

Submission of Comments from Versatel Deutschland to the Issues Papers of the commission regarding the revision of the TVWF Directive

Issues Paper: Commercial Communications

I. General remarks

Versatel as a telecommunications network operator faces a new regulatory framework due to innovations and integration of voice-, video- and data services and thus, the development of triple play products. Legal and planning uncertainties result from these innovations. Therefore, Versatel welcomes the opportunity to comment on the issues addressed.

Versatel generally favours a liberal approach to the future regulation of audiovisual services which supports and fosters the development of new innovative communication services and products. It supports the Commission in its commitment, to maintain a solid, forward-looking regulatory framework. Versatel would like to stress that it is crucial for the telecommunications network operators not to extend the narrow regime of the current TVWF Directive indiscriminately to new Triple Play services. In regards to the fact that those services are still in the phase of development at present time, and it is hard to predict as to what extent they will succeed on the market, their successful development may be seriously endangered by an over regulation. In Versatels view the need for an in-depth-regulation of innovative services should be assessed carefully on the basis of market implementation and development.

II. Concept of audiovisual commercial communications

Versatel generally appreciates the approach to establish a basic tier of qualitative rules applicable to all audiovisual commercial communications for legal and planning certainties.

The regulation of commercial communications should grant an appropriate balance between the financing interests of the providers and consumer protection, as well as the right to design programmes and ensuring the diversity of opinions.

In regards to the discussions about the adoption of a new definition of audiovisual commercial services, Versatel generally opposes new definitions. New forms of advertising should not become subject of specific regulation. Instead, the existing rules should become more flexible to remain workable on new advertising techniques.

Versatel would like to stress that due to the growing number of services the customers gain greater choice and control. Therefore, the market force will exert high pressure on the

providers to avoid excessive advertising. In consequence, the regulation could be less restrictive.

Versatel considers the specifications in the issues paper as partially insufficient. With focus on the definition of “advertising spots” which will be submitted to quantitative rules, some clarification will be necessary. In the general practice, the term “advertising spots” is being used for short moving images. Nevertheless, the definition comprises a broader scope of application. Triple Play services will include all different types of advertisings, i.e. spots, fixed images, texts, etc., which will be provided in return for payment. These forms of commercial communications for being mainly implemented to non-linear services should not be subject to quantitative rules. It is characteristic for these services that the subscriber decides the utilization of the service and thus, the needed level of protection should be considered as low. Therefore, the decision on the quantity of advertising should be up to the provider and will be regulated from the market powers themselves.

In addition, the criterion of “short” commercial communication should not serve as a sufficient distinctive feature and thus, leads to legal uncertainties.

III. Rules on human dignity and the protection of minors

Versatel appreciates the Commissions intention to apply the rules on human dignity and protection of minors to all audiovisual communications to foster legal certainties for all providers.

IV. Rules relating to public health considerations (tobacco, alcohol, medicines)

On the issue of the restrictions relating to public health considerations Versatel would like to point out that non-linear services require a lower necessity for consumer protection. The approach of consumer organisations and public service broadcasters arguing that there is a link between public health rules and the protection of minors also in terms of internet usage goes astray. Various Triple Play services offer an age verification system which excludes minors from accessing those services. Especially in regards to those closed user groups, an equal applicability of the restrictions could not be justified.

Considering the possibilities of closed user groups, the applicability of Art. 13 and Art. 17 sec. 3 of the TVWF Directive dealing with advertising prohibitions for alcohol and tobacco, should be reconsidered. As a result of the age verification systems, only a small user group will receive those advertisements. In addition, Versatel stresses that non-linear services also allow other types of advertisements which could lead to a closeness to the print media. Therefore, the total prohibition for tobacco communications must be considered as over-regulation.

With regard to communications concerning pharmaceutical products, Versatel favours the option to authorise objective information on the products and services referred to in Art. 14 of the TVWF Directive.

V. Identification of commercial communications in general, including sponsored spots

In view of Versatel the main intention in requiring advertising and teleshopping to be “recognisable as such” and “kept quite separate” is to grant consumer protection. However, with reference to Triple Play services, those requirements are to be considered as outmoded. Versatel explicitly supports the prohibition of surreptitious advertisement prevent the misleading of consumers who should, at all time, be able to recognize whether they receive an editorial content or commercial communications. Nevertheless, the option of authorised product placement would cover the development of the advertising market. In addition, technical possibilities such as split screen should also be taken into account. The end user should be enabled to decide if he wishes to receive for instance, parallel to a movie, a teleshopping programme. Therefore, Verstatel encourages a stronger focus on the requirement of clear identification possibilities.

VI. Quantitative rules on television advertising

Versatel agrees with the outcome of the consultation, that restrictions on the daily advertising limits have become obsolete. In regards to the hourly advertising limitations Versatel believes that these limitations could also be abolished. Considering the fact that end users face an increasing offer of content and services and thus, has a broad scope of discretion which service he would like to receive. Thus, need of protection is to be regarded as low. As a result of the end users choices, the quantity of advertising will be at least partially self-regulated. With focus on the non-linear services, Versatel points out that due to the on-demand-functions, the end user decides on the time and duration. Therefore, there is no need for hourly limitations.

In addition, Versatel believes that Art. 11 of the TVWF Directive needs to be simplified in regards to non-linear services. The growing degree of user choice and control in new services, which are included in Triple Play services must be taken into account. The services are not geared on advertising interruptions since those restrictions are evidently linked to linear services. In a competitive environment, consumer satisfaction has become a quality parameter and thus, market forces will ensure an avoidance of excessive advertising. Versatel considers it sufficient, to maintain the ban on commercial communications during religious services.

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