The existence of specific rules aiming to regulate these new techniques is rather exceptional.

1. *Interactive advertising*

Interactive advertising enables the viewer to provide information directly to the broadcaster/advertiser thanks to a return path or to evolve in an interactive environment (i.e. by actively choosing the content – informative or advertising – to which he wishes to be exposed, and this only for as long as he wants). This technique is used on digital television but also in an environment other than broadcasting, for example the Internet or mobile telephony.

The TVWF Directive does not apply to the last two media (with exceptions: for example, TV on the Internet), but other directives and rules do so apply:

- General rules on consumer protection, including the rules on advertising applicable to all the media.

- Rules on the protection of privacy and personal data.
- European Directive on e-commerce.
- Self-regulation codes, etc.

In the context of the present study only the use of interactive advertising on digital television was examined in detail.

Digital television enables the viewer to have direct access to interactive commercial services, by the electronic programme guide (EPG) or from a linear television programme, or even from an advertising spot (generally the last in the advertising break).

The essential question is : to what extent does the TVWF Directive apply to interactive advertising on digital television?

Digital television offers viewers a large range of services. Clearly the TVWF Directive also applies to digital television but the rules on advertising do not necessarily apply to all the services offered on digital television. If those services are covered by the legislation of the Member States, the latter must see to it that broadcasters comply with the laws in force.

Starting from the legal definitions in the European directives, a distinction can be made between “television broadcasting” and “information society services”.

- **“Information society services”** (also called the new media services) are defined in Directive No 98/34 of 22 June 1998 introducing an information procedure on standards and technical regulations (amended by a directive of 20 July 1998). The “e-commerce” Directive refers to that definition.

These services are defined as follows: “any service, normally provided for remuneration, at a distance, by electronic means and at individual request of a recipient of services”.

As examples, the following are regarded as such: VOD, on-line selling of goods, videotext, commercial communications by electronic mail.

- The TVWF Directive defines “**television broadcasting**” as “the initial transmission by wire or over the air, including that by satellite, in unencoded or encoded form of television programmes, intended for reception by the public”.

This concept includes for example television broadcasts, NVOD, teletext (not provided by individual request).

The essential demarcation line between “information society services” and “television broadcasting” is the destination of the service which, in the first case, is provided on individual request while in the second case it is intended to be received by the general public.

Besides, the concept “television programme” is also important since a linear television programme is clearly different from other services offered by the broadcaster.

The main problem in terms of regulation is in effect related to the fact that viewers who wish to interact deliberately leave a linear televised programme to enter an interactive (commercial) environment.

The change of environment (for example from linear to interactive) could constitute the limit of the field of application of the TVWF Directive which, in principle, ceases being applicable when the viewer makes the (individual) choice to leave the linear environment. One should remain attentive to the nature of the services to which viewers have access in this new interactive environment.

In effect

- If these interactive services are regarded as “information society services”: since the user has to intervene and the services are provided on individual request, the TVWF Directive ceases to apply.

In **Sweden**, for example, the competent authority has examined interactive services offered on terrestrial digital television and concluded that interactive shopping services are not subject to audiovisual regulations.

- If some of these interactive services are classified as being “provided for simultaneous reception by the public”, the TVWF Directive could apply.

However, when it comes to assessing the application to these interactive services of the rules on advertising laid down by Chapter IV of the TVWF Directive, it seems that the said rules were only framed for linear televised programmes and do not apply to all the services offered on digital television. This is particularly true of the rules on maximum advertising volume.

The problem is therefore to know whether the criteria adopted to determine the TVWF Directive’s field of application (services provided on individual request or provided for reception by the general public) can be kept and applied to the full range of services offered on interactive television, or if necessary, whether they should also take into account the nature of the services offered, which could then be defined and expressly included in the directive.

In any event, because of the very close coexistence between television programmes and the other interactive services available on digital television, audiovisual regulation is likely to interfere when the interactive commercial service is accessed from a linear television programme or when a television programme and commercial content or links are present simultaneously on the same screen (by means of the split screen technique).

At present the only Member State with a specific regulation for interactive advertising is the **United Kingdom**.

The regulation adopted by the ITC (ITC Guidance Note on Interactive TV) is more a guidance addressed to broadcasters to enable them to apply the existing rules to interactive television.

Basically, this guidance note applies the general principles of televised advertising, whose essential rules are:

- the nature of the various types of content must always be transparent for the televiewer;
- there must be a clear separation between the advertising and the television programme (on interactive television the separation can be spatial and does not have to be temporal: the use of the “split screen” technique is therefore permitted).

Another important rule in the Guidance Note is that the televiewer must not be directed straight from a linear television programme to purecommercial content. A first click on a neutral interactivity button must lead the viewer to an intermediate screen containing at least 50% of editorial content. This editorial content (e.g. the television programme present on part of the screen) can be surrounded by commercial content or links. A second click on that link would then take the televiewer to the strictly commercial content (which could for example be the site of an advertiser, etc.).

Finally, the **EGTA’s self-regulation code** relating to interactive services offered on all the media deserves to be mentioned. In effect, this code comprises a set of basic rules regarded by the advertising industry as offering users a sufficient level of protection, while existing codes also remain applicable whether they be general or specific (i.e. by sector).

Other than the ITC rules and the EGTA code, no specific regulation applies to commercial interactive services, since interactive advertising is still at an experimental stage in most Member States.

Besides, it emerges from the inquiries made among media sector professionals that, according to them, interactive advertising should:

- be subject to light control, to flexible rules that would allow the further development of this new technique and digital television in general,
- take into account the deliberate choice of the televiewer, who from a passive environment voluntarily enters an interactive environment where he receives information he wants,
- be treated at the regulatory level in the same way as all the media, so that interactive services offered on television are not subjected to rules more restrictive than when offered on another medium such as the Internet.

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2. *Split screens*

This technique allows the simultaneous presentation of editorial content and commercial information on the same screen, divided into two or more parts. The technique is evidently used on the Internet, on digital television but also on analog television.

Used in an interactive environment on the Internet, this technique should in general not raise any legal problems because the TVWF Directive will not apply or will apply only to that part of the screen on which a linear television programme is being broadcast. As regards digital television, the question arises of knowing the extent to which the TVWF Directive is applicable in the interactive environment.

In contrast, during the broadcasting of linear television programmes the TVWF Directive and in particular its Chapter IV containing rules on advertising, sponsorship and tele-shopping, are certainly applicable.

This split screen technique could be considered to conflict with the principle of separating advertising from programmes (Article 10, TVWF Directive) and with the rules on the insertion of advertising (Article 11, TVWF Directive).

Such considerations are at the origin of the ban on using the technique in many Member States: the **Netherlands, Portugal, Sweden and France** (note: it may nevertheless be permitted for sponsor messages when the national regulation allows the sponsor to be mentioned during the credits of a television programme).

Other countries have authorised the use of this technique: for example the **United Kingdom** and **Germany**.

Germany is the only country to have adopted a specific regulation on the subject. The conditions imposed by law are as follows:

- the advertising must be clearly separated from the programme by visual means,
- the advertising must be identified by the word “advertising” on the part of the screen that it occupies,
- the duration of the advertising is counted in full when calculating the maximum overall amount of advertising,
- advertising on a split screen must not appear during religious programmes and programmes for children and young people.

In the **United Kingdom** the ITC allows the split screen to be used, but in a more limited form (during the advertising, information can be displayed about the programme, but only in the form of text).

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In the context of the consultations held during the study with national authorities and advertising sector professionals, no consensus was found regarding the evolution and the expected success of the use of this technique. Nevertheless, the economic study showed that its success ranged from “high to very high” according to the broadcasters.

It emerged that authorities which ban the technique consider that the separation between advertising and the programme must be both temporal and spatial. Nevertheless, we consider that the Directive does not require temporal separation for the rules of Articles 10 and 11 to be respected. Spatial separation is sufficient, and consequently separation in time is not necessary.

Article 11(1) allows broadcasters to insert advertising DURING broadcasts:

- provided that it does not compromise the integrity or value of the broadcasts,
- taking into account the natural breaks in the programme (autonomous parts), its duration (audiovisual work – specific programmes) and its nature (broadcasts, audiovisual works, specific programmes),
- and so that it does not compromise the rights of the right holders.

Thus, there is no doubt that to use this advertising technique, the express consent of the copyright owners (and owners of associated rights) must be obtained in advance for programmes whose dissemination would be reduced to part of the screen and would coexist with a commercial message.

Besides, that is why the split screen technique is only used in Germany in the context of programmes for which the broadcaster holds all the rights (sports programmes, programmes produced in-house).

Although it seems suitable to allow the potential development of the split screen technique, it would nevertheless be appropriate, in order to avoid any legal uncertainty or divergent interpretation of the principles laid down by Article 10 of the Directive at the level of the Member States, for the Commission to clarify the interpretation of the Directive by stipulating clearly that a spatial separation of the advertising and the programmes is sufficient.

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3. *Virtual advertising (or virtual “sponsorship”)*

Virtual advertising (or virtual “sponsorship”) is generally used in sports broadcasts. The technique allows advertising messages or mentions of sponsorship to be electronically inserted into the programme.

The technique can be used to replace existing advertising, for example advertisements present at the locations where events are taking place, with other advertisements adapted to the receiving country.

This technique is appreciated differently in the Member States. In some countries it is banned, in others it is expressly permitted and regulated, or sometimes tolerated by the national administrations without the existence of specific regulation.

- Thus, in **Italy, France, Portugal and Norway** virtual advertising is regarded as contrary to the principles that govern the insertion of advertising in programmes, and is accordingly banned.
- In the **United Kingdom and Germany** there are specific regulations, which subject the use of this technique to certain conditions:
 - In Germany the rules adopted are inspired by the EBU code on virtual advertising, which authorises it provided that the televiewer is informed and that it is used exclusively to replace an existing advertisement. Besides, the German regulation stipulates that the virtual technique cannot be used for product placement in televised series or films.
 - In the United Kingdom the ITC also stipulates that the quality of the image must be preserved and bans broadcasters from involvement in the sale of virtual advertising spaces.

- In other Member States, for example **Greece** or **Spain**, the media control authorities allow the use of virtual advertising and there is no specific regulation on the subject.

In the investigations carried out in the context of the study among the authorities in the various Member States and media sector professionals, no census emerged.

At this stage it is therefore difficult to confirm whether or not the technique is of interest for the various actors and to adopt a position on the need to insert a specific regulation in the Directive.

Nevertheless, it would also be appropriate to think about the classification ascribed to this virtual technique, which could well, , be more similar to virtual “sponsorship” than to virtual “advertising”.

In effect, at its present state of development the technique is very generally used during a sports broadcast to display a logo or trade mark of the advertiser who can be regarded as the sponsor of the programme.

On that assumption and subject to the consent of the rights holders in events where the virtual technique is used, the use of virtual techniques instead of the insertion techniques currently used by broadcasters to insert mentions of the sponsors should not pose a problem, provided that the provisions laid down in Article 17 of the Directive are respected.

Even if the virtual technique as such is regarded as sponsorship, its current use nevertheless conflicts with many national legislations. In effect, in most Member States recourse to virtual advertising does not comply with national provisions on sponsorship that are stricter or more detailed than those of the Directive.

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b. Convergence

Media convergence makes it possible to distribute the same content and services on several types of platforms.

Digital interactive television makes it possible to go beyond the simple broadcasting of signals to a public of passive viewers in a one-way flow. A large range of interactive services can be offered, for example games, sales offers, consultation of the Internet and many other communication services. Moreover, it is technically possible to broadcast audiovisual content on the Internet or to receive it on a mobile telephone.

In view of this technological convergence it is clear that there is no uniform regulation for the different supports.

At present there are rules specific to certain media; Compared to other media broadcasting is highly regulated, especially in relation to advertising.

The justification for this situation lies in the fact that TV is an extremely popular means of mass communication, with great influence power and a major impact on public opinion. Moreover, televiewers have placed great faith in this support and have high expectations about the degree of protection offered to them.

Other media, such as the Internet, are not subject to this specific, complex and restrictive legislation.

In all the Member States there are nevertheless other legal and/or self-regulatory instruments which apply to commercial communications regardless of the media used (e.g. general rules concerning misleading advertising, comparative advertising, laws on the protection of personal data, Directive on e-commerce and distance selling, and general or specific codes for self-regulation, etc.).

In view of the technical possibility of offering the public the same content via various media, it has often been suggested to adopt a new regulation relating to the content itself, regardless of its distribution. This would put an end to the discrimination between media and would avoid the flight of some contents (in particular advertising) from highly regulated television to other less regulated media.

Three types of solutions can be envisaged:

- I. To extend the TVWF Directive to other media.
- II. To adapt the existing vertical regulatory systems for telecommunications, TV, information society services, etc., to new advertising techniques or new media services, or indeed to clarify their application.
- III. To reorganise the current regulation with a view to establishing horizontal provisions in combination with vertical provisions.

POSSIBILITY I

The first hypothesis, which consists in extending to other media all the provisions of the TVWF Directive, cannot be realised as such. Clearly, the rules of the Directive's Chapter IV on the quantity and insertion of advertising can be applied to television programmes but not to other services, since the said rules are linked to the very specific structure of classical TV programming, including the continuous flow of broadcasting.

Radio is an exception: in most Member States radio is subject to very similar rules, but often in a form that is slightly less restrictive and less detailed.

An example is the specific case of TV broadcasts on the Internet: in theory, the broadcasting of televised programmes on the Internet is governed by the audiovisual regulation. In some

Member States the broadcasting of programmes on the Internet is expressly included in the legal definition of broadcasting, this, for example in **Greece**.

Nevertheless, in practice the distribution of television programmes on the Internet is still not well developed. Consumers are very fixed in their ways and do not yet regard their PC as a potential television set. It is perhaps risky to assert now that they will do so in the near future, because there are still many technical constraints related to the fact that suitable PCs are not available in most households and to the inadequate video quality.

It is also possible that some national regulatory authorities do not view the regulation of TV on the Internet as a priority (for example the ITC in the **United Kingdom**). Generally, the majority still regards the Internet as a different medium which offers functions different from those of TV.

POSSIBILITY II

This second option would consist in a stage by stage approach based on the regular monitoring of market evolution, and in adapting specific vertical regulations to new media services when it is felt necessary to do so.

This could for example be done by adapting the legal definition of television broadcasting or by introducing certain categories of new television services, which could be governed by all or some of the rules on television advertising.

Moreover, if deemed necessary, certain new advertising techniques could be dealt with in the directive.

Another solution would be to clarify the application of the existing regulations to new advertising techniques. On that assumption no immediate amendment of the rules is

necessary, and this is an advantage if the techniques in question are in an experimental stage or are not yet very highly developed.

POSSIBILITY III

The introduction of a new, horizontal content regulation would offer the advantage of being equally applicable to all media and technologically neutral. It would avoid discrimination between the media and would provide a coherent legal framework. One can imagine a minimum set of rules on the content of advertising, such as that which now exists in Articles 12 to 16 of the TVWF Directive.

The problem is that the various industrial sectors concerned are initially subject to very different levels of regulation (broadcasters have always been heavily regulated, while the Internet is governed by less detailed standards and relies in large measure on self-regulation by the industry). Certain sectors of industry may possibly oppose the idea of a new all media regulation .

Furthermore, the global or international nature of the Internet makes it difficult to subject it effectively to a European regulatory system. Self-regulation of the international industry is often regarded as more appropriate.

Besides, there is a problem of competence: in most Member States vertical regulation is applied and monitored by specific competent authorities, for example solely dealing with TV or radio or telecommunications. There are virtually no all media national authorities that could apply this new regulation coherently .

For example, in **Germany** the regions (*Länder*) are competent for broadcasting and the media services (*Mediendiensten*), while the Federal Government is competent for telecommunications (*Telediensten*). A similar conflict between regional and federal competence is also found in other countries, for example **Belgium**.

On the other hand, there exist specific authorities with competence for one type of media. In the **United Kingdom** and in **Italy** these are or will be brought together to co-operate to some extent (the OFCOM project in the UK and ACCOM in Italy).

Harmonised horizontal regulation of contents could coexist with specific vertical regulation adapted to the specific nature and structure of each type of medium (for example, the rules on the quantity and insertion of advertising on TV). The latter could coexist in the same legal instrument.

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V. GENERAL CONCLUSIONS

It is difficult to foresee how convergence will develop in the future. At present, most Member States take into account the specific nature of the media and consider that the existing, vertical sectorial regulation is the most appropriate and effective, since this regulatory system is related to the specificity of the media.

Bearing in mind what is now technically possible and will become so in the near future, and on the basis of forecasts of how rapidly the public at large will adopt digital interactive television and the new Internet services, some industrialists and politicians with relevant responsibility feel it necessary to draw up regulations or adapt them now, having regard to a future which, however, remains largely unknown.

In a context of complete convergence, the third of the options discussed above presents indeed many advantages.

Nevertheless, as things stand at the moment, it seems risky to regulate on the assumption of complete convergence and general adoption of the digital services by the public; some experts consider that this will never happen, or only more slowly than some of the actors involved believe.

Accordingly, another trend of opinion favours the regular monitoring of market evolution and adaptation of the existing specific vertical regulations as necessary (the stage by stage approach).

Having regard on the one hand to the rather slow evolution of the process of adopting the new technologies and the large differences between Member States (e.g. the situation of digital television in the United Kingdom is very different from that in other Member States),

and on the other hand to the uncertain future of certain services (e.g. television on the Internet), the second option (regular monitoring and the stage by stage approach) seems more appropriate.

The economic study shows that the current vertical regulation applicable to television will remain appropriate and effectively applicable at least for the next seven years. This should not exclude certain modifications of the TVWF Directive (for example the clarification of the rules or the updating of some of the definitions of advertising and self-promotion). An interesting solution could also be to clarify the Directive's interpretation, which would make it easier to apply the present Directive to new advertising techniques and could harmonise the interpretations at national level.

When new rules are adopted or existing rules are amended, certain general principles have of course to be borne in mind:

- Regulation should be limited to the minimum required to achieve the defined objectives (what can be controlled effectively by self-regulation should in effect be left to the industry).
- The rules should preserve or enhance legal security.
- It must be possible to apply and enforce the regulations in an effective way.
- In accordance with the principle of subsidiarity, the European regulator should only intervene in matters that cannot be regulated more effectively by Member States individually.

The general objective when adopting or adapting the regulation should be to seek a fair balance between optimum economic development of the European media industry, and public interests such as consumer protection (especially of minors), the safeguarding of

pluralism, the promotion of cultural diversity, and respect of the Treaty's rules on competition.

The evolution of existing advertising techniques and of the new ones, as highlighted within the scope of this study, leads us to recommend that, as matters stand, the possibility should be considered of clarifying the application of the TVWF Directive or amending it to a moderate extent, without at present seeking to formulate a new directive applicable to all media.

As regards the new advertising techniques, most of which are still testing an experimental stage, we find that none of them seems incompatible with the TVWF Directive. On the contrary, they even seem closely linked.

In effect, referring to the ITC's guidance notes on **interactive advertising**, to ensure consumer protection it is recommended not to confront consumers directly with an interactive advertising message. Thus, a televiewer should never be directed straight from a linear television programme to an exclusively commercial content. The consumer must necessarily go through a voluntary action (in the form of a "click") that leads to an intermediate screen containing at least 50% of editorial matter. Consequently, the secured passage from linear to interactive television necessarily requires the implementation of the **split screen technique** or at least the insertion of a symbol that is clearly identifiable or recognisable by the televiewer.

In this context it seems appropriate to give free rein to the potential development of the said technique, but avoiding any legal uncertainty or divergent interpretation of the principles laid down by the Directive, in particular Article 11 thereof. It would therefore seem suitable to have a clear interpretation or to revise the existing provision, in particular by stipulating that television advertising can be inserted between or during autonomous parts, for example in the case of sports broadcasts for which the split screen technique is precisely most frequently used.

In this respect, our only reservation relates to the nature of the broadcasts in which this technique is used, since the broadcaster must in advance hold or obtain *ad hoc* authorisations to juxtapose advertising messages and editorial content.

As regards the compatibility between this technique and the wording of the Directive's Article 10, it seems that the stipulations of that provision are appropriate, since they allow an unequivocal separation which could take place only spatially and not in time.

Besides, as regards **virtual advertising** it seems to us more appropriate to speak of virtual sponsorship. Nevertheless, and with reference in particular to the EBUcode, it would be necessary to inform the televiewer when a programme is the object of virtual sponsorship. Moreover, the validity of the techniques for inserting or injecting sponsored messages in programmes seem to us to relate more to agreements between the operators involved: broadcasters/third-party operators who develop virtual techniques/organisers of events, in particular sports events.

Consequently, and subject to the consent of the rights holders in the events in which the virtual sponsorship technique is used, the use of virtual techniques instead of the insertion techniques currently used by broadcasters to insert mentions of sponsors should not raise any problems, provided that the conditions laid down in the directive for sponsorship are respected.

As things stand, it cannot be said that virtual sponsorship conflicts with the directive. Nevertheless, it should be noted that the use of such a technique during sports broadcasts is generally contrary to national rules that are more detailed in relation to insertion of sponsorship messages.

As regards **interactive advertising**, the example of the United Kingdom shows that the basic principles (separation between editorial content and the advertising, and identification of the latter) can be applied to this technique and suffice to guarantee the viewer a suitable degree

of protection. Bearing in mind that the viewer intervenes actively and voluntarily requests the commercial information, a regulation that is too restrictive would not be justified.

Moreover, it seems that within the framework of existing legislation the interactive services and commercial information offered on individual demand of the viewer do not fall within the TVWF Directive's field of application. It would in any case be difficult or impossible to apply to this new advertising technique the rules on maximum advertising volume or the rules on the insertion of advertising between and during programmes.

In any case, it is appropriate to avoid regulation that is too strict and would therefore impede the development of this technique and of digital television in general.

In summary, the adaptations to the directive that seem necessary can be summarised as follows:

ARTICLE OF THE DIRECTIVE	MODIFICATIONS PROPOSED
Article 1.a: Definition of television broadcasting	One might ask whether it is appropriate to retain in this definition non-exhaustive examples of the services envisaged or excluded.
Article 1: Definition	<p>Insertion of a definition of the term:</p> <ul style="list-style-type: none"> - "television programme"; - "self-promotion". <p>Consequently, it would be appropriate to exclude this notion of the definition of television advertising.</p> <p>Clarification of the concept "direct offer" in the definition of tele-shopping.</p> <p>Addition of a new concept of an "advertising channel" besides the concept of a tele-shopping channel.</p>
Article 10: Rules on identification	The present rules on identification seem satisfactory to allow the development of new advertising techniques.

Article 11.2: Rules on insertion: “autonomous parts”	One might ask whether it is appropriate to define the term “autonomous parts”. However, it may be difficult to include this notion in a restrictive definition bearing in mind the diversity of the broadcasts and events envisaged. In contrast, it seems sufficient for the purpose of authorising the split screen technique without ambiguity, to allow the insertion of advertising messages during Tv programmes consisting of autonomous parts.
Article 11: Rules on insertion	The rules relating to advertising breaks are certainly complex and should be simplified.
Article 11.4: Intervals between breaks	We note the particular use of the conditional in the French and English versions (<i>devrait</i> and ‘should’). One may ask whether this recommendation ought to be converted to a minimum obligation.
Article 17: Sponsorship	The rules given in Article 17 are appropriate enough in light of the various forms of sponsorship. The possibility of sponsoring a channel should be allowed.
Articles 18 and 18 bis: Rules on volume:	We do not think that the concept “other forms of advertising” should be the subject of a particular definition.

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CARAT CRYSTAL

Bruno LIESSE
bliesses@carat.be
 Guy COECK

BIRD & BIRD

Agnès MAQUA
agnès.maqua@twobirds.com
 Ilse HENDRIX

gcoeck@carat.be
Chaussée de la Hulpe 189
1170 Brussels

ilse.Hendrix@twobirds.com
Rue de la Loi 15
1040 Brussels