



**European Commission Consultation  
Modernising EU rules for audiovisual content**

**Comments of Deutsche Telekom  
September 2005**

## Executive Summary

Deutsche Telekom welcomes the European Commission's aim to establish a legal framework for the media industry that is as modern and as flexible as possible. In particular, it greatly appreciates the Commission's intention to set an example for the 'better regulation' initiative by revising the Television Without Frontiers (TVWF) Directive.

Before embarking upon considerations for regulation of a developing market, it will be necessary to provide concrete regulatory goals. In view of the promotion of the usage of cross-border content offers, it will in particular be necessary to assess the consequences, which should not only include the economic impact of the planned changes but also the question of the necessity for regulation.

The revision of the TVWF must not result in a transposition of tight broadcasting regulation to other audiovisual content offers and services. Such a step would not be conducive to effectively solving the regulatory issues resulting from the convergence trend.

We favour Option 1, calling for a revision of the TVWF Directive, while limiting the scope to television broadcasters. Deutsche Telekom is convinced that it is sufficient to clarify the scope of the TVWF Directive by establishing a definition of broadcasting that takes into account technology changes. The two-tier approach that the Commission has proposed in Option 2 contains conceptual weaknesses and the risk of renewed legal uncertainty due to its imprecise differentiation of linear and non linear content services. Moreover, other than broadcasting services are already sufficiently covered by the e-commerce directive.

A revision of the legal framework should focus on reducing media regulation, establishing legal certainty and fostering an investment-friendly climate. This makes it necessary to create a clear definition of the scope to which the TVWF Directive will apply. A linear audiovisual service (the term proposed by the European Commission) offers a sound starting point but does, however, require a more detailed definition. Alongside the linear criteria that have been adopted by the EU Commission, the definition must also include the significance of influence and control options for users. In addition, 'point to multipoint broadcast' without special conditioning for the user or interaction with users should be included. That would allow a clear distinction to Information society services which are delivered on a point to point basis.

The country of origin principle as the guiding principle of the TVWF Directive should be maintained. A departure from the country of origin principle would contradict the goal of the TVWF Directive: to strengthen the free movement of services and audiovisual products. Therefore, the Commission should clarify that the country of origin applies in case of programmes that are transmitted to another country via satellite or via another technical medium.

In the case of quotas, unnecessary encumbrance and overregulation for market players must be avoided. The discussion about quota provisions, in particular the proposed catalogue requirements and investment quotas for non-linear services, impose unnecessary constraints on the entrepreneurial freedom of providers of new, digital entertainment offers. New and innovative services require freedom in programming allowing to offer services tailored to customers' demand. Quotas can have a

counterproductive effect on diversity in media services and would mean the end of new offers, such as those limited to U.S. cinema classics.

In the field of advertising regulation, we agree with the Commission that, with the emergence of new advertising formats, deregulation is possible. The Commission should let itself be guided by the principle of 'recognition' without introducing new definitions that would make it more difficult to implement new advertising formats. Instead we should rely on existing industry self-regulatory mechanisms, which are more effective and flexible regarding present and future advertising formats. In this context, the suitability of advertising bans for legal products should be reviewed.

The proposed provisions for the protection of minors illustrate the difficulties if the TVWF Directive would be extended to cover non linear services:

- First, existing, effective self-regulatory instruments coupled with EU recommendations on the protection of minors are already in place which show that there is no need to further harmonize the protection of minors throughout the EU. Following the principle of subsidiarity any EU legislation should consider national regulation that covers national expectations and ethical/moral preferences.
- Second, the proposed text is not in line with the current self regulatory approach of the Commission.

The present national regulations on the right of reply render further regulation – in particular an extension of Article 23 of the TVWF Directive – unnecessary.

## Issue Paper: Commercial Communications

Deutsche Telekom strongly supports the Commission's intention to liberalise advertising rules. Advertisements are a strong market force to drive the development of new services. Neither the private broadcasting sector nor internet services would have conquered the economic world of sustainable business models without them.

As we have stated above we strongly oppose the extension of the scope of the TVWF to all audiovisual services. In addition new definitions such as "audiovisual commercial communication" as a subcategory of "commercial communications" as defined in the E-Commerce Directive and further subcategories would not provide any added value.

Instead current general provisions establish workable standards for new advertising techniques as well for evolving linear services as defined above, like mini spots, telepromotion, split screen, interactive advertising, virtual sponsorship etc and for the interactive environment. New techniques do not require specific regulation. And if they are not subject to specific regulation, they need not be defined.

Amending the current set of definitions would, in contrast, adversely affect the clarity and effectiveness of advertising regulation in the TVWF. Moreover, the audiovisual landscape continues to be in a state of flux. The Commission should therefore keep in mind that any revision of the current definitions in the TVWF Directive might soon be obsolete as advertising techniques continue to proliferate.

With regard to quality rules for advertisement we strongly support the Commission to put special emphasis on self-regulatory regimes. Due to the fast pace of new services, self-regulatory regimes generally tend to work more effectively than the less flexible approach of a too detailed legislation.

We agree with the commission's view that audiovisual commercial communications in an interactive environment require less regulation due to a higher degree of user control. National experience and successful self-regulatory regimes show that there are satisfactory regimes already in place. As far as the protection of minors or other special user groups is concerned, an interactive environment offers numerous ways to achieve effective protection without unduly restricting legitimate industry interests. Any interference might affect these models which suit the fast development of new services. We therefore do not see a justification to extend bans or restrictions on advertising in the TVWF to all audiovisual services. Instead, existing bans or restrictions should be re-evaluated.

As a general rule, Art. 6 of the Electronic Commerce Directive, the clear identification of any kind of advertisement, already delivers a workable rule that could accommodate traditional and new forms of commercial communication. It is an essential, yet sufficient cornerstone for the industry to gain consumer trust. With regard to sponsorship it should be clarified that a mere cooperation between service providers (e.g. a linear service provider as defined above and a content aggregator) are not sponsorships. Such cooperation will become more widespread due to the convergence of networks and services. Advertising is only concerned where a third party not involved in performing the service sponsors a programme.

As far as quantitative rules are concerned, the Commission correctly notes, that any kind of quantitative restrictions do not make sense in an interactive environment. Instead even for linear services the intended result – making sure that viewers do not confuse commercial and editorial content – can be achieved by a strict application of the requirement to make advertising recognisable.