

COMMERCIAL COMMUNICATIONS

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The Green Paper - commercial communications in the Internal Market

September 1996
Volume 1 Issue 4

IN THIS ISSUE

John Mogg, Director General, DG XV



John Mogg

Amid that daunting pile of work that confronted you on return from your summer break is a long, perhaps complicated, Green Paper on commercial communications. (It isn't even green unless you have the Italian version!) I hope that this edition of *Commercial Communications* will stimulate you to glance even more attentively at that Green Paper than you might have done. One article provides a potted version of the Green Paper's key proposals. Another demonstrates how the "proportionality assessment methodology"

will work in practice.

I hope these two articles will not only encourage you to read that (hidden?) copy of the Green Paper but will also help you by providing a possible framework for your reply. Indeed, I urge you to reply. We are quite happy if you identify the key points of concern to you and concentrate only on these - we do not expect to receive a long thesis covering all aspects. It is perhaps worth asking yourself when was the last time that you were asked directly to contribute to a debate on a future regulatory framework at the European level for commercial communications. However busy you are, I think it is worth a few minutes of your time. Our deadline is the end of October. And if you want to give your views a public airing consider using this newsletter as a platform.

For those of you still reminiscing about those magic moments of the Olympic Games, in this edition there is a second theme of sponsorship. This is one of the forms of commercial communications that is likely to take off - providing we achieve the right regulatory framework - given the increasing fragmentation of the European media and the new opportunities offered by digitisation. It is a theme given particular attention to the Green Paper. Another is the fundamental role that commercial communications will play in allowing for the development of "electronic commerce". To stimulate that debate this issue of

<i>Editorial Comment</i>	2
<i>Television Sponsorship</i>	
- <i>Commercial television and sponsorship</i>	3
- <i>Sports events and sponsorship</i>	7
- <i>Virtual billboards</i>	10
- <i>Television sponsorship in Europe, a User's guide</i>	11

<i>The Green Paper - Commercial Communications in the Internal Market</i>	15
---	----

<i>Assessing proportionality - A practical guide to the proposed methodology</i>	25
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<i>New services and advertising</i>	33
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<i>The four ages of advertising evaluation</i>	36
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Commercial Communications has an opening volley by a senior representative of the advertising industry.

In addition to rattling your consciousness about responding to the Green paper, I hope that this issue will make interesting reading and encourage you yourself to submit an article for publication. Its readership is growing by the day. You can be sure that you will reach the key commercial communications decision makers.

We look forward to hearing from you !

Editorial

Most readers will have had the opportunity to have read the Green Paper on commercial communications which was recently adopted by the European Commission. It is now the time for comments, views and opinions to be expressed through the consultation period, which runs until the end of October. We plan to produce a further two issues of the newsletter in this period. We hope we are able to communicate some of your initial reactions to the Commission's initiative and would urge you to contact our offices as soon as possible so we can schedule your contribution.

In trying to bring some focus to this debate, we are publishing in this issue two important contributions from the Commission on the Green Paper itself. One provides a summary of the document and suggests some of the areas in which your response would be particularly valuable. The other article gives further practical details of a key element in the Green Paper - how the proportionality assessment methodology would work.

Elsewhere, we look at some of the issues associated with one of the areas identified as problematic - sponsorship. We also continue to explore the difficulties in providing an adequate framework for the development of on-line services in Europe.

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Sponsorship on Commercial Television

A European Perspective

Hugh Geach
ITV Licensees'
Sponsorship Group

Broadcast sponsorship, what is it? If you asked this question in the United Kingdom and then in Italy, France or Spain, for example, you are likely to be given very different answers. There is little common understanding of what broadcast sponsorship is across the EU. Furthermore, trying to track down broadcast sponsorship regulations for each of the EU countries is exceedingly difficult, and what's more, the practice of sponsorship may vary widely from the written rules in certain countries. Yet, broadcast sponsorship across the EU countries is meant to fall within the parameters allowed under the EC Directive on Television Broadcasting (89/552/EEC). Clearly it does not, and as it could be argued that broadcast sponsorship is an important method for promoting goods and services, then such wide variation as presently exists, from the very restrictive to the anarchic, constitutes an impediment to the formation of a single market.

In the UK broadcast sponsorship regulations are published in 'The ITC Code of Programme Sponsorship' which not only covers the sponsorship of programmes, but also advertiser supplied programming, product placement and viewers' competitions run in programme and programme promotion time. Until the early 1990's the direct sponsorship of programmes on broadcast services licensed by the Independent Broadcasting Authority, later to become the Independent Television Commission (the regulatory body for commercial television in the UK), was not allowed.

The present sponsorship regime, it can be argued, has been shaped by the public service broadcasting ethos of the commercial terrestrial channels in the UK, which has traditionally been more concerned with concept of 'quality' programming and the separation of commercial influences from programmes than the issues of programme and channel funding, particularly in the

rapid growth of new channels and services. Yet, the argument from the ITC against radical change has always been partly based on the EC Directive on television broadcasting (89/552/EEC) and the 1989 Council of Europe Convention on Transfrontier Television.

The ITC Licensees' Sponsorship Group was formed in April 1995 to lobby for changes to the present ITC Code of Programme Sponsorship to meet the changing commercial and programming environment in both the UK and Europe. Also it wanted to reflect the viewers' positive perceptions and understanding of television broadcast sponsorship, which have been tested through a number of research studies.

The ITC Licensees' Sponsorship Group felt that Article 17 of the EU Directive on Television Broadcasting was a sound basis for producing a revised sponsorship code. It includes the statement that the following requirements be met for sponsored television programmes:

- a) the content and scheduling of sponsored programmes may in no circumstances be influenced by the sponsor in such a way as to affect the responsibility and editorial independence of the broadcaster in respect of programmes;
- b) they must be clearly identified as such by the name and/or logo of the sponsor at the beginning and/or the end of the programmes;
- c) they must not encourage the purchase or rental of the products or services of the sponsor or a third party, in particular by making special promotional references to those products or services.

The ITC licensees' Sponsorship Group while agreeing with the EU Directive, believes there has been too narrow an interpretation by the ITC of this Directive. Though there has been little comparative research into the differing sponsorship rules and practice in the other EU countries, it is clear that there are wide variations. From all the evidence obtained, both from discus-

There is little common understanding of what broadcast sponsorship is across the EU.

Only the UK, for example, prohibits sponsors of a programme because they have a direct interest in the content of that programme.

sions with representatives of a number of commercial television companies across Europe, and from fairly limited research by the EGTA in 1993, the United Kingdom seems to have one of the most complicated and restrictive sponsorship regimes.

This was highlighted, crucially, at an informal meeting in Brussels, attended by two members of the ITC Licensees' Sponsorship Group with DG15 of the European Commission, which has had the responsibility for drafting the Green Paper on Commercial Communications. DG15's view was that the ITC Code of Programme Sponsorship had gone beyond the requirements of the Directive. In the view of DG15 was that the key issue was transparency, so ensuring the viewer knows what the relationship between a sponsor and a programme is, and can make their own judgements about that relationship. Apart from overt sales messages in programmes, which are unacceptable, many of the other restrictions laid out in the ITC Code are seen as unnecessary.

DG 15 see sponsorship as an important source of funding programming over the next decade, particularly in a growing multi-channel universe with the possibility of many niche channels. It was also stated to the ITC Licensees' Sponsorship Group that the key issue is the continuing implementation of a single market, and this includes harmonising practice on commercial communications. It was pointed out that certain national rules in advertising and sponsorship could be seen to be hindering the full development of the single market.

Only the UK, for example, prohibits sponsors of a programme because they have a direct interest in the content of that programme. This does not seem to be an issue in most other European countries.

The ITC Licensees' Sponsorship Group view this as one of the most crucial issues in the ITC Code of Programme Sponsorship.

Recent research studies in the UK show an overwhelming acceptance of broadcast

sponsorship. Though the research focused, naturally, on sponsorships that had either happened or were on screen at the time of the research, there was enough evidence, in our view, to suggest that most viewers would accept a liberalisation of sponsorship, and would especially welcome sponsorships which are relevant to the content of the sponsored programmes.

Overwhelming evidence from these and many other studies has shown that the audience wants to see a clear connection between a sponsor and the programme they are sponsoring. Furthermore, the research highlights that the majority of viewers want transparency in a sponsorship relationship, and do not have a problem with brand or corporate sponsors, with a direct interest in the content of the programmes, being sponsors of those programmes. In fact, the overwhelming evidence was that viewers become irritated if they cannot see the link between a sponsor and a programme, and enjoy sponsorships where the association makes sense.

The ITC Licensee's Sponsorship Group believe that the key principles behind the EU directive can be fully protected whilst allowing a significant liberalisation of the present ITC Code of Programme Sponsorship.

So in greater detail, what are the main issues that we believe need to be examined, in the light of the changing broadcast and commercial environment within the EU?

Sponsor Influence

First, and most importantly, there is a considerable amount of uncertainty about who can sponsor what. For example in the UK, food retailers can sponsor a cookery programme while a brand of a cooking ingredient cannot.

At the moment the distinction is drawn by stating that a retailer sells a variety of brands, the majority of which will be proprietary rather than own label. Therefore the retailer as a sponsor is unlikely to have a direct interest in the content of the pro-

gramme, while a manufacturer of, for example, a cooking ingredient is much more likely to want to influence the content of the programme to benefit their brand.

It is argued by some at the ITC that the agenda of 'how to' and information series could be set, for example, by a manufacturer of a cooking ingredient to ensure that all or most of the recipes contain that ingredient. But, we believe that there are three main reasons why the viewer can be protected from unacceptable commercial influence within a programme especially if, for example, a food ingredient manufacturer sponsors a cooking programme.

1) The rules on product placement can be applied to a whole series rather than just individual programmes. This would mean that a sponsor would be deemed to be 'in breach' of the ITC rules if their product (even if it was not identifiably their brand in a programme) was used as, for example, a key ingredient in too many recipes throughout a cooking series.

2) There can be no promotional reference within a programme to the products or services of the sponsor of that programme that cannot be editorially justified.

3) The sponsorship of a programme immediately makes the relationship between the sponsor and the content of the programme much more transparent.

We believe, that the television audience is sensible enough to draw its own judgements about the value of a programme, where a sponsor has visibly influenced the editorial judgements.

It is unlikely the audience would see any difference in sponsorship terms, between a food retailer and a cooking ingredient sponsoring a cookery series. To them the quality of the programme is the key issue.

Another crucial issue is that in this growing multi-channel universe, funding of programmes other than by subscription and advertising is going to have to be found to allow many 'how to' and information pro-

grammes to be made. The present rules on who can sponsor what makes the advent of certain themed channels, e.g. food, computing, health etc. extremely difficult.

Our view is that the rule on 'who can sponsor what' should be scrapped altogether and be replaced by a much more limited definition, so allowing a much wider range of information and 'how to' programmes to be sponsored.

Sponsor Credits

Presently the ITC Code of Programme sponsorship states that:

'Credits may indicate the connection between a sponsor and a brand or the nature of the sponsor's business (sponsored by company X makers of brand Y or makers of widgets) but they must not show the sponsor's product (whether or not packaged) or service.'

'Credits must clearly refer only to the programme itself, or to the sponsor's relationship to the programme, but must not in so doing include, whether in the form of descriptions or self referring value statements, any material which is promotional for the sponsor or the sponsor's goods or services.'

The ITC Licensees' Sponsorship Group feels that these rules and their present interpretation are far too restrictive. The key principles are that sponsorship should not directly sell a product or service, and there should be a clear separation between advertising and sponsorship.

We believe this can still be achieved by allowing one visual static reference to a sponsor's product in the sponsor title credits which can in no way be interpreted as advertising. It will in fact help to explain what a product is, particularly for obscure or new brands, and therefore help to increase the transparency of the relationship between the sponsor and the programme.

The present rules on slogans also appear to be a little confused. We believe an advertiser should be allowed to use an es-

The present rules on who can sponsor what makes the advent of certain themed channels extremely difficult

established phrase or saying. It shouldn't be considered surreptitious advertising to use a slogan that is associated with a brand, company or product on the sponsorship credits such as "British Airways - the world's favourite airline".

Advertiser Supplied Programming

The ITC has always treated advertiser supplied programming differently to sponsored programming. Programmes supplied by an advertisers have far more limited credits for that advertiser than they would get through sponsoring a programme.

Undoubtedly, the definition of advertiser-supplied programming is one of the most muddled parts of the ITC Code of Programme Sponsorship. What is the difference between advertiser supplied and sponsored programming? We would argue that to the viewer there is no difference. Does a programme substantially funded by an advertiser seemingly take on a wholly different quality to one that is not? Again we would argue that it does not if other rules within the ITC Code of Programme Sponsorship are observed, particularly those relating to product placement.

Furthermore, there is the classic issue of who is an advertiser when you look at the provision of programming. Are a number of American comedy series, soaps and mini-series provided to the American networks and subsequently to commercial television in the UK advertiser supplied? Major American FMCGs, for example, have funded their production through their own American based production companies for many years. Is all of Buena Vista's programming advertiser supplied and so on?

Increasingly, we see advertisers making programmes not just as a means of promoting their image, or the image of a particular brand or service, but as a method of making money or bartering for airtime. Overseas broadcasting rights, video rights, book rights etc. may all be bought by the advertiser to give them the freedom to use the pro-

gramme and the rights in a variety of ways.

We believe, increasingly, that advertisers will fund programming and retain the rights they want, or simply buy rights which will, in many cases, cover a significant proportion of the funding of the programme(s) so as to provide themselves with product to offer in their marketplace. This programming will often bear no relationship to their products. Therefore in these instances we believe there should be no requirement for them to have front and end credits if they have no wish to do so.

We would agree with the ITC that all programming substantially or fully funded by an advertiser, where the advertiser has a direct interest in the content of the programming should have credits identifying that advertiser, as we believe that transparency for the viewer is crucially important, particularly when programming is funded by an advertiser who is likely to have an interest in the subject matter of the programmes. But, we see no reason why the advertiser should not have the same credits as they would obtain if they had been the sponsor of a series or programme.

Summary

These are some of the main areas of sponsorship regulation the ITC Licensees Sponsorship is trying to get changed in the UK. We would like to feel that the sorts of reforms we are looking for in the UK will bring us closer in practice to the building of a single market within the EU in the field of commercial communications.

But, one of our difficulties has been discovering what the sponsorship rules are in other EU countries, and how are they applied in practice.

Perhaps, you can help? If you have any information on the rules in your country, and examples on video of sponsored programmes and sponsorship credits then we would be delighted to hear from you as we are trying to build up a better picture of what is the current situation across the EU.

If you would like to help develop a thorough understanding of sponsorship rules and practice in Europe, you may wish to contact the author who is attempting to coordinate such an effort:

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Sports events: Sponsorship, transmission rights and TV broadcast sponsorship

Michel Grégoire
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In future it will be increasingly difficult to separate event sponsorship from TV sponsorship. This follows, on the one hand, from the way in which contracts for the acquisition of TV transmission rights are developing and, on the other, from the perspectives of virtual publicity.

The financing of sport through sponsorship presupposes a balance of power in the triangle of advertiser - organizer - television network. However, that balance no longer exists today, when some sports associations, conscious of their dominant position, would like to transform television networks into purely passive broadcasting agencies, thus extracting from them much greater returns than the associations would get from the publicity otherwise generated by these events.

In doing so, sports associations are exploiting a phase of tooth-and-claw competition among networks, which are perhaps more concerned with the prestige of an event than the audience they can really expect. Nevertheless, this may ultimately kill the goose that lays the golden egg.

A little theory

First of all, a little theory is necessary. Businesses are offered two main types of sponsorship products:

The first consists of forms of publicity linked to the event itself: posters at the site of the event, title sponsoring, names shown on vests, etc., and the linking of the sponsor to the campaigns promoting the event, press campaigns and public relations.

These represent event sponsorship. Broadcasters have no control over this kind of sponsorship.

Organizers of events and owners of these forms of publicity are increasingly requiring broadcasters to show brands,

generally negotiating the deals through marketing agencies, which very often act on behalf of the event organizers in selling broadcasting rights to television networks.

The second type is broadcast sponsorship, which consists of the forms of publicity associated with broadcast events which are introduced by the television networks.

These comprise TV billboards or sponsored credits, sponsored trailers, injections, mentions of the sponsor, etc., which may be combined with the use of classic advertising space.

The networks, which own these forms of publicity, market them through their marketing divisions or advertising agencies.

Most sports federations enjoy a monopoly in their relations with an increasing number of competing television networks. The networks are in competition with one another over their ratings and, of course, as broadcasters bringing sports events to viewers.

Sports associations are exploiting a phase of tooth-and-claw competition among networks, which are perhaps more concerned with the prestige of an event than the audience they can really expect

This situation was all that was needed for the price of television rights to soar, with the other conditions imposed by event organizers on television networks (such as preferential rights for official sponsors, etc.) reaching the level of undue interference.

In this setting, the role played by the event organizers' marketing agencies calls for consideration. Responsible as they are for securing increased offers, both from advertisers and television networks, agen-



Michel Grégoire

Secondly, advertisers, having already been overcharged, feel that they are paying twice over for the same thing when they buy television advertising space

cies act as a kind of advance guard for sports federations. In addition, they try to secure a position in the middle of the triangle, playing on the tensions between the three main parties involved, in the manner described below:

1) They are the link between sponsors and organizers of events. As the latter's representatives, agencies stimulate and manipulate competition between businesses, so that the sums paid to secure official sponsorships can reach unbelievable levels.

This has two negative consequences for television networks. First, the more sponsors pay, the more they wish to impose stringent conditions as to exclusiveness in relation to advertising space and TV sponsorship and to be represented in the images of the event without the networks receiving anything in return.

Secondly, advertisers, having already been overcharged, feel that they are paying twice over for the same thing when they buy television advertising space (whether spots or sponsorship) to broadcast their campaign.

2) The marketing agencies have also interposed themselves between event organizers and television companies. They organize the bidding between competing networks and thus contribute to galloping inflation in broadcasting charges, which forms a further negative consequence for television networks.

3) The agencies insert clauses in contracts with television networks securing ever-greater protection for official sponsors as well as advertising space adjacent to events.

Marketing agencies have thus secured a position as compulsory intermediaries between advertisers and advertising agencies with the aim to gain increasing

influence over sponsorship and TV advertising space.

The end result is that the principal actors, the television networks and their agencies, event organizers and advertisers, no longer deal directly with each other, but only through intermediaries.

Recent developments

In the past, advertisers have not subjected the return on their sponsoring of events to the same scrutiny as that on advertising space or TV sponsorship; studies of advertising impact, recall of advertising adjacent to events and efforts to exploit the "contacts" through displaying brands at the site of events indicate an imbalance between the financial outlay and the return in publicity.

It is this imbalance which sports federations and their marketing agencies wish to eliminate, by requiring networks to provide all sorts of injections of customers' logos into the TV image. However, these broadcasts are the property of the networks and form part of the products normally sold to advertisers sponsoring television broadcasts.

Virtual advertising

This is the difficult context in which virtual publicity procedures (the L-VIS system in the USA, EPSIS in France and ORAD and SCIDEL in Israel) operate.

These systems enable a television studio to insert a virtual advertising poster electronically into a TV picture of a site in a sports stadium instead of the real poster, without any alterations at the stadium and without the viewer being aware of any change.

With this system it is also possible to place virtual advertising at a stadium where no real advertising exists.

Such a system could, of course, completely alter the marketing of sport, both in the ways in which TV rights are mar-

keted and the ways in which advertising is sold. Advertising, hitherto at the edge of the stadium, would be electronically injected into the picture like sponsorship reminders or other injections.

In certain quarters it is envisaged that in future television networks might no longer have any responsibility over the content of broadcasts, with the highest bidder being offered a ready-made programme in which virtual publicity, assorted injections and other showings would be entirely determined and sold by organizers of events to advertisers at rates even higher than they are at present. Competition between event sponsorship and broadcast sponsorship would in fact disappear, leaving sports federations with an absolute monopoly over advertising relating to sports events and broadcasts of these events.

This vision of the future may in fact prove unrealistic for the following reasons:

- it assumes that sports-related publicity can avoid any controls;
- it supposes that a dominant position can be deliberately abused;
- it ignores the fact that audiences for certain events are not so big and certain sports are threatened with saturation since increased broadcast hours dilute the event and saturate television viewers;
- it fails to recognize that the use of virtual publicity equipment requires the collaboration of television networks;
- it underestimates possible opposition to virtual publicity on the part of European and national authorities responsible for the audiovisual field;

- it disregards the significance broadcasters attach to their editorial independence;
- it deprives television networks of income to pay broadcasting charges, creating a vicious circle;
- it mistakenly supposes that advertisers will continue to pay to sponsor an event without assessing the publicity impact;
- it underestimates competition from non-sports programmes which will be generated if the ratio between the cost of the rights and the gross rating points becomes exorbitant.

In short, this will kill the goose that lays the golden egg and assumes that it is possible to operate solo in an environment where unity and collaboration are indispensable; without the voluntary participation of the television networks, sport will cease to exist as a mass entertainment.

In the meantime, the current massive rise in rates threatens the survival of certain sports events while benefiting others. This galloping inflation is all the more hazardous since, in this period of economic difficulties, not much is needed to end the high rates for broadcasting rights.

In order to end this inflationary spiral, secure the future of sports events and develop this sector, organizers of events and television networks must establish partnerships, pooling their efforts so that the maximum number of television viewers retain access to the widest possible range of sports.

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***In the meantime,
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EPSIS:

Virtual billboards

EPSIS is an image processing and synthetic image insertion software aimed at the sports sponsorship field. EPSIS offers optimisation of the commercialisation of advertising board space in a given site, by adapting the boards to each country where the event is broadcast.

Today, in Europe, the sports sponsorship market is booming. It represents over fifteen billion francs. Sports scheduling in Europe rose from 24,000 hours in 1989 to 60,000 hours in 1995. The number of TV channels in Europe (168) doubled between 1987 and 1993 and included the appearance of a large number of specialist sports channels. It is estimated that in the year 2000, electronic displays will represent 25 % of sports sponsorship.

For European advertisers, especially companies that market consumer products, their brands represent an inestimable image potential.

The major European corporations have a range of brands that have different names for the same product all over Europe (Heineken, Danone, Unilever,...) or have signed major agreements with other European partners (in the insurance field: UAP in France, CKAG in Germany, SUNLIFE in Britain; in telecommunications: Deutsche Telecom in Germany, France Telecom in France...).

European companies need to be able to optimise their European investments in sports sponsorship while giving their national subsidiaries the means to adapt a European strategy to a local market and motivate their personnel in each country when sponsoring a sports event.

Epsis optimises the message of European advertisers while preserving a national specificity.

In the same way, a national company can tie-in its brand to sports events broadcast all over Europe and thereby be featured in just one country during the broadcast. Without the Epsis process, this sponsorship investment would have been excessive.

The Heineken case-history

For the 1995 Vuelta, the organisers of the Spanish tour of Spain cycle race (the Unipublic company), used the EPSIS process live during the TV broadcasts.

Boards of the Heineken group, marked "AGUILA" (name of the brand sold exclusively by the brewer in Spain), were transformed into "AMSTEL" boards (name of the brand sold by the brewer in North European countries). Belgian, Italian, Swiss, Dutch viewers were therefore able to see boards different to those viewed in Spain!

EPSIS messages are harmoniously adapted in agreement with the organiser of the event in order to respect the comfort of the viewer and sporting ethics.

Always controlled by the organiser, the EPSIS system enables the advertiser to optimise its sports sponsorship investment.

Here are a few examples:

- an advertiser can be present at an event exclusively in the geographical zone that interests it: a German advertiser can buy EPSIS boards during the German broadcast of a French Tennis Open match while a French advertiser's boards are viewed in France.

- an advertiser may wish to write its logo in its country's languages: one can imagine a Greek advertiser (or any other country with a different alphabet) wishing to communicate in its own language during the Olympic Games.

- a European country can adapt its brands to the different countries: an automobile group can for example buy boards at a motor race which vary according to the brand names of the cars sold in each country.

- boards may be shared within the same company: a company can alternate the presence of its different product on the same board according to the audience and thereby build up a genuine media plan. In this way, during a tennis tournament, the targeted products can be promoted differently: during women's matches,

during broadcasts aimed at a young audience, late night broadcasts...

- boards may be shared between several companies: during the broadcast of a major event, seconds on certain boards may be shared between several brands. A message of a European brand can be broadcast to all viewers whilst the national brands will be seen by viewers in a given country.

In certain cases, the physical positioning of boards in the venues can be a problem for the organiser. For example, during a major motor racing event (Formula 1 Grand Prix, Le Mans 24 hour race...), certain boards could be dangerous for the competitors. The event organiser might wish to replace them in designated positions by electronic boards during the broadcast.

The ultimate goal of single brand marketing across the European market is far from being achieved. EPSIS will finally enable national advertisers to tie-in their brands with paneuropean sports events which would otherwise be inaccessible.

How it works

The EPSIS hardware is set up at the event location. With the agreement of the organiser, it is positioned between the original picture output from the TV control room of the domestic broadcasting company (the picture is mixed from pictures taken by each camera) and just before each satellite beam that transmits the different pictures to the various TV channels in the broadcasting countries.

EPSIS applies three techniques:

- board recognition: the EPSIS station identifies and captures a picture zone in a live or repeat sequence,
- the follow-up of the board on the picture,
- the outlining of the obstacles on the background of the board made visible by differentiation between the front and the back of the picture.

The exclusive operator of the EPSIS system in Europe is Symah Vision, a company in the Lagardère Group.

Television Sponsorship in Europe

A User's Guide

Kerry Jonas,
Head of Research
The Register Group
&
Carolyn Levy,
NBC Super Channel

Television sponsorship is dynamic, effective and here to stay. It is undoubtedly one of the most exciting and fastest growing areas of media communication, growing in terms of volume, value and the number of sponsors. In most European markets, it has already established itself as a bona fide form of communication with advertisers and, most importantly, viewers. Overall, broadcasters' revenue from television sponsorship has grown from under \$500 million in 1990 to well over \$1,000 million in 1995.

Yet, in some European markets, programme sponsorship is used principally as a way of reducing the cost of exposure on television. Greece is a prime example, where airtime bought for sponsorship has enjoyed a significant tax reduction (but the sponsored programming from the private stations is not always of the highest quality). Alternatively, sponsorship can be a way to circumvent spot advertising regulations - for example, in France, publishers and retailers are not allowed to buy spot advertising but they can sponsor programming. In most cases, however, the fundamental quest of the dedicated broadcast sponsor is to find the ideal combination of programme, product and price, that will work together to improve awareness and enhance the general status of the brand in the minds of potential buyers: programme synergy is the buzz phrase.

Generally speaking, there are three types of advertisers using television sponsorship in the more mature sponsorship markets:

- The advertiser who *always* includes television sponsorship in its annual plan.
- The advertiser who uses sponsorship from *time to time* to solve an immediate problem.
- The advertiser who grabs the opportunity to sponsor when there is a *special event* or *special offer*.

Sponsorship versus Spot Advertising

Television sponsorship should not compete with spot advertising or try to replace it, but rather enhance the total broadcast communication for a brand. And advertisers should not consider programme sponsorship as simply another form of advertising. In many ways, the whole concept can fall down if it's measured by advertising's yardstick.

Television advertising is now a mature concept, accepted and even welcomed by the majority of the audience. On the other hand, sponsorship at its most basic level or badly done makes no attempt to amuse, inform or entertain its audience - there's no real message - it's just there. At this level, it may be perceived as a surreptitious sell. Whereas spot advertising offers controlled levels of reach and frequency, programme sponsorship will produce low reach but high frequency (that is, it will reach a smaller proportion of the audience, but they are likely to see it often).

Viewers are now advertising sophisticates, and are fully aware of the hard sell approach versus the more subtle approach through programme sponsorship. The association between programme and product, together with the creativity of sponsor credits, can add value to the marketing mix in a complementary way to advertising. Whilst advertising plays a main role in the brand's marketing, sponsorship can highlight and promote the brand in a much more subtle and memorable way. For example, the unforgettable, and very humorous link between Mates Condoms and the transmission of the film *In Bed With Madonna* on Sky TV in the UK!

In some European markets, programme sponsorship is used principally as a way of reducing the cost of exposure on television.

A successful television sponsorship package can ultimately provide a relationship between advertiser, broadcaster and viewer.

What Can be Sponsored?

Article 17 of the European Broadcasting Directive provides a basic guideline to sponsorship in all European countries - applying to both terrestrial and non-terrestrial channels. This states that:

- *the content and scheduling of sponsored programmes may in no circumstances be influenced by the sponsor in such a way as to affect the responsibility and editorial independence of the broadcaster in respect of programmes;*
- *sponsored programmes must be clearly identified as such by the name and/or logo of the sponsor at the beginning and/or the end of the programmes;*
- *news and current affairs programmes may not be sponsored.*

Although some countries impose additional layers of red tape and regulations, sponsorship is now found in a cross-section of programmes ranging from sports, entertainment, documentaries, arts, drama and indeed short-form programming, known as vignettes. In many countries, advertisers are becoming more involved with programme production and advertiser supplied programmes.

To build a lasting awareness, the programme and the brand affinity is extremely important. There are pros and cons between the different types of programme available to sponsor. For example, an established series may have established values that the sponsor wants to be connected with but, on the other hand, viewers may consider this to be a parasitic relationship. New series mean that the brand and programme will be intrinsically linked but, on the other hand, it may flop. A one-off programme may provide immediate awareness and have a lot of hype attached to it, but there will be no long-term relationship.

Nowadays, most broadcasters will create tailor-made packages which are spe-

cifically designed to meet the client's brief. This is an area in which both stations and clients are becoming more and more involved. Recently we have seen new programmes produced which have been fully funded by the advertiser. Whilst the sponsor has no editorial input, the broadcaster can create a programme that appeals to its target audience, and at the same time offer an excellent programme environment and association. Taken to a logical conclusion, this will lead to programme syndication and barter, which allows revenue generating opportunities and/or straightforward barter arrangements.

Key Points to Successful Programme Sponsorship

A successful television sponsorship package can ultimately provide a relationship between advertiser, broadcaster and viewer. The advertiser communicates a message in an innovative way, the television companies produce more relevant programmes, which in turn leads to more valuable and enjoyable viewing. There are some simple rules to follow:

- define the brand values and identify the relevant programme association - where a link is inappropriate the sponsorship can be ignored;
- targeting - programmes deliver narrow-cast audiences that should reflect the brand's target profile thereby minimising wastage;
- creative execution - sponsorship is not expected to send a hard sell message. It's a soft sell and should be seen as an integral part of the programme. Therefore, to achieve maximum benefit, the creative execution should have longevity;
- opportunities for off-air promotional tie-ins (to maximise impact, many advertisers will double the cost of the actual programme sponsorship through off-air promotions);
- Evaluation - some of the values of a

sponsorship package may seem intangible or, at least, expensive and difficult to research. There is always an air-time cost analysis which can be used as a guide, but once the additional benefits are built in, then the value becomes more subjective.

Pan-European

Programme sponsorship has always been an integral part of the advertising revenue mix for pan-European channels, and is still seen as a way of attracting advertisers onto the stations. In fact, the majority of stations would not be interested in a sponsorship deal that did not involve a spot advertising package. Those channels uplinked from the UK, (that is, NBC Super Channel, Turner Broadcasting, MTV and EBN) comply with the ITC (Independent Television Commission) guidelines, which are slightly more flexible than those designed for the ITV stations. Lack of pan-European television research makes audience guarantees more difficult for sponsorship packages - and in reality it is not a 'cost per thousand' sell. In the last two years, there has been a trend towards co-production, and tailor made vignette programming, such as the NBC Super Channel 'Volvo Road Conditions Report' a three-minute update on the weather and road conditions that was broadcast each day during winter 1994/95.

France

In France, television sponsorship continues to flourish, and the market has become more and more structured. The number of sponsors is constant - agencies of all sizes are using sponsorship, and each television channel has a sponsorship department incorporated in its sales house. The regulations are not relaxing and the channels stick strictly to the rules. However, the creativity of the agencies allows them to work round these restrictions.

Over the past 12 months there has been a noticeable trend towards co-production, where advertisers and broadcasters collaborate to produce tailor-made programming. An example of this is the co-production between Danone and TF1 for the mineral water Volvic: *Les Trésors de la Nature* is a three-minute programme that was broadcast twice a day on TF1 during August 1995, in which school children were shown learning about the environment.

Germany

In Germany, the private channels started using sponsorship much earlier than the state channels ARD and ZDF, who have only been allowed to carry sponsorship since 1992. Gradually, the regulations are becoming more flexible, and were last changed at the end of 1994 (a sponsor is now allowed to advertise during the sponsored programme, and billboards need no longer be static). Overall, legislation adheres to the EC directive along with some additional regulations: for example, a sponsor indication may not take place before or after an advertising break, and programme trailers may not be sponsored. An estimated 60% of sponsored programming is sports, indicative that Germany is not as developed as the more mature sponsorship markets. However, the market is growing by an estimated 45% in 1995. The private stations take the lion's share (approximately DM 110 million, compared to DM 30 million to the state channels).

Italy

In Italy, sponsorship policies differ between the main Italian channels. The state broadcaster, RAI, offers a type of sponsorship called telepromotion, where the programme presenter talks about the sponsored products for one or two minutes. The private broadcaster, Fininvest, offers a similar sort of sponsorship called

An estimated 60% of sponsored programming is sports, indicative that Germany is not as developed as the more mature sponsorship markets.

'telesales', where, at the end of the programme, the first 50 or so viewers can phone in and purchase the product at a special price, (and orders can be taken at the regular cost). The important difference between the two is that telepromotion is counted towards advertising and telesales are not. Telepromotion is therefore more expensive to the client. Fininvest is restricted to seventy-two minutes of telesales per day, and can then decide how much telepromotion it has in addition.

Spain

Contrary to other European countries, Spain's television sponsorship market share is on the decrease. This is due to several reasons and developments in the market. Firstly, Spain experienced a sponsorship boom during the Barcelona Olympics and EXPO 92. However, the market could not keep up with such high levels and, in subsequent years, expenditure on sponsorship has been reduced to more reasonable levels. Also, the results of some packages did not meet the expectations of sponsors, and the market became somewhat jaded when many sponsors felt disappointed. Finally, Spain is only just now getting to grips with the introduction of The European Directive norms - which, in comparison to the previous environment, is seen to be more restrictive.

When there are creative restrictions, as there are in the Scandinavian markets, the link between the programme and the sponsor can be lost.

Scandinavia

When there are creative restrictions, as there are in the Scandinavian markets, the link between the programme and the sponsor can be lost. Research has shown that people react well to a sympathetic

link, and that the creative execution can make a great deal of difference. Certainly, the national regulations in the four Nordic markets could be stretched a great deal further without irritating the viewer, and, after all, an advertiser is unlikely to want to spend money already invested in a brand or corporate image by damaging its equity. Sponsorship is still relatively new in Scandinavia, and regulations are still quite restrictive. The satellite channels of TV3, which are uplinked from the UK, follow the ITC regulations - which obviously gives them an edge over national Scandinavian channels by allowing them more creative freedom.

United Kingdom

The major prohibitions on programme sponsorships on terrestrial TV were lifted in the 1990 Broadcasting Act to bring the UK in line with Europe. Still, there are limitations, which all national TV and pan-European stations have to take into consideration. However, creative possibilities have opened up and all sides of the industry have become more experienced. Due to the regional structure, sponsorship deals on the ITV network concentrate on the creative programming element, rather than tying up a deal that includes commercial airtime.

Both advertisers and broadcasters have found the ITC sponsorship legislation confusing and the ITC are currently reviewing the programme sponsorship code. One of the key issues to be sorted out is the current inconsistency concerning sponsors having 'undue influence'. For example, at the moment, a food retailer would be allowed to sponsor a cookery programme but a food manufacturer could not.

The Green Paper - commercial communications in the Internal Market

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On May 8th, the Commission adopted the Green Paper on Commercial Communications in the Internal Market. This policy document is now in the process of being formally distributed for consultation. Its guiding principle is that whilst the Commission's responsibilities require it to tackle any problems directly, launching into a massive harmonisation or infringement programme without having defined a coherent methodology or without having debated the issue publicly would be foolhardy and counterproductive. Our existing readers should have already received a copy of this text. Since the Commission is seeking to launch a major European policy debate in this area, readers are invited to provide names and addresses of other interested parties who they feel may wish to be involved in this process. The written comments of respondents should reach the Commission's services no later than October 31st 1996.

Not everybody will feel that they either have the time or inclination to read the whole text. This summary of the key findings and proposals seeks to convince readers that such an effort would be well worth their while as the document will lay the foundations for the future European regulatory framework within which commercial communications will be conducted.

We draw, here, on some of the key passages from the text in order to present its principle objectives, findings and proposals. This is no substitute for reading the text itself, but hopefully will encourage readers to pick up their copy and consider responding in detail directly, rather than leaving it solely to others such as their trade association, consumer association or other lobby group.

Scope

For the purposes of the Green paper, Commercial communications can be defined as: *'All forms of communication seeking to promote either products, services or the image of a company or organisation to final consumers and/or distributors.'* The term includes all forms of advertising, direct marketing, sponsorship, sales promotions and public relations. It also covers the use of such communications tools by all goods and service industries as well as public and semi-public bodies, charities and political organisations¹. Packaging is not included.²

Within the important service sector of commercial communications, the Green paper identifies the following two general types of service:

i) The range of services offered by the commercial communications industry (**'suppliers'**). Suppliers include *advertising agencies, direct marketing companies (all forms), sales promotion designers, media buyers, sponsorship agents, public relations companies*. Other services are supplied by 'specialist suppliers' such as *market research companies, advertising film producers, mailing list brokers*. The services of both kinds of supplier are provided to clients (**'users'**) interested in making such communications.

ii) The range of delivery services offered by **'carriers'** of commercial communications. The providers of these services cover a wide range of organisations including the *media* (TV, radio and printed word), *organisers of sports and cultural events, postal and telecommunication service providers, billboard site operators* etc., and may work for both suppliers and users.



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¹ This definition covers all forms of remunerated commercial communication services irrespective of the nature of the paying company or organisation. Thus, for example, a political advertising campaign would be included whereas party TV political broadcasts imposed by law and for which political parties or organisations do not pay would be excluded.

² This is because (i) packaging and labelling regulations should be kept separate from non-pack commercial communication regulations and (ii) the pack is typically part of the in-house manufacturing process rather than a part of that element of the marketing mix which is sub-contracted to a specialist service provider as is the case for the commercial communication activities covered by this Green Paper. In the same manner, sales representatives have also been excluded from the scope of this review.

Cross-border commercial communication services across the Internal Market are a growing phenomenon.

Objective

The objective of the Green Paper is to consult interested parties, the European Parliament and the Member States on proposals that seek to establish a forward-looking European Commercial Communications policy. This requires an evaluation of the role of the Community in the field, the identification of any potential problems arising from existing national regulations and an assessment of how any such problems could be best approached by the Commission.

Key general findings

In brief, the analysis undertaken in preparing the Green paper has come to five key conclusions:

- 1) Cross-border commercial communication services across the Internal Market are a growing phenomenon.
- 2) At present, differing national regulations could create obstacles for companies wanting to offer such services across national borders and can also create problems for consumers seeking redress against unlawful cross-border commercial communication services.
- 3) In the future some of these divergences between the regulatory frameworks of Member States could give rise to barriers as more commercial communication services circulate across borders.
- 4) The risk of such regulatory differences giving rise to barriers is accentuated with the advent of the new services developed in the Information Society.
- 5) The availability of information about regulatory measures and market developments is becoming increasingly important at national and Community level.

The role of the European Community in the field of commercial communications

The Internal Market objective

The Treaty's provisions in relation to Internal Market law require that the Community ensures that commercial communication services and the goods they promote should be able to benefit from the principles of freedom to provide services and the free circulation of goods. Part I of the Green paper explains the relevant articles of the Treaty and outlines how the compatibility (or otherwise) of national restrictions on these services have been addressed by both the Treaty and the jurisprudence of the European Court of Justice. The following sections are taken directly from the text and will be significant for any interested parties considering infringement procedures.

The freedom to provide services is guaranteed by Articles 59 and 60 of the EC Treaty. Within the meaning of these articles as interpreted by the Court³, commercial communication activities involve the provision of many different 'services' which can be classified according to whether they are provided by the suppliers (e.g. advertising agencies), the carriers (e.g. media) or the specialist suppliers (e.g. list brokers). All these services could be provided on a cross-border basis and for remuneration.

The European Court of Justice has already held that advertising is a service⁴. For example, in a recent judgement, concerning 'cold-calling' (unsolicited telephone advertising),⁵ it ruled that the prohibition of this practise: *'deprives the operators concerned of a rapid and direct technique for marketing and for contacting potential clients in other Member States. It can therefore constitute a restriction on the freedom to provide cross-border services.'*⁶

The principle of freedom to provide services guarantees that a Member State

³ C-352/85 Bond van Adverteerders (vereniging) v The Netherlands 1988 (2) ECR 2085 of 26.04.1988. In this case the Court explained that for the application of free movement of services it is necessary first to identify the services in question, secondly to consider whether the services are transfrontier in nature for the purposes of Article 59 of the Treaty and lastly, to establish whether the services in question are services normally provided for remuneration within the meaning of Article 60 of the Treaty. (Recital 12).

⁴ See, for example; C-155/73 Re Guiseppe Sacchi 1974 (1) ECR 409 of 30.04.1974, C-52/79 Procureur du Roi v. Marc JVC Debauvre and Others 1980 ECR 833 of 18.03.1980.

⁵ C-384/93 Alpine Investments BV v. Minister van Financiën ECR 833 of 10.05.95

⁶ Cited above, Recital 28.

cannot restrict services emanating from another Member State unless such restrictions fulfil certain specific conditions. If these conditions are not fulfilled, the services fall under the legislation of the Member State within which the provider of the services is established (the 'country of origin' principle)⁷. In determining the specific conditions under which authorities can depart from this principle, the Court draws a clear distinction between discriminatory and non-discriminatory measures.

Discriminatory measures are compatible with Community law only if they can be brought within the scope of the exemptions contained in Article 56 of the Treaty namely: public policy, public security, or public health and if they comply with the principle of proportionality.

Non-discriminatory measures may arise as a result of the additional application of national rules by the host country to persons providing services established in the territory of a Member State who already have to satisfy the requirements of that State's legislation. Such restrictions could be justified under Article 59 only if they are justified by overriding reasons relating to the public interest and if the requirements embodied in the restrictive measures are not already satisfied by the rules imposed on those persons in the Member State in which they are established (the principle of 'mutual recognition').⁸ 'Overriding reasons relating to the public interest' (which we can now refer to as 'public interest objectives') include: the protection of workers⁹; the protection of consumers¹⁰; the protection of intellectual property¹¹; the protection of fair trading; the conservation of the national historic and artistic heritage; the widest possible dissemination of knowledge of the artistic and cultural heritage of a country¹²; professional rules designed to protect recipients of services¹³; the protection of pluralism¹⁴ and linguistic policy¹⁵.

Further, restrictions on the free movement of services cannot be imposed merely because of the existence of such public interest objectives. In order to be justified under Community law they must also be proportionate to these pursued objectives. The Court has specified the meaning of proportionality: 'it is settled case law that requirements imposed on the providers of services must be appropriate to ensure achievement of the intended aim and must not go beyond that which is necessary in order to achieve that objective'¹⁶. In other words, it must not be possible to obtain the same result by less restrictive rules.¹⁷

In certain circumstances, commercial communication activities could benefit from the application of Article 30 of the EC Treaty relating to the free movement of goods. The Court's recognition of the indirect economic link between commercial communication services and the sale of goods is clearly explained in the Oosthoek's Uitgeversmaatschappij judgement concerning the restriction of a sales promotion by a Belgium firm into the Dutch market. The Court stated that this measure led to a measure equivalent to a quantitative restriction as follows:

*'Legislation which restricts or prohibits certain forms of advertising and certain means of sales promotion may, although it does not directly affect imports, be such as to restrict their volume because it affects marketing opportunities for the imported products. The possibility cannot be ruled out that to compel a producer either to adopt advertising or sales promotion schemes which differ from one Member State to another or to discontinue a scheme which he considers to be particularly effective may constitute an obstacle to imports even if the legislation in question applies to domestic products and imported products without distinction.'*¹⁸

⁷ See "Commission interpretative Communication concerning the free movement of services across frontiers" OJC 334, 9.12.93

⁸ C-288/89 Stichting Collectieve Antennevoorziening Gouda and Others v Commissariat voor de Media. "Mediawet Case" 1991 (1) ECR 4007, paragraph 13.

⁹ C-279/80 Re Alfred John Webb 1981 ECR 3305, paragraph 19; Joined Cases 62/81, 63/81 Seco SA and Desquenne and Giral SA v Etablissement d'Assurance contre la Vieillesse et l'Invalidité 1982 (1) ECR 223, paragraph 14; C-113/89 Rush Portuguesa Lda v Office National d'Immigration 1990 (2) ECR I-1417, paragraph 18.

¹⁰ C-220/83 Commission v France 1986 (4) ECR 3663, paragraph 20

¹¹ C- 62/79 S.A. Compagnie Generale pour la Diffusion de la Television Coditel and Others (1980) ECR 881, paragraph 15

¹² Case C-180/89 Commission v Italy 1991 (2) ECR I-709, paragraph 20; Case C-154/89 Commission v France 1991 (2) ECR I-659, paragraph 17; Case C-198/89 Commission v Greece 1991 (2) ECR I-727, paragraph 21.

¹³ Joined Cases 110 , 111/78 Ministere Public and Chambre Syndicale des Agents Artistiques et Impresarii de Belgique, A.S.B.L. v Willy vvan Wesemael and Others "Van Wesemael Case" 1979 (1) ECR 35, paragraph 28.

¹⁴ C-288/89, cited above, in note 18 paragraph 23.

¹⁵ C-379/87 Anita Groener v Minister for Education and City of Dublin Vocational Committee 1989 (4) ECR 3967 (28.11.1989)

¹⁶ C-384/93 Alpine Investments BV, para 45, cited above in note 5

¹⁷ C-288/89 cited above in note 8, paragraph 15.

¹⁸ C-286/81 Re Oosthoek's Uitgeversmaatschappij 1982 (4) ECR 4575 of 15.12.82.

In GB-INNO¹⁹ where the restriction bore on the content of advertising leaflets distributed in Luxembourg by a Belgian retailer, the Court made the link to Article 30 by way of the reminder that the free movement of goods across frontiers also depended upon the free movement of people. Since the banning of advertising directed at individuals from a neighbouring State would deprive them of the incentive to cross the border it would therefore limit the possibilities for the goods to cross the same border. This judgement shows that the informational role of commercial communications is recognised in law.

This informational benefit was stressed in the 'Yves Rocher' judgement²⁰. In deciding that price comparisons were not misleading, the Court remarked that such advertising practices could be considered as:

'...extremely useful to enable the consumer to make his choice in full knowledge of the facts.'

Restrictions on commercial communications may therefore be open to challenge under Article 30 of the Treaty. In Keck and Mithouard²¹ the Court imposed certain limits on the application of Article 30, in that it held that Article 30 would not apply to 'certain selling arrangements'²², provided such measures apply to all relevant traders operating within the national area and so long as they affect in the same manner, in law or in fact, the marketing of domestic products and of those from other Member States. This case has been followed by a number of other cases in which the same line has been taken by the Court.²³ In order to decide whether Article 30 applies, an examination of restrictions on commercial communications needs to be undertaken on a 'case-by-case basis.'

Other Community Objectives

In addition to ensuring that commercial communication services can play their important positive role in the integration of the Internal Market, the Green paper recognises that other policy objectives for which the Community has shared competences with the Member States can be safeguarded through the effective regulation of commercial communications. These are listed at the end of Part I of the text.

The pro-competitive and informational role of commercial communications can be used to promote competition and industrial policy. Limits on certain forms of such services are also justified in other policy areas, as, for example, those relating to the protection of consumers and public health. Finally, given the importance of commercial communications revenue as a source of funding for 'carriers', the regulation of such services also needs to be considered from the perspective of cultural, and within that, audiovisual policy.

Problems that the Commission will be called upon to resolve in the future

Potential Internal Market barriers

Parts II and III of the Green paper outline a number of potential barriers to the Internal Market that might need to be examined by the Community in view of its exclusive competence in this area. These conclusions are based on an extensive comparative regulatory review of Member States' legislations in the field and the Commission's survey results (see *Commercial Communications*, Issue 2). The evidence suggests that different regulatory traditions and the different types and levels of restrictions on commercial communications services that result could be creating Internal Market barriers. Whilst this is the position at present, it is likely to be ever more so in the future as cross-

¹⁹ C-362/88 GB-INNO-BM v Confederation du commerce Luxembourgeois 1990 (2) ECR I-667 of 7.3.1990

²⁰ C-126/91 Schutzverband gegen Unwesen in der Wirtschaft e.V. v Yves Rocher GmbH 1991 (3) I-2361 of 18.5.93

²¹ Case C-267 and C-268/91 Re Bernard Keck and Daniel Mithouard 1993 (7) ECR I-6097 of 24.11.93.

²² Case C-267 and C-268/91 of 24.11.93, Recital 16 cited above.

²³ For example: C-292/92 Ruth Hünemünde e.a. v Landesapothekerkammer Baden-Württemberg 1993 (8) ECR I-6787 of 15.12.93; Societe d'Importation Edouard Leclerc-Siplec v TF1 Publicité S.A. and M6 Publicité 1995 ECR I-179 of 9.02.95

border commercial communication services increase with the development of the Information Society.

The vast majority of these potential barriers appear to stem from non-discriminatory restrictions (see above) and therefore will need to be assessed in terms of their proportionality with their underlying objectives. The Green paper therefore concludes at the end of Section III that, as far as the Internal Market objective is concerned, an extensive case by case regulatory review should be undertaken to cover the following three categories of restrictions:

Category I: Regulatory bans

Certain Member States ban particular types or content of commercial communications which are permitted in others. Such measures could give rise to a problem of disproportionality if applied to services originating in another Member State. Regulatory bans might include:

- Regulations *banning the use of discounts, loyalty premia and other price discounting* forms of commercial communications. These relate to introductory or other price promotional offers (e.g., 10% off), package offers (e.g., 'three for the price of two') or loyalty offers (whereby repeat purchase allows the consumer to benefit (for example with coupons) from a price reduction on a subsequent purchase).

- Regulations *banning the use of concessionary gifts*. These cover 'free gifts' that are given with the purchase of a product or independently.

- Regulations *banning broadcasters from selling overspill audiences* to media buyers and advertisers. This kind of ban is found within TV/radio licensing procedures and applied to 'overspill audiences' which are audiences in neighbouring mar-

kets that fall within the footprint of a transmission or via re-transmission over a cable network.

- Regulations *banning the use of certain media by specific categories of advertisers* in order to preserve pluralism in other media. Such regulations typically seek to divert certain advertising revenues away from Television to support other media such as the regional press.

- Regulations leading to *bans in the use of commercial communications for the professions*.

- Regulations *banning advertising on teleshopping channels or on-line services* for reasons of protection of pluralism. These typically seek to ensure that TV advertising revenues are not adversely affected.

- Measures *banning the use of foreign languages* in commercial communications.

Category II: Horizontal regulatory limitations

Some Member states have chosen to apply strict limitations on general forms of commercial communications. These include:

- Regulations *limiting the use of discounts, loyalty premiums and other price discounting* forms of commercial communications.

- Regulations *limiting the value and nature of concessionary gifts*.

- Regulations *limiting advertising to children*.

- Regulations *limiting the content of teleshopping or on-line services* for reasons of protection of pluralism.

The evidence suggests that different regulatory traditions, and the different types and levels of restrictions on commercial communications services that result, could be creating Internal Market barriers.

The subsidiarity principle might suggest that more efficient protection would be achieved at the European rather than at Member State level precisely because of the differences in approach being applied by the latter.

- Regulations on media buying *limiting the possibilities for cross-border media buying services.*

- Regulations on misleading advertising *limiting competitive advertising.*

- Regulations *limiting the use of brand diversification.*

- Regulations (other than fiscal) *limiting the sponsorship of both events and audio-visual programmes.*

Category III: Specific regulatory limitations

A number of Member States have applied strict limitations on specific sector or product/service related forms of commercial communications.

- Regulations *limiting advertising by professions* which could severely hamper their provision especially when using the new on-line techniques being developed in the Information Society.

- Regulations *limiting non-prescribed pharmaceuticals advertising.* These measures appear, in certain cases, to prevent the effective use of umbrella brands across borders.

- Regulations *limiting alcohol advertising.*

- Regulations *limiting commercial communications related to baby foods other than infant formulae.*

- Regulations *limiting commercial communications associated with TV advertising of retailing.*

- Regulations *limiting the use of commercial communications by the financial services sector.*

Do these differences in restrictions really adversely affect the operation of the Internal Market? Do they lead to inadequate protection of the general interest objectives they seek to safeguard given the increasingly cross-border nature of commercial communications? Is this list exhaustive or will it have to be extended as national restrictions come to confront each other with the development of on-line commercial communication services over the Information Superhighways? These are some of the questions respondents are asked to consider when preparing their replies.

Potential problems in other policy areas that the Commission could be called upon to resolve at the Community level

There are many other (*i.e.*, non Internal Market) policy objectives that could in one way or another rely on the use or the shaping of commercial communications. Given the apparent differences in opinions as to how this should be done (witness the differing approaches, differing forms and levels of restriction currently in place in the Member States), the Community could be obliged to provide European wide solutions to these issues. The expected growth in cross-border commercial communication services in coming years and the different national approaches imply that in a number of areas subsidiarity might require the Commission to take action to protect one or other public interest objectives. The subsidiarity principle might suggest that more efficient protection would be achieved at the European rather than at Member State level precisely because of the differences in approach being applied by the latter.

Under which of these objectives is Community action required? Where do interested parties believe that Community

action could be more effective than Member State action in these non Internal Market related policy objectives? Interested parties are requested to give as much detailed information as possible when responding to these questions in the specific areas where they have concerns.

A suggested solution: The two key proposals

The wide scope of these services, the diverse public interest objectives that regulations on them seek to protect and the widespread use of the services by a plethora of different economic players all call for a case-by-case approach. However, a 'wait and see' approach could result either in a flood of lengthy and confrontational infringement procedures or calls for wide-ranging and potentially premature harmonisation. Furthermore, there appear to be conflicting views on the role and nature of commercial communication services which could result in incoherent policy responses in the future.

Analysis of the problems suggests that a coherent assessment of the proportionality of existing and future measures would help avoid the risk of incoherence. Furthermore, in this rapidly evolving field, it seems urgent to open a dialogue between the Member States, the Commission and interested parties to try to resolve these problems in a rapid and less confrontational manner than would be the case if sole reliance were to be made on the burdensome infringement procedure.

A Methodology to deliver a more Uniform assessment

The efficient assessment of proportionality will ensure that the Community, once a restriction on cross-border services has been identified, can accurately assess on a case-by-case basis (i) the compatibility of national regulations with Internal Market principles and (ii) the coherence and

proportionality of its own initiatives. (This latter requirement also corresponds with the obligation to apply the principle of proportionality as enshrined in Article 3B§3 of the Treaty of the European Union.)

According to the case-law of the European Court of Justice, the proportionality test requires three types of evaluations: first, the verification of the appropriateness of the national restrictive measure vis à vis the pursued objective i.e. *it must be such as to guarantee the achievement of the intended aim*; secondly, testing that the national restrictive measure *does not go beyond that which is necessary in order to achieve that objective*; the Court adds that, in other words, *the same result cannot be obtained by less restrictive rules*.

A 'wait and see' approach could result either in a flood of lengthy and confrontational infringement procedures or calls for wide-ranging and potentially premature harmonisation

The jurisprudence of the Court has not, as yet, provided precisely defined elements that would quickly allow the assessment of the proportionality of national or Community measures. The Commission believes that, in the absence of such precision, it would be useful to develop a methodology to help define the proportionality and coherence of national or Community measures in the field of commercial communications. However, it is important to underline that the Commission is not proposing an automatic or an obligatory assessment system: rather a number of criteria are suggested which could contribute towards the evaluation of the proportionality of a measure. Indeed, such criteria could help in achieving greater transparency and improving

the quality of a proposal. This methodology could help Member States when designing measures to feel more confident that they are fully compatible with Internal Market law, assuming ofcourse that they are also in conformity with the whole body of Community law. Equally, Community legislation could also make use of a common analytical framework.

It is hoped respondents will give considerable attention to this proposed assessment methodology since it is at the heart of the Community's future approach to policy

The proposed methodology would comprise essentially two steps. First, the main characteristics of the measure could be identified in accordance with specific defined criteria. In turn, these characteristics could be used in assessing the proportionality of the measure or proposal. The approach would thus focus on the set of indices on which the final decision regarding proportionality could be taken rather than on the decision as such.

The proposed assessment mechanism is explained in a separate article in this issue of Commercial Communications. Suffice to say here that it combines the existing jurisprudence with an economic impact analysis to result in a number of check points which can be followed through on a step by step basis.

Respondents are asked to consider this proposed tool which could be used by plaintiffs, Member States and the Commission itself to identify those elements which would allow for a rapid and well-informed decision on the proportionality of existing or proposed national and/or Community measures. Is such transparency required? Is such a tool useful? Is it useful to use economic/market truths to help inform essentially legal questions? Is each of the criteria

clear enough? Could the economic impact analysis be improved?

It is hoped respondents will give considerable attention to this proposed assessment methodology since it is at the heart of the Community's future approach to policy in this domain. It would provide the framework for discussions between the Commission and Member States on specific commercial communications issues. Although it may seem complex, it reflects the complexity of the decisions the Community is called upon to undertake each time the issue of the proportionality of a measure is to be considered. By trying to reach agreement on this approach, it would not only increase transparency but should also be a basis for more efficient and rapid policy-making. Interested parties will be aware of what information needs to be provided and understand the basis of the policy debate surrounding a particular action.

In order to further ensure that such a methodology could be applied in a rapid and efficient manner, there is a need to ensure that all interested parties can benefit from improved information exchange and communications on these issues. This leads to the second key proposal made by the Green Paper.

Improved co-ordination and information at the European level

The Commission proposes to establish a committee to consider commercial communications issues which, in particular, will ensure an effective dialogue with and between the Member States. This committee would not, obviously, limit the powers of initiative of the Commission but would assist the Commission (and all other interested parties) in making its actions more transparent through discussing commercial communication issues taking as the starting point the proposed assessment methodology. In this manner

the committee could help safeguard the coherence of policy initiatives and avoid, where possible, the need to act against possible infringements of the Treaty. It would also act as the forum for administrative co-operation in the field of commercial communications, in particular allowing for an exchange of information on issues relating to new developments in this field. Given the global nature of the Information Society it would also consider how the proposed common approach for commercial communications in the European Community could be promoted at the international level²⁴.

The committee would be chaired by the Commission and would consist of representatives from the Member States' authorities. The Commission would periodically report to this committee on relevant information. At the Commission's request the committee would convene meetings on specific issues. The first series of meetings of the Committee would consist of an exchange of views on sales promotions and sponsorship. These were identified in the surveys as those forms of cross-border commercial communication services facing the greatest difficulties. More generally, the Committee would begin to consider how existing commercial communications regulations may impact on the development of electronic commerce.

The Commission also recognises that although market data are easily found for certain commercial communication services (e.g. national advertising statistics) other data (for example on cross-border commercial communications in general, direct marketing, sales promotion and sponsorship services) required for efficient policy appraisal are at times not collected or are difficult to access quickly. Given that certain commercial (notably in the field of media buying and market research), academic and consumer interests

collate and work with the relevant market information and that these have a common interest in regulatory data, they should be encouraged to participate in the European commercial communications policy process. Their inside knowledge would undoubtedly enhance the effectiveness of this policy. The Commission will therefore seek to improve exchange of data between these various organisations and the national and European regulatory authorities.

The need for a central contact point has appeared from the results of the surveys. Interested parties are calling for such a single contact point which would be able to provide help in identifying which Directorate General is responsible in the Commission for specific enquiries in relation to its Commercial Communication policies. Moreover, a co-ordination point is needed to maintain a general overview of activities and developments in this area and to assist the Commission's services in the formulation and assessment of new initiatives.

In order to meet these objectives the contact/co-ordination point could rely on an on-line commercial communications contact network. This would complement this newsletter. The network would encourage the development of two-way contacts between interested parties and the Commission. In this manner the Commission's work could have a direct source of information when required. The management and resources required for such an on-line communications network will be the subject of a feasibility study which the Commission has launched.

Respondents are asked to consider both of these improved communication and information exchange proposals. Are they sufficient? What information would they require? Do they agree that electronic commerce, sponsorship and sales promotions are the key areas on which

²⁴ In this respect, when proposing initiatives, the Commission and the Member States should always give due regard to the trade liberalisation commitments taken in the GATS Treaty and their application by the WTO.

early discussions should begin? Would they be prepared to contribute to the information network and if so, how?

Conclusion

The Green paper has identified the key role that commercial communications play in the Internal Market and the likelihood that the Community could be increasingly called upon to take actions in this area. The Commission's competences oblige it to tackle these problems head on but launching into a massive harmonisation or infringement programme without having defined a coherent methodology or without having debated the issue publicly with all the interested parties including the Member States would be foolhardy and counterproductive.

The Green paper has identified the key role that commercial communications play in the Internal Market and the likelihood that the Community could be increasingly called upon to take actions in this area.

For that reason, in presenting this Green Paper to his fellow Commissioners, Commissioner Monti stated that he believed the Green Paper's proposals should be welcomed by the Member States, the European Parliament and interested parties since

'.. they amount to a constructive and balanced response to an evident problem. They demonstrate how the Commission does not contest the need for regulation aiming to protect general interest objectives but instead seeks to ensure that its future decisions and actions will lead to the effective safeguarding of these objectives whilst also helping achieve the growth and employment benefits resulting from an integrated internal market for commercial communication services.'

Your detailed and specific response to these proposals should be sent to the Commission at the address printed below. The approach adopted is very much 'bottom up' and its effectiveness depends on such widespread participation. We hope that you will also use the newsletter to give more general views on one or other point raised in the Green paper on which you may wish to make a more detailed contribution. The aim of the Commission's services is to encourage and stimulate a proper and unprecedented European policy debate on the issue of commercial communications. We hope that you will use these pages effectively for that purpose.

Detailed written responses to the Green paper should be sent before 31.10.96 to the following:

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Respondents wishing to give their general views on the Green paper or any of its key-points and proposals should contact the editor directly :

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Assessing proportionality

A practical guide to the proposed methodology

Dr. Margot Fröhlinger
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The need for the methodology

At the heart of the commercial communications Green Paper is a proposal for a 'proportionality assessment methodology'. This aims to provide for a quick and accurate assessment of the compatibility with the EC Treaty of any national restriction on cross-border services. It will also help ensure that all future Community initiatives, whichever particular objectives they are targeted at, are consistent and precise.

According to Internal Market law (Article 59 of the EC Treaty) a service emanating from another Member State and which is consistent with the regulations of that State is allowed to be offered into any other Member State without that State imposing its differing regulations upon it. The exception to this principle (implying 'country of origin control') is when the receiving Member State's application of its regulations can be shown to be necessary and 'proportionate' to protect a recognised public interest objective, for example, consumer protection, the protection of minors or the protection of public health.

There are a number of Internal Market barriers which are identified in the Green Paper and no doubt more will be highlighted in due course. In each of these there needs to be a means by which it can be determined whether the specific measure is 'proportionate'.

The problem with this is that an assessment of what is 'proportionate' to protect a public interest objective is often entirely subjective and based on our own experience and views. In practice, the decision as to whether a restriction is 'proportionate' will always, *de facto*, remain of a political nature, since the Judge or the public authority that will decide will do so within socially defined norms.

Such political or judicial decisions

need to be well-founded and they must rely on sound and objective information. To this end, there needs to be an agreed view of how commercial communications function so that the effects of measures (existing or proposed) on specific public policy objectives can be assessed. This functional understanding of commercial communications can then be integrated into, and form an essential part of, a structured, transparent and objective proportionality assessment methodology. This is the instrument which would be systematically applied to individual cases and should help to ensure that, in future, such decisions on proportionality are reached rapidly and in a consistent manner.

The basis for the methodology

In its case-law the European Court of Justice has already set out some general criteria which it always applies when deciding whether or not a measure is proportionate. According to this case-law (which is presented in the Green Paper), the proportionality test must meet a number of criteria.

First, the restrictive measure must be shown to be appropriate to the stated objective, i.e., *it must be such as to guarantee the achievement of the intended aim*.

Secondly, it must be shown that the restrictive measure *does not go beyond that which is necessary in order to achieve that objective*.

Lastly, it needs to be shown that *the same result cannot be obtained by less restrictive rules*.

Building on these principles, the Green Paper defines five criteria that could be applied systematically to further assess the proportionality of a measure. The application of these criteria can best be understood by taking a hypothetical example.

The problem with this is that an assessment of what is 'proportionate' to protect a public interest objective is often entirely subjective and based on our own experience and views.

Applying the methodology - an example

As an example one could take a national ban on advertising by a professional body which leads to actions restricting the supply of advertising services and non-domestic media sales, e.g. by radio or TV stations with overspill into the restricted Member State or international press titles to a profession (Article 59 restrictions), and also the blocking of professional newspapers (Article 30 restriction) at the border of the Member State in question.

The general interest objective justifying the measure would be the protection of the consumer by ensuring that independent professionals are not put under excessive commercial pressure in their provision of the most accurate advice to their clients. In this manner quality standards within the profession are maintained since the relatively high rewards offered from entering the profession justify investment in years of training to do so.

Assessment criterion A

What is the potential 'chain reaction' caused by the measure?

Essentially this criterion involves an examination of the potential market reactions to a measure. For commercial communications, the relevant market forces are centred on three inter-linked groups of economic actors (users, suppliers and carriers). Figure 1 depicts this 'commercial communications chain' via the solid arrows which highlight the various commercial communications service flows between the different players.

The commercial communications chain runs from the 'users' (clients) receiving services from the 'suppliers' (e.g., advertising agencies, direct marketing specialists, PR agencies) and 'specialist suppliers' (e.g., media buyers, list bro-

kers) who in turn order (for users) or purchase services (in the form of air-time or sponsorship credits etc.) from the 'carriers' (media owners, events organisers). It is through this chain that the communications between 'users' and the final receivers (consumers, public at large etc.) are executed. It is the target reception group of these communications that the regulatory measure seeks to protect.

At this stage the methodology seeks to establish two things.

i) How will the target group which the measure seeks to protect be affected?

and/or

ii) How might other public interest target groups be influenced?

To do this, it is necessary to assess the reactions of each individual link in the chain to the measure. Figure 1 demonstrates how, in applying this 'commercial communications chain reaction' to the measure, not only must all the effects in that chain be considered, but it also needs to be acknowledged that commercial communications are but one of four elements of the marketing mix. The possibility that a restriction on commercial communications could influence the user to change his marketing mix and substitute non-commercial communication strategies to influence the target group must be fully accounted for.

The alternatives available to users of commercial communications are shown in more detail in Figure 2 and will be used in our example. Here, one need only note that these possibilities will vary according to the type of competitive environment and the ideal branding strategy the user might wish to adopt. In other words, there will be different potential combinations of tools available within the com-

mercial communications element of the marketing mix. Choice of these tools may be influenced by regulation. Any choice which may have been determined in this way needs to be accounted for when assessing the consequent effects through the communications chain.

Looking at each element of the chain, the consequences that need to be foreseen are as follows:

The impact on the users

This requires an estimate of the probable reaction of users to a restriction applied to a particular form of commercial communications. Of course, each and every sector or firm might be expected to react differently. However, as explained in the Working Document that accompanies the Green Paper, it is possible to identify six typical branding strategies from which logical strategic reactions by users to restrictions on one or other form of commercial communications can be anticipated. (Each one of these branding strategies is associated with a 'typical' form of marketing mix and, within that, a particular form of commercial communications mix.)

The impact on the suppliers

This requires the assessment of:

(i) the possibilities of substitution across different forms of commercial communications services

(ii) the scale effects that could be threatened by a measure and

(iii) the location of these economies of scale/scope possibilities within the commercial communications sectors (again this is explained in detail in the Working Document that accompanies the Green Paper).

Figure 1

Commercial communications chain reaction

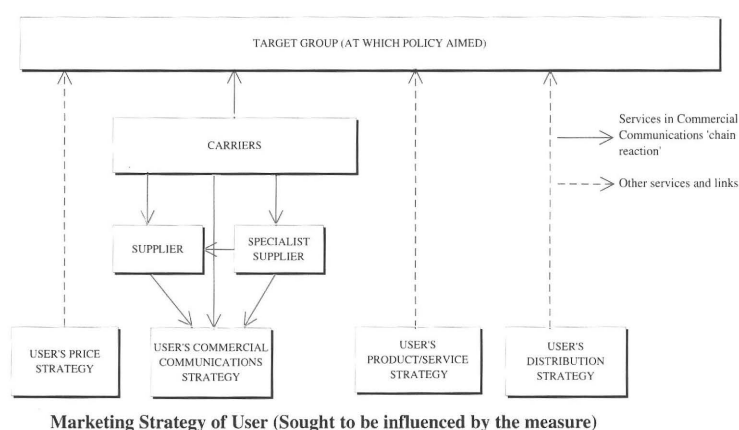
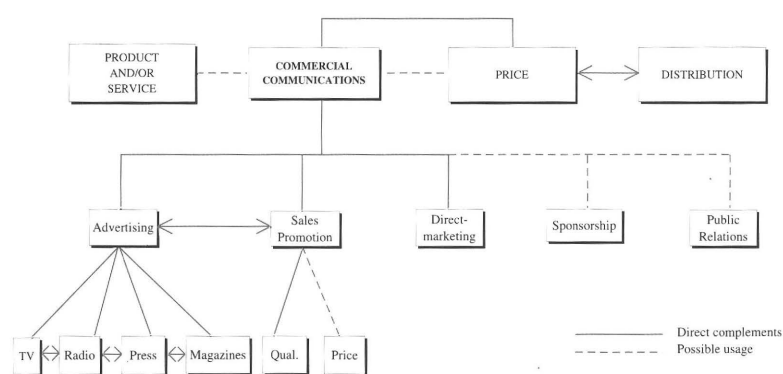


Figure 2

Commercial communications chain reaction



The resulting potential substitution effects and loss of scale or scope economies can then be applied in two ways. Firstly, there is the need to measure how the restriction on the targeted type of commercial communications might spill over into demand for other commercial communications services. Secondly, there is the need to assess whether the restriction is such that it reduces the efficiency of the targeted service provision and makes it more costly. Such changes in demand and/or costs of supply would lead to further reactions from users and carriers.

The impact on the carriers

This requires evaluation of how a commercial communications regulatory measure on a medium or a cultural/sporting event will affect the behaviour of that carrier. This will depend on the commercial response it will make to compensate for the consequent restriction (Readers are again referred to the Working Document for a more detailed explanation of these potential reactions.)

The chain reaction will thus be assessed and the overall impact on the final receiving group (the general public, minors, consumers, etc.) can be evaluated.

Taking our example, professional services are offered both to businesses and to individuals (consumers). They could therefore be considered to be advertised as a mass market service offered on a personal basis. Thus, in Figure 2 the solid lines suggest the most likely combinations of commercial communications mix that would be used by the typical mass market professional service provider (advertising of all forms, direct marketing and some sponsorship). The broken lines show other forms of service that he could use to back up these tools, namely, quality promotions, as well as some PR. The other key elements of a marketing mix of a professional service provider will obviously be the price and the distribution strategies where one could imagine that large professional service firms benefit from having networks of offices under the same brand name.

The first direct impact on the commercial communications chain of the application of the measure to ban all forms of advertising for such services is on the carriers and more specifically those media which are restricted in selling advertising space and time to these professional service suppliers (see Figure 1). One could expect that specialised professional service

publications and certain business-to-business titles or specialised consumer magazines would be severely hit, whereas more general media would lose some revenue although this may be easily substituted with other forms of advertising (in a real evaluation all this would be checked through consulting interested parties). The characterisation of the chain reaction therefore begins with the 'carriers' in Figure 1. For each of the affected types of media or carriers (which the policy-maker can easily check), an assessment of the potential reactions to the loss of these commercial communications vehicles is made.

Working down through Figure 1, the next step of the chain consists of assessing the effect on commercial communications service suppliers. Those specialised in supplying advertising services to the professional service sector will experience a loss of demand (e.g., those advertising agencies with accounts for such clients to design Press and TV advertising campaigns). Assume that the restriction leads to a loss of economies of scale in such professional service provision because the restricted profession accounts for the bulk of professional service advertising. This implies that advertising rates for other professions may increase or there may be a reduction of creative staff in this area.

We then move further down Figure 1 to the users' reactions and to Figure 2. Here, given that the substitution into direct marketing remains possible, we find that such a shift is probable and that direct marketing and sponsorship and PR of activities targeted at the users of such professional services increase their share of the marketing mix. Let us also assume that the restriction is not sufficient to incite users into a price war but that it also leads to marketing effort also being redirected towards distribution (notably through opening new offices).

Working back-up through the chain, the shift in demand from display and media advertising to direct marketing, sponsorship and PR will lead to increased demand for suppliers specialised in preparing such commercial communications services. Whereas TV and other mass media will have lost some business, specialist magazines and journals, and other carriers targeted at the professions, will suffer severe restrictions. We can then note that, as far as the consumer target group is concerned, whilst they certainly no longer receive mass market advertising, they also lose access to an unbiased source of information that was previously supplied by specialist journals, for example, as a consequence of the measure. Furthermore, it follows that another policy target group (in the form of the press who have a role to play in terms of safeguarding opinion, for instance) are also affected.

Finally, as regards the profession whose professional standards are sought to be kept at the highest level through the measure (i.e., by reducing the incentive to compete intensely, so that margins/salaries remain sufficiently high to attract well trained and high quality new entrants into the profession), the measure obviously reduces competitive pressures that would be induced by mass advertising. However, the profession suffers from a reduction of specialist press which prevents the dissemination of new information that would help it maintain high quality of service and it may also encourage the profession into an overtly non-competitive environment which could lead to exaggerated pricing and super profits, which are neither in the interest of the body of the profession nor, of course, in the interests of consumers.

Assessment criterion B

What are the objectives of the measure?

It is obviously necessary to identify and specify the target objective of the measure. However, the European Court of Justice's (ECJ) emphasis on this need is because of the recognition that a measure can have consequent effects on other policy objectives. For a national measure, such identification is obviously required to evaluate if the legal principle of proportionality is met, since it is necessary to determine the reference point on which proportionality will be assessed. For any proposed Community regulatory action, this identification of objectives allows the appropriate legal basis to be determined and permits compliance with the principles of subsidiarity (for non-Internal Market based proposals) and proportionality (for all measures) to be assessed.

Any proposed action justified to protect a particular public interest (public interest objective) will be targeted at a particular group (minors, consumers, the general public, competitors, distributors, etc.). This group needs to be specified together with the objective that the measure (at national or Community level) is seeking to achieve. The chain reaction needs to be used to identify which target (receiving) group actually benefits from the national measure or the proposed Community regulatory action. Working back it will then be possible to identify whether the invoked objective is actually being pursued.

In the example, the measure is aimed at the protection of consumers by preventing professionals from cutting back on training and offering cheap, but less qualitatively sound, professional services that could work against consumers' interests. It also seeks to protect professional

The less specific the measure, the greater the risk of counter productive effects.

standards. Given the chain reaction above, these invoked objectives are affected.

Assessment criterion C

Is the measure linked to the objective?

The specifications, definitions, distinctions, criteria, etc., that are used to determine the content of the proposed measure should be directly linked to its objective. If they were not, the measure could be presumed to be arbitrary.

It is therefore essential for the body deciding on the proportionality of a measure to have access to information regarding: any analytical studies undertaken prior to the measure being adopted; its explanatory memorandum; the justification of its content; the context within which it was adopted and all other relevant data which influenced the decision.

In the example, the link between the measure and the objective might be slightly arbitrary since it relies on the notion that a loss of competition (resulting from the ban of mass advertising) leads to higher quality services.

The notion is that more competition immediately implies price wars which reduce margins and therefore deter entry and training investments. This seems somewhat simplistic given that advertising need not be based on price but can be based on quality differentiation which makes the market more competitive on quality (which is the aim of the measure) rather than competitive on price.

Assessment criterion D

Is the measure counter-productive?

The proposed measure could create a counter-productive effect in relation to another general interest or Community objective. To measure this the indicator of selectivity could be helpful (i.e., whether

the measure is precisely targeted at the objective pursued). The less specific the measure, the greater the risk of counter-productive effects. The application of the chain reaction to the measure will help identify any potential counter-productive effects it may have.

In the example, the restriction on certain media sales and commercial communications services could have grave implications for the specialised press.

There may therefore be a negative spillover effect on the protection of pluralism in the media depending on the number of titles affected, for example, so this will need to be accounted for in the overall appreciation of the measure's proportionality.

Assessment criterion E

Efficiency of the measure

The final criterion is designed to test whether the specific type and the degree of restriction of the measure are able to achieve the objective. The chain reaction assessment needs to be used to determine how the target group is affected and whether the key reactions might work against the pursued objective.

More detailed information could be collected to allow for an assessment of the level of restriction beyond which the negative reactions would be likely to outweigh the desired reactions.

In the example, the measure may be relatively inefficient in protecting consumers since it may reduce competition in the market too much, thus allowing for super profits and excessively high pricing.

Furthermore, a ban on advertising may also reduce qualitative competition thus leading to a less innovative profession and therefore again consumers lose out.

Finally, the severe impact on the spe-

cialised press reduces information dissemination within the profession as well as qualitative information supply to consumers and so, again, quality of service is likely to suffer. Therefore, one can conclude that the measure is generally inefficient in meeting its key objective.

By helping define the key characteristics of the measure, these five criteria will allow a relevant authority to be in a better position to decide on its proportionality and coherence.

The final result:

The link between the assessment results and the key criteria referred to as necessary for the ECJ and /or the Commission to make its judgement.

In relation to national measures

The characterisation of the chain reaction assessment criterion 'A' could demonstrate that the objectives met by the measure differ from that or those which are implied (according to assessment criterion 'B'). Should these analyses reveal that the objective sought is missed and no other recognised public interest objective can be identified, the measure **would** be incompatible with Community law.

With regard to whether the measure is 'appropriate', the evaluation of the chain reaction (assessment criterion 'A'), 'the link with the objective' (assessment criterion 'C') and 'counter-productivity' (assessment criterion 'D') will help to appreciate whether this criterion has been met.

For example, a relevant authority could come to the conclusion that a measure is somewhat loosely linked to the objective, has no counter-productive effect and is relatively efficient.

As regards the 'level of restriction' part of the proportionality evaluation, the 'ef-

iciency' assessment criterion 'E' will be crucial in determining whether the level of restriction is really necessary for achieving the intended aim.

Finally, as regards the 'alternative measures test'¹, the application of the five assessment criteria to competing measures will allow for the identification of the least restrictive measure.

In relation to Community regulatory actions

The characterisation of the measure with the five assessment criteria would also assist in avoiding incoherence, in particular avoiding counter-productive effects on other Community objectives.

This should be achieved, when choosing between two measures, by actively seeking, and giving preference to, that measure which avoids counter-productive effects on other Community objectives.

In relation to proportionality, the choice should be made in favour of the measure with the less restrictive effect on the targeted economic group. In some cases, of course, it may be impossible to avoid using a measure which is incoherent with other objectives or measures. In such cases, the methodology proposed will provide the Commission with a tool assisting it in justifying the proposal.

In the example: The Commission position on the application of such a national measure to advertising services emanating from other Member States is that it appears to be disproportionate.

The 'appropriateness' of the restriction on cross-border advertising services to the profession (Article 59), given its pursued objective of consumer protection (criterion B) and its potential arbitrariness (criterion C) and counter-productive effect on media plurality (criterion D), would appear to raise doubts as to its proportionality.

In relation to proportionality, the choice should be made in favour of the measure with the less restrictive effect on the targeted economic group.

Likewise, the measure is 'relatively inefficient' (following the application of criterion E).

Finally, the ECJ calls for the assessment of less restrictive measures. Given that the measure could be extremely inefficient and might actually work against the interests of consumers, and that it has counterproductive effects in terms of media pluralism and could be criticised as being of an arbitrary nature, alternatives should be considered (for example restrictions on price advertising) before a decision was taken on the proportionality of the measure.

For a Community proposal, alternative measures ought to be considered.

Again, alternative measures (such as advertising content provisions that ensure that competition is quality rather than price driven) would need to be examined given the doubts raised by the methodology as to the proportionality of the proposed measure.

Conclusion

This structured and transparent approach to assessing the proportionality of a national regulatory restriction or the coherence of a proposed Community

communications policy Committee, it could lead to a rapid establishment of a far more effective regulatory framework in Europe for commercial communications services.

The case by case consideration of proportionality with this tool should allow for agreement to be reached on how best to ensure that country of origin control becomes the guiding principle of regulations on such services within Europe. In this manner, companies could feel confident in offering their services across borders without having to check for any other regulatory conditions than those of their country of establishment. Likewise, consumers could achieve effective redress in the country from which the problem they encounter originates.

The resulting increased dynamism and competitiveness of the European commercial communications market would benefit all. It is therefore to be hoped that this approach to clearing up the current regulatory patchwork and legal uncertainty affecting the effective use and reception of commercial communications in the European Community will be strongly supported by all interested parties who respond to the Green Paper.

Companies could feel confident in offering their services across borders without having to check for any other regulatory conditions than those of their country of establishment. Likewise, consumers could achieve effective redress in the country from which the problem they encounter originates.

proposal will allow for better informed and therefore more rapid decision making on these issues. In particular, by structuring the discussions on identified regulatory restrictions between the Commission and the Member States' authorities in the proposed commercial

¹ This final assessment is similar to the previous one. It differs only in so far as the measure used for evaluation is not the specific restrictive measure under assessment as such but another alternative measure which could result in a less restrictive effect. The objective of this step is, therefore, not to analyse the restrictive measure, but to identify other appropriate measures that could meet the objective whilst being less restrictive.

New Services and Advertising

Jacques Bille,
Chairman of EAT
(European Advertising
Tripartite)

Every day sees a new innovation in the multimedia landscape. The technology revolution is unfolding at such a speed that it is difficult to predict, a few years ahead, the framework in which commercial communications will be operating.

Thus, only just recently, thinking was dominated by interactive television projects. The experiments undertaken seemed to foreshadow a genuine revolution for television, whereby interactivity would change both its content and its relationship with viewers. Today, we know that if such perspectives remain, they will no doubt take longer to find a concrete reality.

At the same time, we have seen - somewhat unexpected in its scale - an explosion in the market for 'off-line' and 'on-line' services.

The market for CD-Roms has increased dramatically, to such an extent that it seems like a new means of communication as well as a new medium. Furthermore, the number of subscribers connected to the Internet and World Wide Web has grown at lightning speed. Every day, hundreds of new commercial, educational or informational Web sites are created. The penetration of personal computer equipment has reached levels never seen before.

All these services are playing an increasingly important part in the daily lives of a growing number of people. However, those commentators closest to the market also know that we are faced with great uncertainty: the proliferation of these services can only be an initial phase; selection will quickly follow. This will happen, first, when customer numbers stabilise and, above all, when the services proposed will have proved their financial viability. It is at this level that the main problem is posed and it clearly appears that advertising can and should play an essential role. For its part, it is ready.

Off-line services

First, off-line services. CD-Roms are now part of our everyday life. Until recently, they were still a high technology or luxury product. In the space of a few months, they have become almost an everyday object, fast becoming commonplace, and are finding a place quite naturally amongst other forms of communication.

Games account for a large share of CD-Rom usage. Virtually all the children of Europe know them and an ever increasing number of households have the equipment needed to access them. CD-Rom games are becoming more and more sophisticated, and because of this their production costs are increasing. At the same time, the commercial proliferation of CD-Roms is encouraging a search to reduce their retail price as much as possible. Only commercial communication can bridge this growing gap, whether it be directly through 'conventional' advertising or, more often, relatively elaborate forms of sponsorship.

Only commercial communication can bridge this growing gap, whether it be directly through 'conventional' advertising or, more often, relatively elaborate forms of sponsorship.

Other types of CD-Rom are also spreading very fast. These are used for communication and information purposes: for example, a presentation on a company or 'business-to-business' communication. These discs are both a medium for transmitting information and, at the same time, a communication product since they project a message that enhances the value of the publishing firm. Across Europe, the level of CD-Rom capable hardware in use and familiarity with this new mode of expression can vary, but nonetheless the trend is undeniable:



Jacques Bille

the CD-Rom has become a concrete reality and it is now a specific medium for commercial communication.

On-line services

The same can be said of on-line services. The recent MILIA exhibition at Cannes showed the speed and extent of these changes. Whether dealing with 'open'

Moreover, the user of these services does not have unlimited financial resources.

What he wants first of all is a free service, such as that which he receives already from his radio or television.

services on the Internet or World Wide Web, or new 'closed' services offered by proprietary systems, they too have experienced exponential growth. Offering a Web site has become a communication priority for the majority of firms. Strategies vary. Some, for example, have sought, by creating a site on the Internet, to reinforce their profile and create a place for communicating or demonstrating products. Others wish to go further by establishing a more personalised contact with the public. This is the case, for example, with car manufacturers who use the Internet not only to present their range of vehicles, but also to allow the consumer to fix an appointment with his or her local car dealer.

Other firms take the final step and, if their product allows it, extend their demonstrations right up to the act of purchase. This is true of a large number of commercial sites on the Internet; and the majority of firms producing mass consumption products have started working towards this end. They have chosen to do it either individually, or by coming together around the concept of 'shopping centres'. Most of us who have browsed through the Internet have visited a certain

number of these shops or shopping centres as if we had been window shopping in our own town on a Saturday.

Finally, to establish without doubt the advent of electronic shopping, the big mail-order firms are all installed on the Web and many are starting to show a significant turnover. In all cases, the product is shown, offered, then sold using a long-distance transaction system. Thus, the entire chain of commercial communication is integrated because it naturally leads to the conclusion of a sale.

Future uncertainties

The evolution of such techniques still have a long way to run and, therefore, one needs to guard against any judgement or assessment which leaves no room to adapt to an unstable reality.

Thus, who can predict how deregulation in the field of telecommunications will impact on the strategic choices of operators in the field of new services? Is a concentration of services unavoidable, especially in those countries with a lower cost-base for their telecommunications? Is this trend compatible with the multinational aspirations of new media? Are we to fear new obstacles at borders when the services offered are totally oblivious of such borders?

There are many such questions which, without necessarily being able to answer them, it would be best to anticipate.

Advertising and financial viability

Given the worldwide enthusiasm for these services and the real revolution of communication or commercial techniques that is implied, a serious uncertainty remains, namely that of financial viability.

Nothing is less certain than the profitability of all these services which, it seems, everyone is rushing to offer. Moreover, the user of these services does

not have unlimited financial resources. What he wants first of all is a free service, such as that which he receives already from his radio or television. If a new service gives him a real benefit, he will be ready to pay according to the quality of what is offered to him. He is not ready to pay in advance a high price for a general subscription. Every service has, therefore, to find its own financial viability, either through sales to this client, or by other means. This is where advertising comes into play. As is the case for other traditional media, such as television, radio or print, advertising will become an essential source of financing.

For the time being, however, the involvement of advertising in these new services poses several problems:

- First, its acceptability to users. Even if the strong resistance to commercial advertising shown by the early pioneers of the Internet has now subsided, the user of these new services is still not ready to accept intrusive messages and can, by a simple click, show his refusal to do so. This, therefore, for the commercial communication sector, creates a major creative challenge to create a new form of advertising which will rely on dialogue and all the most appropriate forms of sponsorship.

- The second problem for our industry is advertising evaluation. Costs are going to be high because viewers are basically fragmented despite their number. It is, therefore, essential for us to be able to evaluate this advertising. We need to put in place as quickly as possible means of measuring the viewership of these new services, which are adapted to our needs. We already know that counting contacts is a meaningless approach. Viewership research must find parameters that will enable us to understand the length of

contacts and the quality and content of the dialogue involved. This is a second challenge we all face.

- The third challenge is technical, namely that of the security of commercial transactions. At present this has not been achieved, which acts as an important obstacle to the development of 'electronic order' selling and thus the economic viability of the entire system. On this issue, technical progress should soon give an answer, which will then allow those services dependent on direct selling to develop.

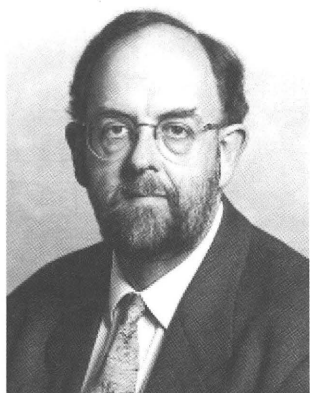
- Lastly, the final challenge is ethical. It concerns, firstly, respect for personal privacy and individual freedom. This is a major source of concern because the new services allow a very precise profiling of their users. This is, at the same time, one of their advantages and a possible source of abuse. We have to be alert.

Equally, recent controversies have shown that the extreme freedom of expression created by the new services could, if one is not careful, cause intolerable situations. However, is it necessary to rush towards bans and regulations without prior debate? Moreover, here again, the multiplicity of national regulations would create disparities and obstacles which very quickly would act as new brakes to the free flow of the new services. Our answer is once again that freedom is indissoluble from responsibility. We think that our editorial and advertising self-disciplinary rules must be adapted to the new services, but that the self-regulatory principle must be reaffirmed.

As far as we are concerned, thinking in this direction has started. Our existing self-disciplinary rules must be adapted and strengthened. We are already working on it.

The Four Ages of Advertising Evaluation

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If you had asked different people at various times and places "what do the words *advertising evaluation* mean to you?", you might have got any of the following answers: Nielsen, Starch tests, Day after recall, coupon response, persuasion tests, qualitative research, "Usage Pull", econometrics, tracking studies, the Awareness index, the IPA Effectiveness Awards, Media Marketing Assessment. And these aren't just different methodologies, they're attempts to do different things. Some aim to evaluate one ad against another, others the effects of campaigns over time. Some look for ad effects on sales, others on consumers' minds. Some are geared to justifying or choosing budgets, some to creative decisions, and some to media optimisation.

We are now in the third of these ages, and (perhaps) beginning to pass into the fourth - which may not be an entirely good thing.

The history of advertising evaluation is not just a story of changing research methodologies, but of changing mental models of what advertising is all about and of changing concerns and priorities for decision making.

In this article I have attempted to summarise the history of advertising evaluation from these differing perspectives into four ages. This is, of course, a simplification, but I hope the overall pattern that emerges is reasonably accurate. We are now in the third of these ages, and (perhaps) beginning to pass into the fourth - which may not be an entirely good thing.

The First Age - Direct Response

The first age of advertising evaluation was all about direct response. Claude Hopkins based his 1922 book *Scientific Advertising* on empirical results of coupon responses to mail order advertising. *Scientific Adver-*

tising was strongly influential - David Ogilvy was one later adman who regarded it as his bible - and it left behind it an idea that all advertising should be as accountable as direct response appeared to be, if only we could find the right tools to measure it. It has given rise to a lot of misunderstandings when its ideas are applied to advertising for which the direct response model is inappropriate. It also represents a tradition, still alive today, that cumulative experience will enable us to develop sets of rules to ensure successful advertising.

The Second Age - Evaluating Executions

It then occurred to some people that advertising might have an impact on consumers, without necessarily provoking them to clip a coupon. At about the same time as Hopkins was writing, Dr Daniel Starch invented a famous methodology that measured whether people had noticed or read an ad. Dr George Gallup evolved a rival system, arguing that 'recognition' was not the most useful test, because people could recognise an ad without remembering what it was for. He thus invented 'recall', and took his share of the market.

These became standard methods for researching press (and still survive today). When TV advertising became a major force, in the USA just after the war, an ex-army psychologist called Horace Schwerin saw an opportunity. In the war he had been investigating the effectiveness of internal communications among the troops. An announcement on the Tannoy would ask all soldiers to go back to their quarters and change their boots after breakfast, while Horace was secretly putting chalk marks on all the soldiers' spare boots so that later he could count how many had actually responded. This type of experimental design is recognisable in the classic Persuasion Test methodology which Schwerin invented in the 1950's.

Meanwhile in Cincinnati, Procter & Gamble asked a local research company called Burke to find a way of evaluating their ads. They came up with another simple plan; the day after the ad's been shown, ask how many people can remember seeing it and what it said.

These are among the dominant figures who helped create the second age of evaluation. Although they take very different approaches, you might notice two general points:

1. Up to this point in time, the focus is almost entirely on individual ads, (or even individual insertions). For this reason, there's no hard and fast distinction between pre-testing and post-testing - it's simply a question of whether the ad can be exposed more cost effectively in a laboratory situation, or in paid for media.

2. The emphasis has not been on trying to relate overall advertising to overall sales. The received wisdom in every book I've seen before the 1970s is that sales are so remote from advertising, affected by so many different factors, that bottom line sales response is unreadable. Therefore all measurement is of - something else. Now I can't believe that advertisers weren't looking at sales during this time - Nielsen existed, after all! - but from the literature, it's clear that they were consistently being told *not* to look for advertising-sales effects in any formal way.

So the second age of evaluation was about measuring consumer psychological responses to individual ads. The focus is on execution, not on budget. This reflects an environment where advertising budgets were taken for granted; everyone knew that advertising built business; and as the economy grew, advertising expenditure grew happily with it. The focus was on selecting executions which would 'outpull' the competition, and it was accepted that the difference between a good ad and a bad one was potentially huge.

The Third Age - Campaign Evaluation

The third age begins with a shift of perspective away from the individual execution and towards evaluation of the campaign working over time. At first there was still no systematic way of relating advertising to sales, so the emphasis stayed on measures of recall, claimed behaviour, and brand image. This approach is first formally described in Russell Colley's 1961 book, DAGMAR (a book rather unfairly derided today). In practice it very often meant asking questions every year or so on the annual U & A study, which could pose difficulties of interpretation if one survey took place just before an advertising burst and the following one just after. So an improvement on this for campaign evaluation was the pre and post survey; and then, in the seventies, Millward Brown introduced the Continuous Tracking Study.

Also in the seventies - this is in the UK - the econometricians arrived. Computers had already made large scale survey research manageable - now they offered the possibility of running complex regression analyses on large data sets so that the previously obscure relationship between advertising expenditure and sales could now be, as the phrase was, 'operationalised'.

Econometric models found some very interesting things. One discovery seemed to be that differences in executions were not usually very large; advertising effects were much more driven by budget size. This was partly a function of what they were looking at. Advertising weight, which can easily be quantified, lends itself to becoming an explanatory variable much more readily than a nebulous concept like 'creative quality'.

The other thing the early models found was really alarming - for ad agencies. The good news was - *there's usually*

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an advertising effect; the bad news - it's usually very small. Small enough, in most cases, that if you ran a scenario without advertising, you might lose a little bit of sales, but you would make quite a lot more money. (When I came into this business, 'econometrics' was a dirty word in ad agencies.)

At the same time, there was an increasing scepticism about whether the things measured in pre-tests and tracking studies - recall, image shift, and so on - really reflected people's behaviour. British ad agencies, in particular, were pointing out the weaknesses in many of the accepted methods when considered as actual predictors of sales.

As the seventies came to an end, there was a paradox. It was, in the UK, seen as something of a creative 'golden age'. But as clients' margins were squeezed tighter and tighter, and as previously growing markets became mature, more and more advertisers were asking themselves how much money they should spend on advertising - whether, indeed, they really needed to spend it at all. The emergent econometrics, the tendency of ad agencies to pooh-pooh any measurements related to short term sales performance and talk airily about an abstraction called 'brand image', were combining to create what Tony Twyman described as 'a myth of the ineffectiveness of advertising'.

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It was against this background that Simon Broadbent conceived the IPA Advertising Effectiveness Awards, for papers which would marshal sufficient evidence to convince the most sceptical reader that advertising did, at least in some cases, work.

The IPA Awards have been enormously successful in the two objectives they set.

1. They have, to a great degree, reversed the ineffectiveness myth. As the large volumes extend along the bookshelf (we're now up to no 8), they offer a formidable weight of evidence to back up their title - *Advertising Works*.

2. But perhaps even more important in the long run, they have put advertising evaluation much higher up the agenda, and stimulated an interest in it in agencies and elsewhere, and a series of debates about how to approach it.

One such debate was the issue of 'long term effects'. After the first four competitions, it was apparent that far too many papers were about sudden and dramatic sales increases. Some had even paid for themselves in incremental sales!

But if a dramatic sales uplift and a quick payback is the only definition of successful advertising, most advertisers, most of the time, are wasting their money. Most advertising expenditure is really justified by keeping a brand attractive and profitable over the long term in a competitive marketplace. Unfortunately, this is far harder to prove.

The IPA therefore created a category for what were initially called 'Longer and Broader Effects', to encourage a different sort of entry. This has generated some classic cases including PG Tips, Andrex, and BMW. These make the point that from one year to the next it is not always possible to put a figure on the real contribution of advertising, but that looked at over the long term advertising can be seen as a vital cost of doing business, and a way to add competitive value to a brand. Econometric modelling continues to evolve and it is now recognised by many of its practitioners that explaining the short term blips in a sales graph does not necessarily measure the *total* contri-

bution of advertising to sales.

The IPA books epitomise the Third Age of evaluation in its maturity. Typically, the winning papers recognise that there is no one foolproof way of relating cause and effect, but by combining the tools we've got intelligently - sales analysis, tracking studies, and general market understanding - it's possible to build up a reasonable picture of what's going on.

The Fourth Age - Research Nirvana?

Meanwhile, I wonder if, unnoticed still by many of us in Europe, a fourth age of advertising evaluation is approaching.

You must remember that the third age as I've described it didn't really happen in the United States. The picture I've described is very much based on my own knowledge of the UK market.

The United States didn't buy into the more sceptical, uncertainty-tolerant culture of account planning, or its emphasis on qualitative learning. Perhaps more surprisingly, they didn't for a long time buy into econometric modelling either (there are probably practical reasons for this). Ad evaluation in the States remained stuck in the second age - heavily quantitative systems for measuring consumer response to individual executions. Sales response as such was largely ignored.

This started to change with the advent of scanning data. For some years now, clients in the USA have had access to a quantity of detailed sales data which we still don't match. In particular they can analyse sales by named account, which in the UK is largely made impossible by limited retailer co-operation.

What's more, there exist a number of single source panels where individuals' purchasing *and* media behaviour are measured together, and where, by the magic of cable, split transmission experiments can be carried out.

The easiest thing to detect with all this wealth of data was the effect of in-store promotion. In the States this is huge. Being on promotion means you have dump bins full of product at a third of the price blocking every aisle. Not surprisingly the immediate effect on shifting product is dramatic (even though the longer term effects on the brand may actually be negative).

It became possible for the researchers handling the data to produce a package which would compute exactly how much extra volume, and profit, any given promotion would produce - mainly by comparing store where the product was on promotion with stores where it wasn't. Suddenly the mystery was taken out of this aspect of marketing and, unsurprisingly, clients started moving most of their money into promotions.

For advertising to compete, there had to be some way of evaluating it on a similar basis. In this way America started to use econometric models, which they tend to call 'marketing mix models'.

The strong difference in flavour between the modelling tradition developed in the UK from the 1970s and the way modelling is conducted in the USA in the 1990s is partly driven by a quantum leap in the amount of data involved. Modelling in the UK is still typically done at a national level. In America, scanning data is now available at store chain level and given the importance of retail promotion it makes sense to build models at this level. Also remember that America is, like Europe, a collection of regional markets rather than one national market, so to cover the country as a whole requires many different models rather than one.

At the same time the complexity of the database has exploded in every dimension. The number of lines stocked in the average supermarket has exploded. Scanning data captures every variation, whether you want it or not. Good old bi-

The United States didn't buy into the more sceptical, uncertainty-tolerant culture of account planning

monthly Nielsens have been replaced by weekly figures; you can even have daily if you want it. Just to handle the data requires more computer power than most of us have got, let alone make sense of it. For that we'll be dependent on modelling skills of a high order. Paul Baker of OHAL has said "it is no longer possible to *look at* the data to find out what's happening". Well, he would, wouldn't he... but he does have a point.

At the same time, many clients have downsized or entirely dispensed with the research departments who might have helped make sense of this data explosion.

In theory this sounds like it could be research Nirvana, where the effects of advertising can not only be precisely quantified, but our understanding of causes and effects lets us estimate the results of different scenarios in advance. But simply having access to the data does not guarantee any greater precision in the answers to our questions about what to do. In fact the data explosion may even create more problems, as it forces a certain industrialisation on what many once saw as the modelling *craft*.

On the one hand, the techniques threaten to become so sophisticated and complex that they may, in a sense, escape from any human ability to follow them. When we get into expert systems and neural networks, we let the computer take on a level of responsibility which was previously under the control of the statistician. The answers we get will only be as good as the system - and these are uncharted waters.

On the other hand, the ready availability of software packages to all sorts of end users means that non-statisticians can start extracting apparent conclusions without understanding the limitations of what they're doing. Again, the black box

may be far from infallible. Do read the January 1994 issue of the JMRS, edited by Paul Freeman, who wrote there:

"At least one virtue of the older, less penetrable environment, was that people looking for a quick, soundbite answer were sufficiently intimidated. Nowadays data sets can be rapidly molested by a wide range of people."

At the same time, many clients have downsized or entirely dispensed with the research departments who might have helped make sense of this data explosion.

However it works out, my prediction is that the fourth age of advertising evaluation will be dominated by sales analysis, computers, and huge data sets. Whether this proves an entirely happy development or not, I wouldn't like to say. But be warned.

It is also important to repeat this caution; that this scanning explosion so far applies to the world of packaged goods. There are many other, increasingly more important fields, where advertisers still dream of having robust regular data on sales. In these categories, we are still firmly stuck in the Third Age - at best.

Conclusion

John Maynard Keynes wrote:

"Practical men, who believe themselves to be quite exempt from any intellectual influences, are usually the slaves of some defunct economist."

Likewise there are plenty of people involved in advertising who assume that their preferred way of researching it is just 'common sense'. But perspectives which particular individuals regard as eternal truths, whether it's persuasion testing or tracking studies or trigger models, are all artefacts created at some point in history by a (more or less) inspired researcher. And created in response to a client's problem which may, or may not, resemble yours.