COMMERCIAL COMMUNICATIONS

The Journal of Advertising and Marketing Policy and Practice in the European Community
Sponsored by DG XV (The Directorate General for the Internal Market and Financial Services) of the European Commission

Call for views on discount regulations in the European Union

Jean Bergevin, DG XV

September 1998
Issue 14

On the 22nd October 1998 the Expert Group on commercial communications will meet in Brussels to discuss the European regulatory framework for price discounts. At this meeting Member States will discuss whether or not mutual recognition can be applied to such services so that they can benefit from free movement.

Whether you are a consumer association concerned about certain discount practices in cross-border marketing or a business seeking to ensure that your discount campaigns can benefit from the one-stop shop of the Internal Market, your views on this issue will be useful for this policy discussion. More specifically, we would ask you, on the basis of the description of the national regulations set out below (to date provided by most but not all the Member States) and your own knowledge of the content and application of these regulations to answer the following questions :

For each of the three following types of commercial communication services :
(i) Price discounts expressed in '% off' or absolute terms
(ii) Packaged / bulk purchase discounts (e.g. '3 for the price of two') involving identical items
(iii) Discounts coupons allowing for price reductions on future purchases

1. Do you believe that mutual recognition is applied by the Member States such that these services can be provided across the entire Community whilst being subject to solely the regulations applicable in their originating Member State (i.e. where the company offering them to consumers is established)?
2. If not, what proof (or reasons) do you have that mutual recognition is not (or should not) be applied?
3. Between which Member States do you believe that mutual recognition is not (or should not) be applied?
4. If you believe certain Member States are restricting such incoming services, do you believe that these additional restrictions are compatible with European law and in particular with the free movement of services (Article 59 of the Treaty)?
5. If you believe that certain existing restrictions are justified, do you believe that harmonisation is required?
6. Do you believe that mutual recognition cannot be applied because

IN THIS ISSUE

C1-AA-98-014-EN-C

COMMERCIAL COMMUNICATIONS
Sponsored by DG XV
(Internal Market & Financial Services)
European Commission

EDITORIAL
Mike Sainsbury, *Editorial Director*
Kate Maitland Smith, *Managing Editor*
Diane Luquiser, *Consumer Affairs Editor*
Esther Grant, *Production Manager*
Toby Syfret, *Research Consultant*

Published by **asi,**
111 Whitchurch Road
Tavistock PL19 9BQ, UK
Tel: +(44) 1822 618628
Fax:+(44) 1822 618629
e-mail:asi@dial.pipex.com

of inadequate cross-border redress systems and if so could you explain what are the deficiencies that would need to be addressed to resolve this problem?

In answering questions four and five, it is suggested that respondents refer to the proportionality assessment set out in the Communication that the Commission adopted in March.

In summary this involves the following:

First the additional restriction (compared to the law of the originating country) on the incoming service should be assessed in terms of the alteration in the commercial communication user's marketing strategy that it could be expected to lead to.

Using the commercial communications chain set out in the Communication and reproduced in a diagrammatic form in Figure 1, it should be possible to identify where in this chain the restriction would have effect and then consider the follow-through effects that this will lead to up to the impact on the various public interest objective(s) (target groups) that the restriction seeks to protect.

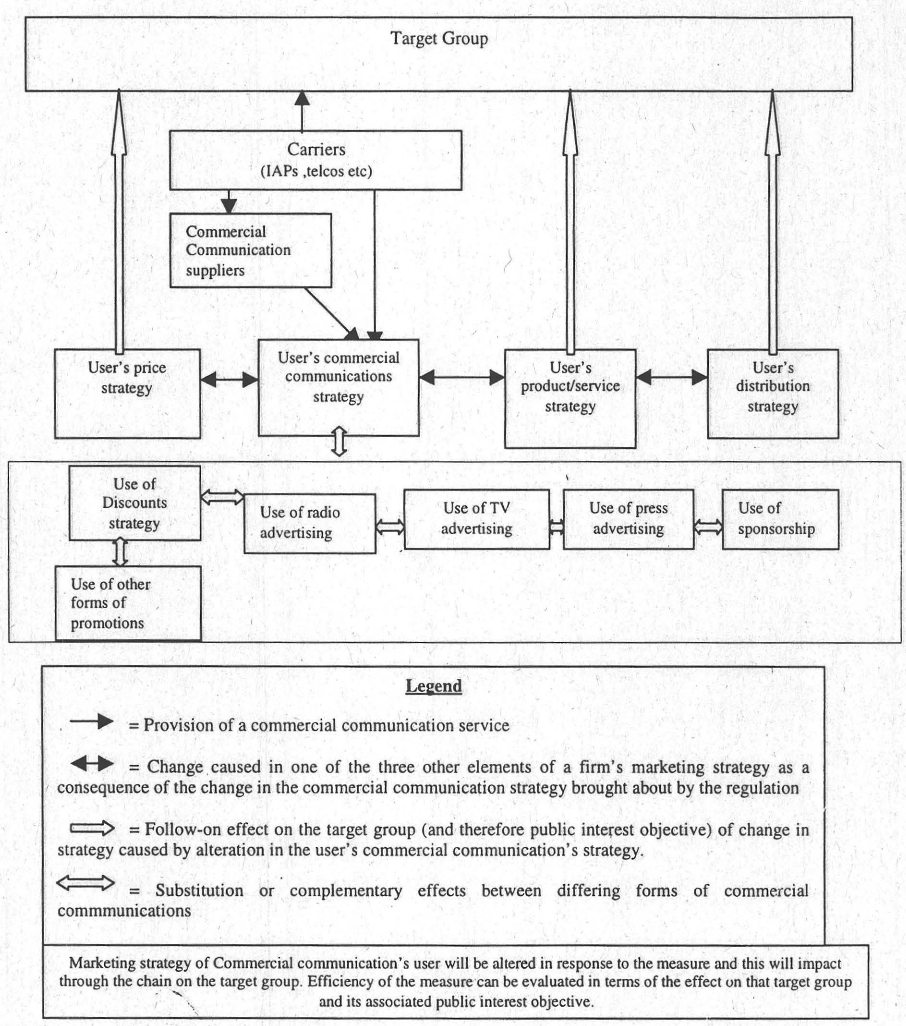

Figure 1. The commercial communications chain

For example, in general terms, restrictions on discounts will mean consumers are protected from certain types of such services but it also means that the marketing budget they would have been financed through is used in other forms of commercial communications which will have a (different) impact on both consumers (protection of consumers) and competitors (protection of unfair competition). It may also mean that companies place less emphasis on price strategies and this too will have an impact on these two target groups.

This is not an academic exercise. It must be recognised that restrictions seek to alter behaviour of economic agents in order to meet the invoked public interest objectives. They first seek to alter behaviour regarding the restricted type of commercial communications. This initial restriction will then lead to a second-round readjustment of the operator in terms of a readjustment of his commercial communications strategy and marketing strategy. This second-round adjustment must be accounted for if the true effect of the restriction can be determined in terms of its protective effect on the relevant public interest objectives.

Readers should have received under separate cover a list of the national contact points that will be involved in the policy debate in Brussels. These are reprinted in the Expert Group feature on page 22 of this issue. In addition to sending responses to the Commission's contact point, we would encourage you, where you deem it useful, to also send them to the relevant national representatives on the Expert Group[1].

[1] It may be that some respondents wish to keep the commentt they send to the Commission confidential. It is therefore requested that when submitting your views you indicate whether or not your identity is to remain confidential during the discussion of the Expert Group.

Editorial

This issue contains the details of the contact points for the Expert Group which will be meeting again on the 22nd of October. We also publish details of the regulations which are currently in place in Member States relating to discounts. Readers are urged to submit instances of such difficulties as they may have encountered to the members of the Group. It is suggested that it may be appropriate for you to send such communications directly to the representative of the country or countries concerned, with a copy going to the your own national representative. It is to be hoped that a clear enough understanding of these issues can be formulated to allow the Expert Group to propose some resolution by the end of the year. It will then be able to move on to consider other matters.

We also highlight the difficulties associated with the retransmission of sporting events. When investigating some of these issues, *Commercial Communications* was surprised to learn from senior industry figures in France that a ban existed on billboard advertising of alcoholic products in that country. As Armand Hernon makes clear, such a ban does not exist in law and the absence of alcohol advertising on billboards in sports stadiums is a consequence of self-regulation by alcohol producers. This self-regulation, in turn, is no doubt influenced by the code of conduct drawn up between the French broadcast regulatory authority (CSA) and French broadcasters.

You will also find with this issue another copy of the questionnaire on Commercial Communications and the Internet. The Commission has had a great deal of response to this already and in recent weeks has been approached by a number of companies which have requested more time to complete the document. Since this issue contains an excellent report from Y&R's Brand Futures Group on the development of Internet Shopping in the USA and Europe, it seems appropriate to distribute further copies of the questionnaire.

Wired World: Internet shopping circa 1998

Marian Salzman and Ann O'Reilly, Brand Futures Group, Y&R Inc.

The future is now

Traffic on the Internet as a whole doubles every 100 days. In 1994, only 3 million people were connected to the Internet. By the end of 1997, 100 million people were online. [Source: Datamonitor]

* * *

Nearly 80 percent of global CEOs surveyed believe electronic commerce will reshape competition in their industries, according to a Price Waterhouse/World Economic Forum survey. Twenty percent of those surveyed think e-commerce will completely reshape how they do business, while 59 percent say it will lead to significant change.

(Note: Survey participants included 377 CEOs from among the world's 2,000 largest companies)

E-commerce 1998: North America leading the way

Only a couple of years ago, when the Internet was often presented as a mysterious entity clouded with hype and hope, cautious marketers could reasonably ask, 'Fine, but who's on it?' quickly followed by 'OK, so who's making money from it?' Today, the answer to both questions is 'many people'. User numbers are building fast, and numerous smart retailers, both established and brand new, have shown that it's possible to do big business online.

1-800-FLOWERS sold US$30 million online in 1997. While Internet sales represent only 10 percent of the company's total revenues, their profit contribution to the overall business is nearly equal to that of its store-based business, which is twice as large.

Nearly one-third of U.S. consumers with online access has purchased products or services on the Internet, according to consulting firm Ernst & Young. The firm also notes that 53 percent of Internet users in its recent survey cited convenience as the main reason for its appeal; 45 percent said cost savings were also a factor. A report from the U.S. Department of Commerce (http://www.e-commerce.gov/retail.htm) forecasts that Internet retailing will reach US$7 billion by the year 2000. If mail-order sales are used to determine the potential for Web retail sales, as some suggest, that figure could reach US$115 billion in five to eight years.

Among other factors spurring 'Net sales are increasing demands on consumers' leisure time and the improvement of overnight and second-day delivery services. These factors, which spurred the growth of catalogue shopping in the 1980s and 1990s, are now leading people to shop over the Internet. By the end of 1997, 10 million consumers in the U.S. and Canada had purchased something over the Web, up from 7.4 million six months earlier.

Consider the following statistics:

- 1-800-FLOWERS sold US$30 million online in 1997. While Internet sales represent only 10 percent of the company's total revenues, their profit contribution to the overall business is nearly equal to that of its store-based business, which is twice as large.

- In 1996, online bookstore Amazon.com recorded sales of less than US$16 million. In 1997, its sales reached US$148 million.

- Sixteen percent of all new car and truck buyers used the Internet as part of their shopping process in 1997, up from 10 percent in 1996. By 2000, the Internet will probably be used in at least 21 percent of all new car and truck purchases. A front-runner in this category is Auto-by-Tel, a Web-based automotive marketplace that processed an average of about 29,000 purchase requests for autos each month in 1996. By the end of 1997, the Website was generating US$500 million a month in auto sales (US$6 billion annualised) and processing more than 100,000 purchase requests each month.

- *Inter@ctive Week* reports that online travel services are favoured to be the top money-making category for electronic commerce over the next five years. According to the Travel Industry Association of America, nearly 14 million people (9 percent of U.S. travellers) used the 'Net to plan trips or make reservations in 1997. By year end '98, this figure is expected to reach 75 million (38 percent of the U.S. adult population). One such site, Microsoft's Expedia travel service (http://expedia.msn.com/daily/home/default.hts), logged more than US$100 million in sales during 1997 and draws about 1 million unique visitors per month.

- Andersen Consulting predicts that online grocery shopping will grow to US$60 billion and account for nearly 12 percent of the consumer packaged-goods business over the next 10 years.

- In the clothing sector, The Gap's Website is close to being one of the chain's biggest stores in terms of sales volume.

- *The New York Times* reports that between June 1997 and March 1998, the percentage of people who purchased online stocks and mutual funds doubled, from 14 percent to 28 percent.

Trends contributing to the marketspace opportunity

Trend: Internet growth is astronomical
In 1996, fewer than 40 million people around the world were connected to the Internet. By the end of 1997, more than 100 million people were using the Internet. Today, that number has grown to more than 115 million.

The world's widely disparate adoption rates have to do with a number of factors, ranging from limited phone lines to repressive governments, from excessive telephone charges to cultural separations between work and home. Despite barriers to adoption that still exist in parts of the world, Brand Futures Group firmly believes that the majority of the world will become wired within the next decade. One important reason for this is that computers are no longer about technology. They're about something far more important: community and communicating.

When the telephone was invented, it was initially a tool of commerce, controlled by men in the workplace. Gradually, its value as a means of connecting with friends and family was discovered, and it found its way into the home. Thanks to the Internet, computers currently are making a similar transition from technology to communications tool. As the Internet becomes increasingly multilingual, as e-shopping becomes an everyday occurrence for more people, and as cost restrictions continue to fall, Internet adoption will increase at a rapid rate.

Trend: Online window shopping as a precursor to true E-commerce
With many newcomers initially hesitant to make purchases online, Internet window shopping has become an important process for introducing consumers to the world of e-commerce. Comparing prod-

ucts, models and prices is much easier online, even if the buyer intends eventually to buy over the counter.

Research figures indicate that Internet users are getting wise to the window shopping potential of the 'Net:

- According to IntelliQuest Information Group (February 1998), although just 17 percent of Internet users currently make purchases online, nearly 60 percent of them shop online. Finding information about a product's price or features, checking on product selection, and determining where to purchase a product are the most popular shopping activities.

Online transactions are much less familiar, and newcomers are reluctant to send credit card details to a computer that may be thousands of miles away. Even more worrying to some is the risk of one's financial details being intercepted and stolen by a third party.

- An American Internet User Survey came up with a higher figure, indicating that 75 percent of adults who use the Web sought online product and investment information in Q4 1997, up from 54 percent in Q2.

Trend: Barriers to E-commerce will continue to fall

The potential for today's online window shoppers to become tomorrow's e-shoppers is great. Research has found that, as users become more comfortable with the Internet, many of their concerns regarding the security of e-shopping are eased. 1-800-FLOWERS, for instance, recently reported that less than one-third of its customers worry about credit card security, compared with almost 75 percent in 1996. Word of mouth, combined with new technologies and standards for safeguarding sensitive information, will help to alleviate consumer concerns even further.

Around the world, companies eager to transact business in cyberspace are taking steps to remove obstacles to consumer e-shopping.

Obstacle: Fear of credit card fraud

In the 'real world,' walking around stores with a wallet and credit cards is a security risk—loss and theft are not unusual, and there are numerous scams to perpetrate credit card fraud. Despite this, consumers appear to be far more wary about using credit cards online. Online transactions are much less familiar, and newcomers are reluctant to send credit card details to a computer that may be thousands of miles away. Even more worrying to some is the risk of one's financial details being intercepted and stolen by a third party.

Solution: A mix of experience and new safety mechanisms

Conducting transactions online seems to be the best way to ease one's concerns regarding online security. Ernst & Young reported in January 1998 that 70 percent of Internet users said they are uncomfortable sending their credit card number over the Web. This sense of insecurity lessens with experience: the majority (52 percent) of people who make purchases via the Web claim to be happy with Internet security.

New safety mechanisms also are easing fears:

- ISP Prodigy is offering a '100% Safe Shopping Guarantee.' This protects the consumer from any liability resulting from unauthorised use of their credit card.

- Wave Systems will incorporate a chip that acts like a credit card into IBM computers. The chip—which, according to Wave Systems, provides a more secure method of online payment—will hold consumers' account balances, transaction logs, and software execution licenses. The company believes it will also change the way people purchase online, offering the ability to rent, pay-per-use, or rent to own.

- eCHARGE Corporation has launched an electronic payment system that charges online purchases to the customer's telephone bill. The system will automatically identify a customer's computer and bill accordingly.

Obstacle: The need to return goods
What happens when a buyer finds that the product he or she ordered online is faulty or not what was expected? Returning a product to a catalogue company is one thing, but what about a merchant that only provides a cyberaddress or is located on another continent?

Solution: PackageNet Returns Made Easy!
Microsoft Network is partnering with United Parcel Service to offer a returns service called PackageNet Returns Made Easy! for online merchandise that doesn't meet the customer's needs.

Obstacle: Fear of big brother
Cybersites like to gather as much data as possible about their visitors—the more they know about users' Web-surfing habits, purchase patterns and personal details, the better they can target promotions and/or sell information to interested parties. So, when a buyer connects with a merchant's computer, who knows what information the computer can ferret out?

Solution: Privacy safeguards
In an effort to assuage consumers' concerns about providing personal information to Website operators, industry leaders, including the Electronic Freedom Foundation and CommerceNet, have championed eTRUST, a program aimed at protecting personal privacy rights on the 'Net and building consumer confidence in e-commerce. The backers believe that informing consumers of how their information will be used by Website operators is an important first step toward gaining their trust—and patronage. The Boston Consulting Group, authors of the eTRUST Internet Privacy Study, estimate that if 10 percent of online retail sites were to adopt eTRUST, the resultant increase in transactions could add a quarter of a billion dollars to electronic commerce in the following year.

Concerned about the potential loss of personal privacy online, the international WWW Consortium (W3C), which oversees use of the Web, is developing a platform for privacy preference (P3P) to enable Web users to dictate how much, if any, information is collected by Internet providers about site visits, purchases, and other Web habits.

'Technology has broken through the brick wall. Now it is up to executives to determine which way they want to go. Just a few months ago, sceptics were calling the Internet the "World Wide Wait" due to congestion, long response times, and busy signals. Today, the network backbone has been enhanced and service providers have caught up with demand.

Industry leaders, including the Electronic Freedom Foundation and CommerceNet, have championed eTRUST, a program aimed at protecting personal privacy rights on the 'Net and building consumer confidence in e-commerce.

'When mail order catalogues first came out, consumers did not want to give their credit card number over the telephone. Convenience won out and many consumers now regularly phone in their orders. The Internet can fulfil the ultimate promise of convenience. No need to even wait for the catalogue.' Stuart Lipoff and Janice

Huxley Jens, Arthur D. Little, as quoted in *Management Stats Daily* [Source: *Innovation Line,* 30 June 1997]

Trend: Front-running e-shopping products are 'knowns' and 'understoods'

In time, virtually all goods and services will be available online. In the Internet's nascent stages, however, consumers are tending to purchase items that don't require 'looking' or 'touching.' According to Ernst & Young's Internet Shopping Special Report (January 1998), the best-selling products in cyberspace today are computers, software, books, travel, music and magazine subscriptions. Clothing is also emerging as a popular choice.

E-shopping is proving particularly ideal in categories that traditionally have faced limited shelf space, including music, books and videos. Unencumbered by the cost of real estate or the need to tie up capital in stock, cybersites are able to offer a far more diverse selection than can their offline counterparts.

E-shopping is proving particularly ideal in categories that traditionally have faced limited shelf space, including music, books and videos. Unencumbered by the cost of real estate or the need to tie up capital in stock, cybersites are able to offer a far more diverse selection than can their offline counterparts. Amazon.com, for instance, offers a selection of 2 million book titles to Internet customers. In comparison, traditional book superstores carry approximately 150,000 titles. Similarly, Reel.com, the world's largest movie store, maintains a selection of more than 85,000 film titles online. This breadth of selection is particularly appealing to those in search of hard-to-find titles. As a result, the top-selling movies on the 'Net today aren't classics or blockbusters, but a mix of cult classics and offbeat films. According to Reel.com, the top 10 movies sold in 1997 were *In the Realm of the Senses*, *Better Off Dead*, *A Clockwork Orange*, *Blade Runner*, *Clerks*, *Beyond the Valley of the Dolls*, *The Manchurian Candidate*, *Poison Ivy 2: Lily*, *Pink Flamingos* and *Brazil*.

Trend: E-commerce's entrepreneurial edge

Joining the e-commerce revolution doesn't automatically mean stratospheric increases in sales, as many established companies have discovered. E-shopping requires a different way of thinking—and one that may not come naturally to larger companies. In 1998, Internet-only startups have the advantage of being totally focused on their online business and have structured their operations accordingly. As noted in a recent report from the U.S. Department of Commerce, 'These new Internet-only businesses had a head start of one to two years during which they invested heavily to build a brand image and gain market share before super retailers like Wal-Mart, Barnes and Noble, the Gap and JC Penney equipped their Websites with a sales capability.'

It's interesting to note that only 15 to 20 percent of the impressive sales figures rung up in cyberspace thus far have gone to online sites of conventional retailers, according to investment company Piper Jaffray. Most were rung up in the travel and financial services industries and in business-to-business sales. The merchants finding the most success at selling online tend to be ones that exist only online (*e.g.*, Amazon.com). [Source: *New York Times*, 20 April 1998]

Established companies have every reason to hone an entrepreneurial edge in order to compete in cyberspace, though. Traditional retail is already finding that competition from online retail is making life tougher. The U.S. retail sector fired 55,393 workers in 1997 (up 32 percent from 1996), in part to cope with increased competition from online shopping business, according to a survey by outplacement firm Challenger, Gray & Christmas. Online commerce has a 4 percent higher profit margin than traditional sales avenues, according to Forrester Research.

Fortunately for larger companies, brand-name recognition gives Websites a big boost. Ernst & Young's recent 'Internet Shopping' study found, for instance, that 69 percent of online shoppers surveyed base their online buying decisions, in large part, on their familiarity with the company. Nearly three-quarters knew both the brand and the online store they were looking for when they made their last online purchase.

How two industries are conducting business in cyberspace

The music industry

For a medium based on sight rather than sound, the Internet is having a tremendous impact on the worldwide music industry. It's become a base in which audiophiles exchange opinions, record labels push the artists on their rosters, and music retailers hawk their wares.

Music-related content online includes information (tour dates, artist bios, new releases, reviews, etc.), message boards and chat-rooms, live events, the sale of music and related merchandise, e-zines, contests and special promotions, and fan clubs. Virtually every major record company has an online presence. Music-related newsgroups run the gamut from alt.music.techno to alt.rock-n-roll.oldies to alt.music.beethoven to alt.music.bootleg.

Music enthusiasts can 'attend' concerts and interviews online featuring the likes of Simple Minds, Smashing Pumpkins, and Flutist Eugenia Zuckerman, or they can choose to sample pre-recorded audio selections courtesy of a variety of sites, many run by record companies. David Bowie took this concept one step further by releasing the song 'Telling Lies' exclusively on the 'Net (http://www.davidbowie.com). Despite a download time of seven hours (with a 28.8 modem), 'Netizens were undeterred: 100,000 downloads of the pitch-perfect recording were completed during the first month. Taking advantage of online marketing capabilities, Mercury Records made available for downloading a live, unreleased version of John Mellencamp's 'Key West Intermezzo (I Saw You First)' via AOL. A live cyberspace chat with Mellencamp followed.

A number of sites now use 'intelligent agent' software to generate a list of artists/selections based on the visitor's musical preferences. For example, Bignote (http://www.bignote.com) surveys information submitted by its brigade of more than 1 million music fans to find artists the user is likely to enjoy, based on the user's ratings of other artists. The site, which is a part of the Firefly network (www.firefly.com), provides a free home page for each member, chat-rooms, and links to reviews, audio samples, and artist biographies.

Virtually every major record company has an online presence. Music-related newsgroups run the gamut from alt.music.techno to alt.rock-n-roll.oldies to alt.music.beethoven to alt.music.bootleg.

Converting consumer interest into sales

CDs are among the top-selling items on the 'Net. Reasons for the success of electronic music mail-order houses include the buyer's ability to sample songs prior to purchase and to take advantage of modest discounts (typical price: US$9.95), and the seller's ability to reduce overhead and 'stock' a broader assortment of titles.

Internet Underground Music Archive (http://www.iuma.com/) got its start selling CDs of unsigned bands. Today, the Website carries titles from more than 1,000 bands, a number of which have been signed by major labels as a result of 'Net exposure. The site draws more than a quar-

Huxley Jens, Arthur D. Little, as quoted in *Management Stats Daily* [Source: *Innovation Line,* 30 June 1997]

Trend: Front-running e-shopping products are 'knowns' and 'understoods'

In time, virtually all goods and services will be available online. In the Internet's nascent stages, however, consumers are tending to purchase items that don't require 'looking' or 'touching.' According to Ernst & Young's Internet Shopping Special Report (January 1998), the best-selling products in cyberspace today are computers, software, books, travel, music and magazine subscriptions. Clothing is also emerging as a popular choice.

E-shopping is proving particularly ideal in categories that traditionally have faced limited shelf space, including music, books and videos. Unencumbered by the cost of real estate or the need to tie up capital in stock, cybersites are able to offer a far more diverse selection than can their offline counterparts.

E-shopping is proving particularly ideal in categories that traditionally have faced limited shelf space, including music, books and videos. Unencumbered by the cost of real estate or the need to tie up capital in stock, cybersites are able to offer a far more diverse selection than can their offline counterparts. Amazon.com, for instance, offers a selection of 2 million book titles to Internet customers. In comparison, traditional book superstores carry approximately 150,000 titles. Similarly, Reel.com, the world's largest movie store, maintains a selection of more than 85,000 film titles online. This breadth of selection is particularly appealing to those in search of hard-to-find titles. As a result, the top-selling movies on the 'Net today aren't classics or blockbusters, but a mix of cult classics and offbeat films. According to Reel.com, the top 10 movies sold in 1997 were *In the Realm of the Senses*, *Better Off Dead*, *A Clockwork Orange*, *Blade Runner*, *Clerks*, *Beyond the Valley of the Dolls*, *The Manchurian Candidate*, *Poison Ivy 2: Lily*, *Pink Flamingos* and *Brazil*.

Trend: E-commerce's entrepreneurial edge

Joining the e-commerce revolution doesn't automatically mean stratospheric increases in sales, as many established companies have discovered. E-shopping requires a different way of thinking—and one that may not come naturally to larger companies. In 1998, Internet-only startups have the advantage of being totally focused on their online business and have structured their operations accordingly. As noted in a recent report from the U.S. Department of Commerce, 'These new Internet-only businesses had a head start of one to two years during which they invested heavily to build a brand image and gain market share before super retailers like Wal-Mart, Barnes and Noble, the Gap and JC Penney equipped their Websites with a sales capability.'

It's interesting to note that only 15 to 20 percent of the impressive sales figures rung up in cyberspace thus far have gone to online sites of conventional retailers, according to investment company Piper Jaffray. Most were rung up in the travel and financial services industries and in business-to-business sales. The merchants finding the most success at selling online tend to be ones that exist only online (*e.g.*, Amazon.com). [Source: *New York Times*, 20 April 1998]

Established companies have every reason to hone an entrepreneurial edge in order to compete in cyberspace, though. Traditional retail is already finding that competition from online retail is making life tougher. The U.S. retail sector fired 55,393 workers in 1997 (up 32 percent from 1996), in part to cope with increased competition from online shopping business, according to a survey by outplacement firm Challenger, Gray & Christmas. Online commerce has a 4 percent higher profit margin than traditional sales avenues, according to Forrester Research.

Fortunately for larger companies, brand-name recognition gives Websites a big boost. Ernst & Young's recent 'Internet Shopping' study found, for instance, that 69 percent of online shoppers surveyed base their online buying decisions, in large part, on their familiarity with the company. Nearly three-quarters knew both the brand and the online store they were looking for when they made their last online purchase.

How two industries are conducting business in cyberspace

The music industry

For a medium based on sight rather than sound, the Internet is having a tremendous impact on the worldwide music industry. It's become a base in which audiophiles exchange opinions, record labels push the artists on their rosters, and music retailers hawk their wares.

Music-related content online includes information (tour dates, artist bios, new releases, reviews, etc.), message boards and chat-rooms, live events, the sale of music and related merchandise, e-zines, contests and special promotions, and fan clubs. Virtually every major record company has an online presence. Music-related newsgroups run the gamut from alt.music.techno to alt.rock-n-roll.oldies to alt.music.beethoven to alt.music.bootleg.

Music enthusiasts can 'attend' concerts and interviews online featuring the likes of Simple Minds, Smashing Pumpkins, and Flutist Eugenia Zuckerman, or they can choose to sample pre-recorded audio selections courtesy of a variety of sites, many run by record companies. David Bowie took this concept one step further by releasing the song 'Telling Lies' exclusively on the 'Net (http://www.davidbowie.com). Despite a download time of seven hours (with a 28.8 modem), 'Netizens were undeterred: 100,000 downloads of the pitch-perfect recording were completed during the first month. Taking advantage of online marketing capabilities, Mercury Records made available for downloading a live, unreleased version of John Mellencamp's 'Key West Intermezzo (I Saw You First)' via AOL. A live cyberspace chat with Mellencamp followed.

A number of sites now use 'intelligent agent' software to generate a list of artists/selections based on the visitor's musical preferences. For example, Bignote (http://www.bignote.com) surveys information submitted by its brigade of more than 1 million music fans to find artists the user is likely to enjoy, based on the user's ratings of other artists. The site, which is a part of the Firefly network (www.firefly.com), provides a free home page for each member, chat-rooms, and links to reviews, audio samples, and artist biographies.

Virtually every major record company has an online presence. Music-related newsgroups run the gamut from alt.music.techno to alt.rock-n-roll.oldies to alt.music.beethoven to alt.music.bootleg.

Converting consumer interest into sales

CDs are among the top-selling items on the 'Net. Reasons for the success of electronic music mail-order houses include the buyer's ability to sample songs prior to purchase and to take advantage of modest discounts (typical price: US$9.95), and the seller's ability to reduce overhead and 'stock' a broader assortment of titles.

Internet Underground Music Archive (http://www.iuma.com/) got its start selling CDs of unsigned bands. Today, the Website carries titles from more than 1,000 bands, a number of which have been signed by major labels as a result of 'Net exposure. The site draws more than a quarter of a million hits per day and brings in nearly US$1 million a year. Relatively unknown artists also are getting a push from some major labels. For instance, the popular Sony Music Website (www.sony.com), which supports pages for all Sony labels and many of its artists, is credited with sparking booming record sales for the then largely unknown alternative band Korn (Epic/Immortal Records). Following this 'Net exposure, Korn's new CD, *Life Is Peachy,* broke onto *Billboard*'s album chart at number three, selling 152,000 albums in its first two weeks.

The 'Camelot Music CD Genie' (http://www.camelotmusic.com) recommends music selections based on input from users, enables site visitors to preview every track on a CD prior to purchase, and is supported by interactive computer-assisted ordering directly from the site. By early '97, more than 1.2 million 30-second sound bytes were available from 80,000 CDs. The site attracts up to 120,000 hits a day.

Internet Music Shop in the U.K. (http://www.musicshop.co.uk) sells discounted CDs online. With the U.K. already being one of the cheapest places in Europe to buy CDs, the site receives approximately 60 percent of its business from outside the country (14 percent of which comes from the U.S.). Approximately 5 percent of those who visit the Internet Music Shop make a purchase.

Atlantic Records' Digital Arena (http://www.atlantic-records.com/) used Thinking Pictures' new Rockpipe software to broadcast video on the Internet of Tori Amos performing at the Virgin Megastore in New York.

Despite all this activity, e-sales still represent a tiny portion of overall industry sales: according to Jupiter Communications, online music purchases were only about two-tenths of 1 percent of the U.S. industry's total in 1996. Look for that figure to grow rapidly in the next few years.

Music Industry Next

Until recently, most companies shied away from distributing albums directly on the 'Net due to unanswered technical and legal questions. This has changed in the past year or so, as sites such as superSonic BOOM (http://www.supersonicboom.com) and Music Maker (www.musicmaker.com) allow visitors to create and download custom CDs. Electronic delivery of music recordings could represent a US$2 billion market in coming years, according to the International Federation of the Phonographic Industry.

In anticipation of what's to come, there are now 'enhanced' CDs that combine sound and multimedia data and run on both audio CD players and properly equipped PCs. Enhanced CDs are identified in stores by a label that reads 'See What You Can Hear.' Internet music is also coming out of the box. Aristo International Corporation plans to put high-tech jukeboxes and video games linked to the Internet in bars, hotels, and other public places. The company's MusicNet Plus plays high-quality digital music and enables customers to buy recordings and merchandise from bands, as well as tickets to events. (The machines are expected to sell for a price comparable to current coin-operated vending machines.)

Atlantic Records' Digital Arena (http://www.atlantic-records.com/) used Thinking Pictures' new Rockpipe software to broadcast video on the Internet of Tori Amos performing at the Virgin Megastore in New York. Rockpipe uses Netscape's server-push feature to transmit 12 frames per second at 28.8 kbps, and smooth audio on high-speed connections. An Atlantic employee used a cellular phone to describe the event and interview audience members. This, too, provides a glimpse of what's next.

The automotive industry

The automotive industry is already undergoing massive change even outside the Internet, with car manufacturers revamping their distribution systems; large, national chains entering the market; and dealers experimenting with changes in service. On top of this, the Internet is beginning to change the way consumers research, buy and finance their new and used cars. This is particularly apparent in the States, where Internet usage is sufficiently common to make advertising and selling on the 'Net economical for dealers.

Increased access to information is putting car buyers in the driver's seat. All the major car manufacturers have sites online, featuring such information as product specifications, list prices, dealer locations and company histories. Most sites will also mail out additional information (in the form of a brochure, videotape, or CD-ROM) on request. Microsoft's CarPoint (carpoint.msn.com) lets users search among more than 900 car models based on criteria the user selects. The search function includes 'Surround Video,' an interactive feature that gives the user 360-degree interior views. Fighting Chance (www.fightingchance.com) features updated information on pricing and dealer rebates. IntelliChoice (www.intellichoice.com) provides product specifications, product reviews and advice for buyers. For US$4.95, the service will provide a downloadable report that includes information of invoice pricing for all options, current rebates and incentives, and five-year cost-of-ownership evaluations.

The well-known *Edmund's Buyer's Guides* also are online (www.edmunds.com), as is the *Kelly Blue Book* (http://www.kbb.com), which provides resale pricing on used cars. For used-car buyers, VINguard (http://sterba.com/vinguard) charges US$19.95 to take a vehicle identification number and search the vehicle's history for theft and accidents.

In the past three years, automobile sales on the 'Net have become a viable business. Though online sales sites accounted for only about 1.5 percent of all new-car sales in the U.S. as of mid-1997, some analysts are predicting that as many as one out of five new-car buyers will make their purchases via the 'Net within the next two years. A study by J.D. Power & Associates has found that 70 percent of new-car buyers in the U.S. use or own a computer, and that 45 percent of those people would consider using the Internet to shop for their next vehicle. In the past year, the number of people willing to buy an automobile over the Web jumped from 4 to 10 percent, according to a study by The Dohring Company. 38 percent of consumers aged 35-49 said they would use the Internet to assist them in the car buying process.

Increased access to information is putting car buyers in the driver's seat. All the major car manufacturers have sites online, featuring such information as product specifications, list prices, dealer locations and company histories.

Some sites are even beginning to feature such services as online loan applications, credit approval and insurance sales, and a recent report from research and consulting firm Killen and Associates forecasts that within the next five years more auto loans will be processed via the Internet than through traditional channels.

Auto-by-Tel (www.autobytel.com) is one of the major sites that allows consumers to order and buy new cars online. The company encourages consumers to access other online sites for vehicle information (the site provides links), then contact Auto-by-Tel for the actual purchase. Auto-by-Tel forwards the buyer's name and order to a local dealer (1,700 dealers were participating as of mid-1997), who calls the customer within 48 hours with a firm (no haggle) price, prepares all paperwork in advance, and may even drop off the car at the buyer's home. Auto-by-Tel charges dealers a sign-up fee of US$2,500–US$4,500, an annual fee of US$2,500, and an additional fee of US$500–US$1,500 a month per car brand. In return, dealers receive all customer enquiries within their exclusive territories.

In its first two years of operation, Auto-by-Tel reportedly turned 450,000 purchase requests over to dealers, approximately half of which resulted in sales. (As of Q1 1998, the company reports that it is processing more than 100,000 purchase requests each month.) Auto-by-Tel offers online financing through Chase Manhattan Bank and leasing through GE Capital. The company has also unveiled a Used Car CyberStore, which lists only vehicles that have been through a 135-point certification program. They are backed by a 72-hour, 100 percent money-back return policy and a three-month/3,000-mile warranty.

Advantages to dealers who participate in online car shopping include decreased advertising costs, expanded sales areas, opportunities to establish an ongoing relationship with customers and decreased staffing needs. Advantages to buyers include increased leverage against dealers; no-haggle sales; savings in time and, in many cases, money.

A 1997 study by the National Automobile Dealers Association found that nearly 30 percent of all U.S. dealerships have Internet e-mail addresses and report an average of 43 leads from the 'Net each month. The average dealer sells an average of 2.5 more new vehicles and 1.6 more used vehicles per month because of their 'Net accessibility. Advantages to dealers who participate in online car shopping include decreased advertising costs, expanded sales areas, opportunities to establish an ongoing relationship with customers and decreased staffing needs. Advantages to buyers include increased leverage against dealers; no-haggle sales; savings in time and, in many cases, money.

Car dealers in the States also are using the 'Net to fight back against superstores such as CarMax and to increase sales. In Atlanta, for example, a dozen new-car dealers and some private investors have formed Used Car Network, featuring a toll-free hot line and Website. The site features photos and information on the used-car inventory of its 30 subscribing dealers. Used Car Network hopes eventually to include a vehicle-inspection program and used-vehicle warranty program.

Europe Online
Internet adoption

Western Europe is an affluent, educated region with broad penetration of high-tech appliances and a good telecommunications infrastructure. So how come it's so far behind the United States with regard to Internet penetration?

To be fair, there are exceptions. Northern Europe in general has many more computer and Internet users than does southern Europe. In fact the faraway Finns, famous even amongst themselves for being people of few words, boast the world's highest per capita ratio of Internet servers and users, and 'greater Scandinavia' is easily the world's best-connected region, according to the Internet Industry Almanac. The study found that Finland has 244.5 'Net users per 1,000 people. Its northern neighbours also rated among the top users: Norway is second (231.1); Iceland, third (227.3); Sweden, eighth (147.3); and Denmark, 10th (125.6). The United States clocked in at fourth, with 203.4 'Net users per 1,000 people. The worldwide user rate is 16.9. [Source: *Wired*

News, 23 March 1998]

In contrast to the Scandinavians, not even 1 percent of the loquacious Italians use the Internet, according to Y&R Milan. Italian marketing consultant Giancarlo Livraghi (http://gandalf.it/netmark/) blames this poor showing on technophobia and fears about the dangers of the Internet: 'Families (as well as politicians and teachers) are bombarded every day with sensationalism and misinformation that make them uncomfortable and scare them away.'

Climate and social customs play a part, too. Long, dark, hard winters force northern Europeans to spend many months of the year indoors - ideal for developing computer skills and networking with other people online. As Katarina Varenius of Hall & Cederquist/Y&R Stockholm puts it: 'The trend is that we will see fewer of these people out in the garden, since they will be sitting in front of the computer. The computer is a fully legitimate place to be - you don't have to explain to anybody whether you are doing something useful or not.' By the same token, the long, fine summers of southern Europe invite pavement café and beach life - why shut yourself away with a computer and modem when you can go out and socialise in the sun?

In some respects, France was ahead of the European pack with France Telecom's Minitel system, a sort of screen-based dial-up information and communication system launched in 1984. The equipment was provided free on demand and as many as 6.5 million subscribers used it. Yet some industry analysts think that having Minitel may have inclined many French people to dismiss the Internet as unnecessary. Minitel is certainly well entrenched. France's major national daily papers *Le Monde* and *Le Figaro* are on the Web and even offer search facilities, but their archives cannot be accessed through the Internet - it's Minitel only.

Nevertheless, in early February 1998, Prime Minister Lionel Jospin became the first French leader ever to appear on a podium with a technology guru when he welcomed Microsoft founder William H. Gates III at a technology conference. Jospin's government has vowed to embrace the Internet, even if its *lingua franca* is English.

A more important part of Europe's problem is that computer penetration is a lot lower in Europe than in the United States and it's growing at a less rapid pace in Europe than in North America and Asia.

Language very often is cited as an obstacle to non-English-speakers using the Internet - the vast majority of Websites are American and many non-U.S. sites have English-language versions. Yet the Internet hasn't yet caught on to a large degree in the U.K., which obviously has no language barrier.

A more important part of Europe's problem is that computer penetration is a lot lower in Europe than in the United States and it's growing at a less rapid pace in Europe than in North America and Asia. Sweden has developed an innovative socialist-capitalist approach to address this situation: labour unions have negotiated special bulk lease-purchase deals for their members, resulting in a huge increase in business for PC makers. Expect more deals of this type to drive higher computer sales in other countries over the coming years.

But even for computer owners with Internet access, relatively high telephone charges discourage the sort of long online sessions that enable users to develop Internet interest and skills. Deregulation of the European telecoms markets, which took place in January of 1998, is likely to increase competition and drive down prices. But the case of British Telecom in

Britain shows that entrenched monopolies aren't dislodged overnight - it takes quite a while for serious competition to be established.

Y&R feedback about the Internet from around Europe is pretty consistent, along the lines of 'there's lots of hype, it hasn't had much impact here yet, but people are very interested and expect it to change the way they do business.'

The most concrete expectations come from Katarina Varenius of Hall & Cederquist/Y&R Stockholm: 'The changes to expect, I would think, would be closing down retailer branches of all sorts, due to the shift from visiting a physical location to visiting it on the Internet. Post offices, banks, food stores will close down their 'bread and butter' stores, and focus their competence and one-to-one service on flagship-stores...The number of smaller businesses has increased. The high unemployment level has resulted in a need for creating jobs, and one way is to start your own business. But, the Internet has made it much easier to succeed, due to the low costs involved in presenting your idea and your business to the market.'

The continent has its share of digerati, but Europe looks a long way from reaching the critical mass of popular usage that will encourage and sustain a real range of local Internet initiatives. The United States will lead the race well into the next millennium.

Sus Røedgaard at Y&R Copenhagen reports similarly upbeat thinking about the Internet: 'The Internet is not only for technology freaks anymore. A lot of Danish institutions and cultural organisations are on the 'Net. The Ministry of Culture in Denmark has sponsored a site called 'Kulturnet Danmark' (http://www.kulturnet.dk/) that has links to all cultural institutions on the 'Net. Kulturnet also helps cultural organisations to get on the 'Net by helping them program their homepage. Even the Royal Danish Theatre is online, and so is the Danish Royal Family.'

There's little risk in predicting that Western Europe is not going to take the world lead in cyberspace in the foreseeable future. The continent has its share of digerati, but Europe looks a long way from reaching the critical mass of popular usage that will encourage and sustain a real range of local Internet initiatives. The United States will lead the race well into the next millennium.

Within Europe, it's hard to imagine the southern countries doing anything other than playing catch-up - at best - for many years to come. For European leads on the Internet, it's probably worth watching the Nordic countries. They've been tinkering with the Internet for some time now, and the Swedes in particular have proved that they can put together marketing concepts that cross borders easily - Abba, Ikea, and two distinctive car brands (Volvo and Saab).

Who's doing what online?

When considering Internet usage in Western Europe, it's important to recognise the vast differences from country to country, not just in terms of Internet penetration but also with regard to how each nationality spends time online. NOP Research Group recently conducted a major study of Internet users in Britain, France and Germany. Among its findings:

- Internet users in Germany are far more likely to use online home banking than are users in Britain or France. Five times as many Internet users in Germany as in Britain said they had banked via the Internet during the previous 12 months. One in five users in Germany said they had used the Internet to search for financial information over the same period.

• There are also significant differences in terms of where people access the Internet. French adults are most likely to use the Internet at home, while use of the Internet in schools and universities is highest in Britain.

• Users in Germany are far more reserved about disclosing their credit card details over the Internet when making a purchase than are users in Britain and France.

• Home shopping is still at an embryonic stage in all three countries; approximately 10 percent of Web users in Britain, France and Germany had shopped online in the four weeks prior to the survey.

• Just under a quarter (23 percent) of users in Britain said they had read the newspapers via the Internet in the previous 12 months compared with more than a third of users in France.

NOP's Richard Jameson comments: 'The findings of this comprehensive study reveal a number of important differences in Internet usage across the key European markets. Even though the Internet is a medium aimed at transcending national boundaries, there are clearly differences in attitudes towards usage in each of the British, German, and French markets which can be explained by a range of local factors. These include the relative maturity of the respective marketplaces and the cultural receptiveness of users towards Internet technology and services.'

The NOP findings indicate that, as a proportion of the total adult population, the percentage of people who used the Web in the four weeks prior to the survey was highest in Britain and Germany. The figure for Britain was 9 percent (4.31 million people) and for Germany also 9 percent (6.1 million people). France currently has the smallest proportion of Internet users in relation to its total adult population—6 percent (2.87 million people).

Internet usage has affected the length of time people spend on other activities. For example, approximately one in five Internet users in Britain, France and Germany are spending less time watching TV as a result of using the Internet.

Approximately one in five Internet users in Britain, France and Germany are spending less time watching TV as a result of using the Internet.

There also are wide differences from country to country with regard to levels of satisfaction with the Internet. Twice as many French respondents as British and German respondents said that, overall, they were 'dissatisfied' with the Internet. This can likely be explained by the fact that users in France are unable to see a significant advantage in having access to the Internet over Minitel.

No-car shopping

Though most of Europe lags behind the United States in terms of Internet adoption, the confluence of some particularly European factors bodes well for the adoption of e-shopping.

Most European countries have very large populations for their size, particularly in comparison with the United States:

Population per square km

France	105
Germany	229
The Netherlands	379
UK	238
Sweden	20
Italy	190
Spain	79
USA	29

Source: The Economist Pocket World in Figures 1997

These density figures don't tell the full story, because large parts of Italy and Spain are mountainous and/or sparsely populated, which means the remaining areas have much higher population densities. Similarly, France has vast tracts of increasingly deserted countryside, with 20 percent of the population crammed into the Paris region, while most of Sweden is lake, forest and subarctic wasteland.

The competitive advantages of building a wired clientele will be too immense for many retailers to pass up in the next century. Besides freeing up valuable store and car park real estate, facilitating more efficient stock management and tying in customers - all big boosts to profitability - online sales will also hugely increase retailers' negotiating clout with manufacturers.

In other words, most Europeans live pretty crammed together, often in old towns that may be picturesque with lots of fine old buildings, but also have narrow streets that aren't suitable for car traffic. European towns and cities are becoming choked with automobile congestion, and it's influencing the quality of life. The average car journey in London, for example, is no faster than it was by horse-and-cart 100 years ago, and causes a lot more pollution. Even on the open roads outside towns, European motorists complain that traffic congestion is all too common - hardly surprising, with something like 13 million new cars coming onto Europe's roads every year.

Europeans are caught in a bind. Like people the world over, they are addicted to the comfort and convenience of their cars, but they are also increasingly aware that the convenience is diminishing and the cost (environmental and otherwise) is increasing. Authorities across Europe are looking at ways to discourage car use and raise some useful revenues while they are at it. Italian cities such as Rome have long had 'permit only' entry for historic city centres (although enforcement is another matter), and Amsterdam is progressively squeezing cars out of its canal belt. British cities such as London are looking at road pricing schemes. New bike sales in the U.K. are at an all-time high. Scooters have re-emerged as the speedy and sexy way to get around town, with sales in the U.K. rising 40 percent in the last year, according to *The Guardian*.

All of which raises big issues for retailers. Ever since 'hypermarkets' first appeared on the scene 30 years ago in France, the trend in northern and central Europe especially has been toward superstores - the sort of places that need the space that's most easily and cheaply found on suburban or out-of-town sites. Even Wal-Mart has entered the fray. So far, shoppers have flocked to buy trolleys full of goods, which require a car for transport back home. All very convenient, except for the increasing traffic there and back, trouble parking and long lines at checkout. Probably not what busy working couples want to be doing in their precious spare time.

In short, the scene is set for a return of delivery service, with a 21st century spin - interactivity and computerised customer profiling. Some smaller businesses, such as pizza parlours in the Netherlands, are already using the Internet, and Britain's Tesco is currently piloting a system for online food shopping through the Internet.

The competitive advantages of building a wired clientele will be too immense for many retailers to pass up in the next century. Besides freeing up valuable store and car park real estate, facilitating more

efficient stock management and tying in customers - all big boosts to profitability - online sales will also hugely increase retailers' negotiating clout with manufacturers. In combination with customer profiling, the Internet will enable retailers to highlight promotions or new products/brands in individually targeted messages to interested customers. And retailers will have even more control over point-of-sale contact with consumers.

Expect to see some ingenious systems being worked out as ambitious retailers figure out the deals and the logistics that will entice European consumers to forget the car and shop by wire.

What works in Europe could well spread quickly to other markets, too. Dutch food retailing giant Ahold (1997 worldwide sales of US$26 billion, including US$14.1 in the eastern United States) operates 3,000 supermarket and specialist companies in the U.S., Europe, Asia and South America. Ahold could also learn something from its newly acquired Argentine subsidiary Disco, which has outlets in upmarket areas and offers services such as home delivery and telephone ordering.

French hypermarket giant Auchan, another player pursuing further expansion overseas, has taken its first steps in cyberspace at home. After teaming up with America Online last year to give Internet demonstrations in 50 of its French stores, it currently sells multimedia products through its Website and plans to expand its online shopping facilities.

Potential E-shopping powerhouses

A recently released report from Datamonitor (www.datamonitor.com), 'Consumer Online Shopping,' claims that revenue from online shopping in Europe will reach US$5 billion by 2002, up from US$111 million in 1997. Germany and the U.K. will continue to dominate the market, controlling 78 percent of European e-commerce by 2002. By that time, Germany's e-commerce revenue will have reached nearly US$2 billion (up from US$72 million in 1997), while the U.K.'s share will have grown to some US$1 billion (up from US$15 million in 1997).

In combination with customer profiling, the Internet will enable retailers to highlight promotions or new products/brands in individually targeted messages to interested customers. And retailers will have even more control over point-of-sale contact with consumers.

Datamonitor also predicts that Germany, Britain, Sweden and the Netherlands will have the highest percentages of households making online purchases, a result of those countries' higher levels of technological sophistication. France, which saw US$3 million in online sales last year, is expected to garner US$58 million by 2002, and Spain, with revenues of US$1 million in 1997, is expected to reach US$11 million by 2002.

Research study: Children's categorisation of food

Dr Brian Young and Mark Claessen
Exeter University, July 1998

Research study summarised by James Aitchison
Food Advertising Unit

Background and purpose

In 1996 in the U.K., Brian Young and Paul Webley of the University of Exeter and Marion Hetherington and Suzanne Zeedyk of the University of Dundee presented a report to the Ministry of Agriculture, Fisheries and Food (MAFF) entitled *The Role of Television Advertising in Children's Food Choice*. The report, commissioned by MAFF as part of its Food Acceptability and Choice programme, examined in detail the existing literature on advertising's influence and effect on children's food choices. *Inter alia*, the report stated that 'there is no evidence to suggest that advertising is the principal influence on children's eating behaviour'.

In addition to reviewing the quality and findings of the research already in existence, the authors were asked to identify and recommend areas requiring further investigation; one such area which emerged from the report was how children mentally classify foods. A better understanding of how children order and perceive foods psychologically, the authors argued, would engender a better understanding of whether brand advertising has its intended effect and influences the share of brands in their specific markets or whether it has a wider, unintended effect, of influencing consumption outside of these specific markets.

Following discussions between MAFF, Dr Brian Young (co-author of the 1996 report) and the Food Advertising Unit (FAU) at the Advertising Association, the FAU provided the funding for extensive research into this area. 'Children's Categorisation of Foods' is the culmination of a twelve month research programme into how children mentally order and perceive foods. The overall project comprises three studies and a total sample of 780 children, in which the first study provides data for the second, and the first and second provide data for the third. It seeks to identify the types of food at the forefront of children's minds, the level at which they categorise these foods, the criteria they use for this categorisation and, crucially, whether the branding of foods has an influence on this process. In all three stages, interviews and questionnaires were conducted with individual children between the ages of seven and 13 grouped according to their age.

The first study

The first study asked a total of 597 children to name 10 foods they knew about. Allowing for duplications in the 5,600 names spontaneously generated by the children, 497 different names were produced. The top ten most prevalent foods were:

1. Chips
2. Pizza
3. Apple
4. Fish
5. Sausage
6. Chicken
7. Crisps
8. Chocolate
9. Beans
10. Ice cream

The 497 foods were then classified into 48 separate categories, and the top ten are listed below. Items such as apples and potatoes occurred in numbers sufficient to warrant their own category, outside of categories such as 'fruits' and 'vegetables', which were also high up in the list.

1. Chips and fries
2. Meats and meat products
3. Vegetables
4. Fruits
5. Chicken
6. Pizza
7. Apples
8. Potatoes
9. Ice creams
10. Fish

The most striking result to emerge

from the first study is, that across all age groups, only two per cent of the different food items the children mentioned were branded goods, suggesting that branding has a minor if not negligible influence on how children mentally organise foods. Indeed, further investigation of this finding discovered that, in psychological terms, children overwhelmingly use 'basic' categories when thinking about food - 77 per cent of the responses were classified as such - meaning that they categorise food at a level above brands. Subordinate categories, into which individual brands would fit, accounted for just nine per cent of the foods mentioned. Registering two per cent overall, branded goods account for less than a quarter of responses in this specific category (approximately 25 per cent of nine percent).

The second study

The first study identified the types of foods foremost in children's minds as well as the level of category they use to order them; the second study went on to explore the criteria and dimensions children naturally use to classify foods into these categories and, crucially, whether or not branding was amongst them.

Two techniques were used, in which 20 children from three age groups - six, nine and 12 year olds - were shown pictures of different foods drawn from the list generated in stage one. Of the foods shown to the children, there were two different pools of twelve foods: one consisted of six branded foods and six unbranded foods (e.g. apples, eggs, etc.); and the other pool consisted of the same unbranded foods, together with six 'de-branded' foods - that is, pictures of foods which had had their brand names removed by computer graphics and replaced by a generic term. In both techniques, the branded and 'de-branded' pools were shown to alternate children to ascertain the extent to which branding has an influence.

Using the first of the two techniques - six branded foods and six unbranded foods - the 12 pictures were randomly spread out in front of the children, who were asked to put the foods into two groups and explain their reason for doing so. The smaller pile was then discarded, and the children were invited to repeat the process on the larger remaining pile. This was continued until they were unable to sort the cards any further.

In the second technique - using six unbranded and six 'de-branded' foods - a pair of pictures was randomly selected from the pile and the children were asked to offer a reason as to why the foods were different. The process was repeated until the children were unable to offer a distinction on three consecutive pairs.

Only two per cent of the different food items the children mentioned were branded goods, suggesting that branding has a minor if not negligible influence on how children mentally organise foods.

The two techniques combined to produce a list of 224 different reasons from the children as to how and why they categorised the foods in the manner in which they did. This data was analysed using multi-dimensional scaling and correspondence analysis to discover the dominant dimensions underlying the children's responses.

The process identified three clear structural dimensions along which children categorise and classify foods. The first to emerge from the analysis was that 'healthy'/'unhealthy' was a key criterion. This is a finding supported by existing studies on subjective meaning which report that an evaluative dimension is significant in how individuals organise their psychological worlds. A second dimension discovered from the analysis was 'meal food'/'snack food' - a functional dimension depending on whether foods are eaten as part of a meal or as a snack outside meal times. A third dimension was identified as 'natural' / 'man made', working along the lines of whether children saw a food to be in its raw, unprocessed state, or whether it was processed or manufactured.

The presence or absence of branding on the foods shown to them did not impact at all on their clear and natural ability to: differentiate between 'healthy' and 'unhealthy' foods; distinguish between foods eaten at meal times and foods consumed as a snack; and recognise natural foods from those that have been processed.

Whether or not foods were branded or 'de-branded' did not change the basic structure of classification used by children. The presence or absence of branding on the foods shown to them did not impact at all on their clear and natural ability to: differentiate between 'healthy' and 'unhealthy' foods; distinguish between foods eaten at meal times and foods consumed as a snack; and recognise natural foods from those that have been processed.

The third study

In the third study, the researchers went on to examine children's practical ability to categorise the foods they named in the first study using the structural dimensions identified in the second. Two groups of children were used - 71 seven to eight year olds and 52 twelve to thirteen year olds - to determine whether this ability evolved with age.

30 foods were selected from the original list produced by the children in the first study, and the children asked to rate each food according to the two dominant dimensions that emerged in the second study: 'healthy'/'unhealthy' and 'meal food'/'snack food'. For both dimensions, the children were shown pictures of the 30 foods in random sequence and invited to label them according to the following:

- 'very healthy' / 'a bit healthy' / 'a bit unhealthy' / 'very unhealthy'; and
- 'always eat at meals' / 'normally eat at meals' / 'normally eat as snack' / 'always eat as snack'

Hardly any difference was found between the two age groups. Comparing the two age groups' top 10 foods, deemed by the children to be most 'healthy' (i.e. either 'very healthy' or 'a bit healthy'), the lists are almost identical and in similar order, with nine foods appearing in both groups' top 10: Carrot, Apple, Salad, Tomato, Rice, Bread, Potato, Pasta and Corn Flakes. The younger children included Fish in their top 10, whilst the older group included Egg. Fish and Egg both appeared 12th in the older and younger groups' lists respectively. Likewise, when comparing the foods at the bottom of the list, there were strong similarities. Both groups shared seven of the 10 foods, such as Chips, Hamburger, Crisps, Cake and Doughnut.

The children were also asked to give reasons for their rating of each food and these were recorded. Parental and family influence, particularly of mothers, was often cited by the younger age group (e.g. 'Mum says so'). Other important factors were: nutrition (e.g. 'fruit and vegetables are good for you', 'vitamins in', 'bad if you eat too much'); the influence cooking techniques (e.g. 'depends how they are cooked', 'fried foods are bad'); and dental hygiene (e.g. 'is bad for your teeth').

Parental and family influences played a lesser role in the reasons given by the 1[illegible] to 13 year olds, although it was still significant - particularly when labelling a food as 'healthy'. Nutritional factors were most important for this group who, in addition to vitamins, referred to protein and carbohydrate as well as levels of salt, fat and sugar.

Overall, these results indicate that, when categorising foods, the children of both age groups could use the dimension of 'healthy'/'unhealthy' identified in stage two systematically and consistently. In addition, they possess a developed nutritional awareness which the data suggests is derived from parental and family influences - only one response from a child referred to the influence of the media.

The similarities between the two age groups were also apparent when the children were asked to classify the foods along the 'meal food'/'snack food' dimension. Of the ten foods cited as most properly eaten at meal times, eight were shared by both age groups, including Potato, Chicken, Rice, Baked Beans, Fish and Sausage. In terms of differences, the younger group included Carrot and Chips (which ranked 12th and 13th in the older group's list), whilst the older group included Salad and Egg (ranking 11th and 14th in the younger group's list).

Equally, 10 of the 30 foods seen by each of the groups as 'snack foods' were, barring one food, identical and included Crisps, Apple, Chocolate, Kiwi Fruit, Cake and Ice Cream. The younger group's list included yoghurt (appearing 11th on the older group's list), whilst the older group chose jam (which was 11th on the younger group's list).

These results concur with the findings of the 'healthy'/'unhealthy' dimension, indicating that the children were able to locate foods along the 'meal foods'/'snack foods' dimension. Taking the results of the two dimensions together, children have the ability systematically and consistently to rate foods evaluatively ('healthy'/'unhealthy') and functionally ('meal food'/ 'snack food').

Finally, the children in the third study were shown pictures of, and asked to identify, six leading brands of ice cream, crisps, cola, chocolate, bread and cereal, all of which had had their brand names covered. The researchers introduced this procedure to act as a check on the findings of the second study; namely, that branding did not have an impact on either group's categorisation of foods.

The older children had a greater awareness of brands. For each of the six brands shown, an average of 89.5 per cent of the 12 to 13 year olds recognised it. The highest recognition was for the crisps (100 per cent) and the lowest was for the ice cream (77 per cent). The younger group's average was lower at 53.3 per cent. The highest recognition was for the cereal (96 per cent) and the lowest was for the ice cream (39 per cent).

They possess a developed nutritional awareness which the data suggests is derived from parental and family influences - only one response from a child referred to the influence of the media.

However, despite the fact that children's powers of brand recognition increase with age, the greater knowledge of the older group must be coupled with the findings of the first and second studies; namely, that only two per cent of foods originally named were branded and that the presence or absence of branding had no impact on how they categorised foods. Indeed, children know about brands, are aware of brands and, as they get older, can recognise them with increasing accuracy, but this knowledge is not pertinent to how they classify foods.

from the analysis was 'meal food'/'snack food' - a functional dimension depending on whether foods are eaten as part of a meal or as a snack outside meal times. A third dimension was identified as 'natural' / 'man made', working along the lines of whether children saw a food to be in its raw, unprocessed state, or whether it was processed or manufactured.

The presence or absence of branding on the foods shown to them did not impact at all on their clear and natural ability to: differentiate between 'healthy' and 'unhealthy' foods; distinguish between foods eaten at meal times and foods consumed as a snack; and recognise natural foods from those that have been processed.

Whether or not foods were branded or 'de-branded' did not change the basic structure of classification used by children. The presence or absence of branding on the foods shown to them did not impact at all on their clear and natural ability to: differentiate between 'healthy' and 'unhealthy' foods; distinguish between foods eaten at meal times and foods consumed as a snack; and recognise natural foods from those that have been processed.

The third study

In the third study, the researchers went on to examine children's practical ability to categorise the foods they named in the first study using the structural dimensions identified in the second. Two groups of children were used - 71 seven to eight year olds and 52 twelve to thirteen year olds - to determine whether this ability evolved with age.

30 foods were selected from the original list produced by the children in the first study, and the children asked to rate each food according to the two dominant dimensions that emerged in the second study: 'healthy'/'unhealthy' and 'meal food'/'snack food'. For both dimensions, the children were shown pictures of the 30 foods in random sequence and invited to label them according to the following:

- 'very healthy' / 'a bit healthy' / 'a bit unhealthy' / 'very unhealthy'; and
- 'always eat at meals' / 'normally eat at meals' / 'normally eat as snack' / 'always eat as snack'

Hardly any difference was found between the two age groups. Comparing the two age groups' top 10 foods, deemed by the children to be most 'healthy' (i.e. either 'very healthy' or 'a bit healthy'), the lists are almost identical and in similar order, with nine foods appearing in both groups' top 10: Carrot, Apple, Salad, Tomato, Rice, Bread, Potato, Pasta and Corn Flakes. The younger children included Fish in their top 10, whilst the older group included Egg. Fish and Egg both appeared 12th in the older and younger groups' lists respectively. Likewise, when comparing the foods at the bottom of the list, there were strong similarities. Both groups shared seven of the 10 foods, such as Chips, Hamburger, Crisps, Cake and Doughnut.

The children were also asked to give reasons for their rating of each food and these were recorded. Parental and family influence, particularly of mothers, was often cited by the younger age group (e.g. 'Mum says so'). Other important factors were: nutrition (e.g. 'fruit and vegetables are good for you', 'vitamins in', 'bad if you eat too much'); the influence cooking techniques (e.g. 'depends how they are cooked', 'fried foods are bad'); and dental hygiene (e.g. 'is bad for your teeth').

Parental and family influences played a lesser role in the reasons given by the 12 to 13 year olds, although it was still significant - particularly when labelling a food as 'healthy'. Nutritional factors were most important for this group who, in addition to vitamins, referred to protein and carbohydrate as well as levels of salt, fat and sugar.

Overall, these results indicate that, when categorising foods, the children of both age groups could use the dimension of 'healthy'/'unhealthy' identified in stage two systematically and consistently. In addition, they possess a developed nutritional awareness which the data suggests is derived from parental and family influences - only one response from a child referred to the influence of the media.

The similarities between the two age groups were also apparent when the children were asked to classify the foods along the 'meal food'/'snack food' dimension. Of the ten foods cited as most properly eaten at meal times, eight were shared by both age groups, including Potato, Chicken, Rice, Baked Beans, Fish and Sausage. In terms of differences, the younger group included Carrot and Chips (which ranked 12th and 13th in the older group's list), whilst the older group included Salad and Egg (ranking 11th and 14th in the younger group's list).

Equally, 10 of the 30 foods seen by each of the groups as 'snack foods' were, barring one food, identical and included Crisps, Apple, Chocolate, Kiwi Fruit, Cake and Ice Cream. The younger group's list included yoghurt (appearing 11th on the older group's list), whilst the older group chose jam (which was 11th on the younger group's list).

These results concur with the findings of the 'healthy'/'unhealthy' dimension, indicating that the children were able to locate foods along the 'meal foods'/'snack foods' dimension. Taking the results of the two dimensions together, children have the ability systematically and consistently to rate foods evaluatively ('healthy'/'unhealthy') and functionally ('meal food'/ 'snack food').

Finally, the children in the third study were shown pictures of, and asked to identify, six leading brands of ice cream, crisps, cola, chocolate, bread and cereal, all of which had had their brand names covered. The researchers introduced this procedure to act as a check on the findings of the second study; namely, that branding did not have an impact on either group's categorisation of foods.

The older children had a greater awareness of brands. For each of the six brands shown, an average of 89.5 per cent of the 12 to 13 year olds recognised it. The highest recognition was for the crisps (100 per cent) and the lowest was for the ice cream (77 per cent). The younger group's average was lower at 53.3 per cent. The highest recognition was for the cereal (96 per cent) and the lowest was for the ice cream (39 per cent).

They possess a developed nutritional awareness which the data suggests is derived from parental and family influences - only one response from a child referred to the influence of the media.

However, despite the fact that children's powers of brand recognition increase with age, the greater knowledge of the older group must be coupled with the findings of the first and second studies; namely, that only two per cent of foods originally named were branded and that the presence or absence of branding had no impact on how they categorised foods. Indeed, children know about brands, are aware of brands and, as they get older, can recognise them with increasing accuracy, but this knowledge is not pertinent to how they classify foods.

The regulation of discounts in different Member States

To this date, thanks to the submissions by members of the Expert Group, the regulation of discounts in the Member States can be summarised as follows (where they have been supplied, legal references are annexed):

AUSTRIA

Law

1992 Deregulation of Competition Law (Wettbewerbs-Deregulierungsgesetz - cf. Federal Law Gazette No 147/1992). This law effectively revoked, *inter alia*, the Discounts Law (Rabattgesetz), the Law on Free Gifts (Zugabengesetz) and the Law on Sales (Ausverkaufsgesetz). The provision on 'shopping passes' (Einkaufsausweise) in Article 9c of the Law against Unfair Competition is the only part of the Discounts Law to be reprised therein (cf. Federal Law Gazette No 448/1984, in its version of Federal Law Gazette No 422/1994). In contrast, the legislation governing both free gifts (in Article 9a) and sales (Article 33a *et seq.*) was liberalised by this law.

General

Although the Law on Free Gifts contains, in its Article 2, an exception to the general ban on free gifts in the form of a discount in cash or in kind, the Discounts Law (which, as a more recent and more specialised rule, takes precedence over the Law on Free Gifts) has placed significant restrictions on the granting of price reductions (Article 2 *et seq.* of the Discounts Law; not only a maximum limit of 3% of the price) and bulk discounts (Article 7 of the Discounts Law; trade practice regarding bulk discounts) to consumers. Henceforth, under Article 9a(1), point 1 of the Law against Unfair Competition (the 'ban on free gifts'), it is possible that an application for a restraining order and damages can be made against persons who, in the course of business and for purposes of competition, by means of a public announcement or any other such communication aimed at a wider audience, advertise the granting to consumers, in addition to goods and services, of gratuitous gifts (bonuses), or, those persons who, in periodic publications, offer, advertise or grant to consumers gratuitous gifts (bonuses).

According to existing case law, free gifts are to be defined as an additional advantage over and above the underlying product/service which is advertised to the consumer without any specification of the actual financial advantage involved, in order to promote sales of the underlying product or secure the sale of the underlying service. The relationship between the gift and the underlying product/service must be such that the gift constitutes an objective inducement to the customer to purchase the underlying product/service.

Article 9a(2) of the Law against Unfair Competition sets out an exhaustive list of permissible free gifts. Exceptions to this list include gifts that consist of a specified amount of cash, or an amount of cash calculated in a specified manner, which is not included with the product (point 5), or of a specified amount of the same product, or a specified portion thereof, (point 6). This Article also permits both cash discounts and discounts in kind. Such discounts are defined as a sales promotion, a technique used to offer preferential terms to consumers of particular products or services in the form either of price reductions or of bulk discounts for large-quantity purchases. For restrictions on this, see point (iv) below.

It must be stressed that any prices advertised voluntarily in commercial communications must comply with the 1992 Pricing Law.

i Details of regulation applicable to price reductions - Cash discounts & sales.

Cash discount - This may be calculated with reference to the price of the product, in the form either of a specified cash amount (ATS 70, down from ATS 100) or of a cash amount to be calculated in a specified manner (20% off socks), or with reference to the quantity of the product (every unit purchased over 5 costs only ATS 10). In theory there are no limits on the amount of the discount. For general restrictions, refer to point 3 below. The key factor is that the discount can be easily calculated by the consumer. The mere fact that the information needed to calculate the price reduction is freely available elsewhere is not sufficient to meet this criterion.

Sales: the relevant provisions are in Article 33a *et seq.* of the Law against Unfair Competition. The requirement to obtain authorisation applies to closing-down sales and clearout sales for reasons of renovation or transfer of premises, etc., but not to seasonal clearance sales and the like. A distinction is drawn between discounts and sales: Discounting represents a sales promotion technique which is not 'forced upon' retailers by external circumstances and concerns only certain products and services, whereas sales are carried out under certain specific criteria and have to be intended to move goods rapidly and in large quantities.

ii Details of regulation applicable to combined offers - Discounts in kind.

This is the case only where the same product or a specified quantity of the same product is advertised, offered or granted (the deciding factor here is the similarity of the product, i.e. as regards quality and type, such as in offers of the kind 'three for the price of two'). This feature of this form of discount differentiates it from free gifts within the meaning of Article 9a(1) of the Law against Unfair Competition. Article 9a(2), point 6, allows for the same differention in the area of services.

iii Details of regulation applicable to coupons.

As a rule, even the issuing of vouchers is permitted. According to the latest case law, if the voucher attached to the underlying product is to be redeemed in cash, this constitutes a cash discount. If the voucher confers the right to acquire a product or have a service performed, this constitutes a discount in kind if the product/service is identical to that offered in the underlying transaction, but a free gift if the product/service is different (Article 9(1) of the Law against Unfair Competition).

The issuing of vouchers that entitle the holder to acquire a (different) product at a reduced price was ruled by the Supreme Court to constitute a violation of Article 9a(1) of the Law against Unfair Competition.

Shopping passes: Article 9c of the Law against Unfair Competition (previously Article 13 of the Discounts Law) makes provision for applications for a restraining order against operators who issue shopping passes, coupons or the like, which entitle the holder to repeated purchases of goods, or those who sell goods on the strength of such passes to persons who are the final consumers of such goods. This rule is not intended to prevent discounting abuses but is much more intended to prohibit operators from giving consumers the mistaken impression that they can purchase goods at prices usually available only to wholesale customers (the offence of 'misleading practices').

iv Rationale behind the rules on discounting - permitted practices and restrictions.

As a rule, bans or restrictions on discounting are intended to prevent operators disseminating misleading price information and are therefore in the interest not only of the economy as a whole but also of consumers. Clarity and accuracy of pricing considerably enhance market transparency, thereby also promoting fair competition.

Since the entry into force of the Deregulation of Competition Law in 1992, discounting is generally permissible under Austrian law. However, the capacity to offer cash discounts and discounts in kind is subject to certain conditions intended to promote price transparency: the price reduction and the free additional quantity of product must be easily discernible and the free product must be the same as that being purchased. Compliance with these requirements enables consumers to discern the value of the price advantage on offer and prevents any deception regarding the extent of the preferential terms.

For this reason, it is also generally permissible to display the original price, since this allows consumers to calculate the exact price. However, to protect consumers from the danger of being misled (Article 2 of the Law against Unfair Competition), Austrian case law has, with good reason, established strict standards for comparative price advertising of this type ('Now only...' pricing). In each case, the reference price for the comparison must be clearly indicated.

For the rest, the provisions in the Law against Unfair Competition provide adequate potential redress to protect consumers from the possible effects of irrelevant and misleading information associated with cash discounts or discounts in kind. To wit, the following practices are all offences under its Articles 1 (Offences against common decency) or 2 (Misleading practices): monopoly pricing, exaggerated incentives based on excessive discounts, deception as regards the price advantage of products by the advertising of substantial discounts, excessive/exaggerated advertising, psychological pressure to purchase or advertising with clearly unrealistic prices.

BELGIUM

Law

Act of 14 July 1991. Articles 5 and 6 relating to consumer information; Articles 40-41 on sale below cost; Articles 42-45 and article 53 on the announcement of price reductions and comparisons; Articles 54-57 on combined offers and Articles 63-68 on coupons.

General

Identical products or services can only be sold together for a global price if (1) the customer has an option to purchase the items separately, (2) the consumer is clearly informed about this facility and the individual prices of the goods or services and (3) the price reduction does not exceed one third. Coupons can be offered for an identical product or service provided that the overall price reduction does not exceed one third. Coupons exclusively offering a cash rebate are permitted provided that they specify the amount of cash in question (it is not clear whether there is a restriction on the rebate not exceeding one third of the price).

i Price reductions expressed in percentage and/or absolute terms - *General principle.*

Article 5 refers to the indication of discounts in absolute or percentage terms. It specifies that discounts must be presented in one of four specific forms (see text of law). It prohibits presentation of price reductions in the form of a 'free' part of the normal quantity of an item. The consumer must be presented with a discount for a specific product/service category in the commercial communication. A sale announcing 10% off the price of 'marked items' would not be allowed.

Detailed conditions

1. The reference price - Article 43§1 provides details on the reference or 'habitual' price on which the discount is announced. This 'habitual' price must have been enforced for at least one month prior to the discount.
2. The level of discounts/rebates - a minimum level of discount is not set but the discount must be real i.e. significant (Article 43§2)
3. Duration of discounts/rebates - the discount must be offered for at least one day and for no longer than one month. An exception to the former is made for products with short shelf lives (e.g. fresh foods). An exception to the maximum period of one month is made for clearance sales (Article 43§2). The start date must be indicated in the commercial communication associated with the discount.
4. Prohibition of sales at a loss - with a few specific exceptions, sales at a loss are prohibited (Article 40).
5. Periods when discounts are prohibited - during the periods prior to the midsummer and winter sales periods (15 May – 30 June inclusive and 15 November – 2 January inclusive), discounts and their indication in commercial communications are prohibited (Article 53). An exception to this rule is made for annual local or occasional trade events with a duration of no longer than four days.

ii Details of regulation applicable to combined offers (3 for the price of 2) of '25% more for the same price'.

Under Article 5 (see above) a '25 % more free' offer is allowed since more product is provided. However, providing the same sized product at a lower price and suggesting that a 'free' quantity is being given is prohibited. Instead, the seller must announce a price reduction.

Under Article 55§2 the '3 for the price of 2' is allowed since it meets the cumulative conditions that (i) each product could be obtained separately, (ii) the buyer is informed of this and also advised of the separate selling price of each product or service and (iii) the price reduction does not exceed more than one third of the combined prices of the individual items. A '2 for the price of 1' offer is therefore prohibited.

iii Details of regulation applicable to coupons.

Cash rebates in the form of coupons linked to previous sales are allowed under Article 57§3 and §4 as long as they state (i) the cash value they represent and (ii) their discount value is displayed at the point of sale and (iii) their value does not exceed one third of the price of the goods or service acquired to obtain the coupon.

Articles 63 – 64 also allow for free distribution of coupons (i.e. not conditional on prior purchase) as long as they again clearly indicate (i) their cash value, (ii) against which items and where they can be redeemed, (iii) their duration and (iv) the identity of the issuer.

As with discounts, coupons cannot be issued in the specified periods prior to seasonal sales set out in Article 53 (see above).

DENMARK
Law

Lov om markedsforing 1994 (Marketing Law) (§6)

General

Not allowed to provide or advertise any collateral gift or similar inducement, unless such a gift is of negligible value. Discounts for products of the same kind are allowed - section 6(2) (an exception to the free gifts rule), although subject to the general rules e.g. that customers must not be misled as to the true value of what is being offered.

i Price reductions expressed in percentage and/or absolute terms.
Simple price reductions ('before/now') are regulated by §2, sec.1 of the Marketing Practices Act in accordance with which it is an offence to make use of any false, misleading or unreasonable or incomplete indication or statement likely to affect the demand for or supply of goods.
ii Details of regulation applicable to combined offers '3 for the price of 2' or '25% more for the same price'.
It is allowed to give quantity discounts if the goods are identical, for instance 'take three – pay for two'.
iii Details of regulation applicable to coupons.
Trading stamps are regulated by §8 of the Marketing Practices Act. Accordingly, it is not allowed to issue stamps or the like prior to purchase for later encashment. Provided that the stamps state the name of the issuer, the value of the stamps (in Danish currency) and means of encashment, it is allowed to give a discount for subsequent encashment in connection with a purchase. The issuer shall exchange them for cash in an amount to be determined by the Ministry of Industry.

An exception from these rules are the flight bonus programmes which are offered internationally (§8.3). The minister of Industry and Co-ordination may permit that other enterprises than airlines, subject to similar international competition, may provide a collateral gift, inducement of a specified value or trading stamps. Such permission may be granted for a limited period of time.

FINLAND
Law

Kuluttajansuojalaki 1978/38 (Consumer Protection Act) §§ 2.1 (General clause) and 2.5 (specific regulation) which restrict the use of premium and combined offers.

General

No conduct that is contrary to good practice or that is otherwise unfair from the point of view of consumers is allowed in marketing. Marketing will always be deemed unfair if it does not convey information necessary in respect of the health or economic security of consumers. False or misleading information shall not be conveyed in marketing.
i Price reductions expressed in percentage and/or absolute terms.
Allowed. The price of consumer goods or services can not be announced as being reduced by more than it actually is below the price previously charged by the merchant (§ 2.3).
ii Combined offers '3 for the price of 2' or '25% more for the same price'.
Allowed. Offers to sell two or more goods or services for one price or to supply one product or service free of charge or at a reduced price if another product or service is purchased are allowed if there is an evident material connection between the goods/services offered (§ 2.4).
iii Details of regulation applicable to coupons.
No detailed regulation. Rebates in the form of coupons fall under §§ 2.1 and 2.2.

FRANCE

Information on rules is still to be supplied, but the Commission's initial review suggested that discounting, including couponing, is generally unregulated although there are specific rules for book sales and refinery products.

GERMANY

Information on rules is still to be supplied. The Commission's initial review suggested the use of discounts is regulated. Discounts can only be offered if the product is not subject to price maintenance and does not amount to a reduction of more than 3%.

GREECE

Information on rules is still to be supplied, but the Commission's initial review suggested that discounts appear to be prohibited. It is not clear whether there is any exception for discounts of a small value or whether couponing is allowed.

IRELAND

Information on rules is still to be supplied, but the Commission's initial review suggested that there do not appear to be any specific rules on discounting.

ITALY
Law

The Royal Decree-law on lotteries, RDL No 1933 of October 1939, converted into statute as Act No 973 of July 1939 (Title V), supplemented by the Royal Decree-law on prizes in sales promotions in the form of reductions in price, RDL No 1077 of July 1940; further supplemented by Act No 80 of sales; by Decree-law no 332 of 30 September 1988, converted into statute as Act No 384 of 27 November 1989, which extended supervision to schemes addressed to the seller, and by Article 19 of Act No 449 of 27 December 1997, which included services in the category of prizes and reorganised the system of authorisation.

A proposal will probably be made to prohibit prizes offered in connection with the sale of newspapers and magazines.

General

The legislation applies to general measures and not to terms agreed in individual cases.

Coupons and discount vouchers are allowed provided they do not constitute an incentive.

The rules on fair trading in the Civil Code prohibit the practice of offering a discount which is expressed as a percentage of the price offered by a competitor.

A trader selling on his own premises may be required to indicate the normal price and the amount of any discount offered; this is not necessary in the case of personalised direct mail offers to specific markets provided the discount is specified in the wording.

Article 19 empowers the government to make changes in the operative and procedural treatment of events and competitions carrying prizes. The main features of this are that supervisory powers are to pass from the Ministry of Finance to the Ministry of Industry, Commerce and Craft Trades and there is to be substantial deregulation. The departments responsible have drawn up first drafts of appropriate regulations as a basis for consultations which are currently being undertaken with trade associations. These drafts address the question of discounts which in some cases are considered to constitute 'prizes' and are consequently subject to the same rules. In particular, discount vouchers intended to promote the medium through which they are distributed, and promotions requiring payments in which participants are given the opportunity to buy an article or service at a discounted price provided that they submit (along with payment) stamps or coupons proving a certain number of purchases of an article or service which is the vehicle of the promotion, are treated on the same footing as any other prize and are consequently subject to tax. The new regulations will take the form of a Legislative Order that is likely to be enacted in the next few months and will probably take effect at the beginning of 1999.

LUXEMBOURG
Law

Articles 13, 14 and 19 of the law of 27 November, 1986 regulating certain commercial practices and sanctioning unfair competition as modified by the law of the 14th May 1992.

General

i Price reductions expressed in percentage and/or absolute terms.

Discounts such as 'old price 35 ecus – new price 29 ecus' are permitted but subject to the following conditions :

During sales : Articles must be stocked by seller at the beginning of the sales period and must have been sold prior to this period. The discount must be 'real' vis à vis the 'usual' price for the same article. Discounts can take the form of sales at a loss. Advertising of discounts can only be undertaken from the day preceding the sales period.

During authorised clearance sales : Must be 'real' discount as for previous case. Same conditions as above on sales as a loss and advertising.

During non-sale period (normal out of sale discount): The promotional character of the discount must be clear; the previous ('normal') price on which the discount is made must have been offered in the same sales' outlet for identical items for at least two months immediately prior to the date when the discount begins. The discount start date must remain indicated throughout the discount period in associated commercial communications. Such discounts on retail items which are commonly sold in seasonal sales are prohibited in the 30 days immediately running up to the seasonal sales periods. Sales at a loss are not allowed. Advertising can only start on the working day following the day when the discount begins.

ii Details of regulation applicable to '3 for the price of 2' or '25% more for the same price'.

'3 for the price of 2' offers

Allowed for combined identical products or identical products if :
- each item can be bought separately at its usual price
- the buyer is made aware of this possibility and the price of each separate item
- the discount on the total package offered does not exceed 1/3 of the combined price.

25% more for the same price

This is unclear since the two 'elements' can't be bought separately in which case it would be forbidden by the Courts, yet this practice is common practice in the food and drink sector.

iii Details of regulation applicable to discount coupons.

- Discount on price of future purchases is allowed subject to the same conditions set out above for 3 for the price of 2 offers.
- Free future purchase not allowed since 1/3 of cumulated value condition could not hold.

NETHERLANDS

Information on rules still to be supplied, but Commission's initial review suggested that discounts are allowed for all products and services other than cigarettes and insurance brokers. Couponing is allowed.

PORTUGAL
Law

Decree-Law No 253/86 of 25 August 1996 (which lays down arrangements for retails sales effected with price reductions, promotional prices etc.).

Decree-Law No 370/93 of 29 October 1993 (which prohibits individual restrictive practices in the distributive trades), as amended by Decree-Law No 140/98 of 16 May 1998 (the amendments entered into force on July 1 1998).

General

Discounts are allowed, although Articles 1-7 of the Decree provide that when a price reduction is announced, sufficient information must be given for the consumer to be able to determine the nature and duration of the sale. Information must be given on either the old and new price or the percentage reduction.

Couponing is authorised.

SPAIN

Information on rules is still to be supplied, but the Commission's initial review suggested that discounts are not regulated. It is not clear whether there is regulation on the use of coupons.

SWEDEN
Law

Marknadsföringslagen 1995:45 (Marketing Law) entered into force on Jan 1 1996.

General

Special offers in connection with marketing are regulated by Section 13 of the Swedish Marketing Law.

A trader who, in connection with marketing, offers the buyer the opportunity to obtain additional goods without consideration or at a particulary low price or offers the buyer other advantages, shall supply clear information on: the conditions for obtaining the offer; the nature and value of the offer, and the applicable time-limits or other restrictions.

i Price reductions expressed in percentage and/or absolute terms.
Allowed as long as the consumer obtains clear information on: the conditions for obtaining the offer; the nature and value of the offer, and the applicable time-limits or other restrictions.

ii '3 for the price of 2' or '25% more for the same price'.
Allowed. See above.

iii Details of regulation applicable to discount coupons.
Allowed. See above

UNITED KINGDOM

Discounts, including coupons, are allowed.

There is no specific legislation relating to discounting in the UK. The basic requirement is that any price indication should not be misleading (Consumer Protection Act 1987 Part III and the Code of Practice for Traders on Price Indications 1989). There are also restrictions under competition legislation to deal with abuses of a dominant position. Consumer protection and fair trading practices are covered by the following: Fair Trading Act 1973; Restrictive Trade Practices Act 1976; Resale Prices Act 1976; Trade Descriptions Act 1968; Competition Act 1980; Control of Misleading Advertising Regulations 1988; Price Marking Order 1991; Sale of Goods Act 1979 as amended by the Sale and Supply of Goods Act 1994; and Supply of Goods and Services Act 1982.

The Trading Stamps Act of 1964 requires trading stamps to bear a cash value which consumers can redeem when they have collected stamps worth 25p.

There are also codes of practice covering commercial communication activities such as the British Code of Advertising and Sales Promotion 1995 and the Direct Marketing Code of Practice 1998.

National contact points for Commercial Communications

The European Commission Contact Point emphasises that national contact points should not be regarded as sources of specific legal advice.

Austria

Dr Maria REIFFENSTEIN
Bundeskanzleramt
Bundeskanzleramt Abt VII/A/4,
A-1011 Wien

Tel: +431-711 72 - 47 54
Fax: +431-715 58 31

Belgium

Mr Frederic BAEYENS
Ministere belge des Affaires economiques,
Administration de la Politique commerciale
Bureau 6.044 North Gate III,
154 Bld Emile Jacqmain,
1000 Bruxelles

Tel: +32-2-206 50 14
Fax: +32-2-206 57 63

Denmark

The authority is the contact point
The National Consumer Agency of Denmark
Amagerfaelledvej 56,
2300 Copenhagen S

Tel: +45-31 57 01 00
Fax: +45-32 96 02 32
www.fs.dk

Finland

Mr Eero MANTERE
Ministry of Trade and Industry
P.O. BOX 230,
00171 Helsinki

Tel: +358-9-160 36 57
Fax: +358-9-160 40 22
eero.mantere@ktm.vn.fi

France

Mr Luc ROCHARD
Ministere de l'Economie des Finances et de l'Industrie
139, rue de Bercy
75572 PARIS CEDEX 12

Tel: +33-1-44 97 31 79
Fax: +33-1-44 97 30 43

Germany

The authority is the contact point
Bundesministerium fur Wirtschaft,
Referat II B 4
Heilsbachstrasse 16,
D-53123 Bonn

Tel: +49-228-615 46 20
Fax: +49-228-615 48 76

Bundesministerium der Justiz,
Referat III B 5
D-53170 Bonn

Tel: +49-228-58 43 25
Fax: +49-228-58 45 25

Greece

To be confirmed

Ireland

Mr Michael CLARKE
Department of Enterprise, Trade and Employment
Consumer Protection Branch
South Frederick St.,
Dublin 2

Tel: +353-1-6614444/2606
Fax: +353-1-671 7457
clarkem@entemp.irlgov.ie

Italy

Dr Francesco LOMBRASSA
Presidenza Consiglio Ministri
Via del Giardino 66
00186 Roma

Tel: +396-6779 5221
Fax: +396-699 1635

Luxembourg

Mrs Bernadette FRIEDERICI-CARABIN
Ministere des Classes Moyennes et du Tourisme
6, avenue Emile Reuter,
L-2420 LUXEMBOURG

Tel: +352-47847 13/14
Fax: +352-47847 40

Netherlands

Ms. Mariëtte KOBUS
Ministry of Economic Affairs
P.O.box 20101
2500 EC The Hague

Tel: +31-70-3796207
Fax: +31-70-3797014
M.Kobus@minez.nl

Portugal

Mrs Maria do CARMO SILVA
Instituto do Consumidor
Praca Duque de Saldanha no 31.
1050 Lisboa

Tel: +351-1-356 46 00
Fax: +351-1-356 47 19
ICPRES@MAIL.TELEPAC.PT

Spain

Mr Manuel CONTHE,
Cons. Economico y Comercial Jefe
Representacion de España ante la UE
Boulevard du Regent, 52
1000 Bruxelles

Tel: +32-2-509 86 67
Fax: +32-2-511 10 23

Sweden

Mr Per EKLUND
Ministry of the Interior,
Consumer affairs unit
S-103 33 Stockholm

Tel: +46-8-405 35 98
Fax: +46-8-723 11 93

UK

Lesley FORSDIKE
Department of Trade and Industry
Kingsgate House
66-74 Victoria Street
London
SW1E 6SW

Tel: +44-171-215 4153
Fax: +44-171-215 2975

The problem of televising sporting events

Armand Hennon
Chief Executive
Entreprise et Prévention

On 2 March 1995, TF1 did not broadcast the Arsenal/Auxerre match due to the presence of advertising hoardings for French alcoholic drinks in the British stadium. This has brought to light the inconsistency of French legislation as regards the unrestricted broadcasting of images on a European and international scale. This inconsistency was subsequently reinforced when the Commission and the European Parliament adopted the Green Paper (Mrs Jessica Larrive's report) on commercial communications, which defines the proportionality assessment criteria that the Evin Law cannot address, as illustrated in the case of sporting broadcasts.

TF1's decision was taken following pressure from the Conseil Supérieur de l'Audiovisuel (CSA, the French broadcasting regulator), which took the view that the broadcast would be in breach of the Evin Law. The decision, soon followed by the cancellation of other broadcasts, made a distinction between advertising for French products and advertising for foreign products, whereas the Evin law does not distinguish between the type of products, their alcoholic content and, more importantly, their nationality.

Commonly known as 'The Code of Good Conduct', the compromise drawn up under the aegis of the Ministère de Jeunesse et des Sports (Ministry of Youth and Sport) in April 1995, between the Conseil Supérieur de l'Audiovisuel and the television channels without the agreement of the advertisers in the sector in question, falls far short of sorting out the broadcasting problem.

However, the broadcasting debate has no basis in law as advertising for alcoholic drinks has been permitted in French sports stadiums since an amendment to the Evin Law was adopted in August 1994, authorising advertising hoardings throughout the whole country. Alcoholic drinks manufacturers, on the initiative of Entreprise et Prévention and as part of a voluntary compliance agreement signed by the whole of the profession, have to date refrained from making use of this freedom.

Furthermore, the televising of sporting events showing advertising hoardings for alcoholic drinks is legal and complies with the 'Television without Frontiers' Directive and this has been continuously confirmed by legal precedent[1] on this matter. The only difficulty at the moment is the CSA's interpretation of the Evin Law, which conflicts with legal precedent, earning France a warning from the European Commission on 21 November 1996 for impeding the principle of the free circulation of goods and services, as defined under the Treaty of Rome. The Commission also takes the view that the actions taken by France via the CSA are 'inconsistent and arbitrary', that the discrimination applied between advertising for foreign and French products has no justification on the grounds of public health and that an exemption already exists in France for the broadcast of Formula 1 racing with tobacco advertising.

However, the broadcasting debate has no basis in law as advertising for alcoholic drinks has been permitted in French sports stadiums since an amendment to the Evin Law was adopted in August 1994, authorising advertising hoardings throughout the whole country.

In support of this complaint, and in favour of submitting the case to the European Court of Justice, it should be noted that the latter recently stated in a judgement (C34-35-36/95 De Agostini and T.V. Shop) that any restrictions which limit 'television broadcasting organisations, based in the country of transmission, from tel-

[1] In fact, a ruling of the Tribunal de Grande Instance de Paris (Paris County Court), dated 27 February 1991, since confirmed by a summary order injunction by the Bordeaux Court on 11 March 1995, found that French broadcasters could not be prosecuted for broadcasting images containing advertisements for alcoholic drinks provided these images could not be assimilated to advertising messages in themselves, and the broadcasters are extraneous to their presence and do not derive any revenues from these.

evising, to the advantage of advertisers in the receiving country, any television advertising specifically aimed at the general public in the latter country, are contrary to the Treaty of Rome'.

Meanwhile, French advertisers continue to denounce the serious distortion in competition engendered by this interpretation, having experienced the greatest difficulty in exercising their rights to advertise in foreign stadiums due to the pressure brought upon them by the CSA via the television channels and the organisers of sporting events. This again is all in the name of 'the Code of Good Conduct'. Anyway, it is not the broadcasters who should be held accountable for failing to televise a sporting event or for discriminating against French advertisers, but the CSA, as the administrative authority which contributed to producing the 'Code of Good Conduct'. This is what in fact emerged in a decision at the Paris Court of Appeal on 23 September 1997 (TF1/Bacardi Martini) which found that by preventing Pastis Duval's access to advertising in a foreign stadium, TF1 was not acting wrongfully as it was basing its decision on the said 'Code of Good Conduct'.

The French ice hockey team at the World Championships televised at the end of April 1997 by the Eurosport channel, were sponsored by a German beer manufacturer whose name appeared not only on the ice, but also on the French players' helmets and shirts!

During the European Cup semi-final in Liverpool on 24 April 1997 for example, Cellier des Dauphins and Pastis Duval had their advertising hoardings banned at the last minute, whilst the English players were sporting the name of a foreign beer on their shirts.

Finally, on the subject of sports sponsorship, which is totally forbidden under the Evin Law, it was surprising, to say the least, to see that the French ice hockey team at the World Championships televised at the end of April 1997 by the Eurosport channel, were sponsored by a German beer manufacturer whose name appeared not only on the ice, but also on the French players' helmets and shirts!

Whilst the 'hunt' continues around foreign stadiums for advertising space for French products, which are not allowed to be promoted to their traditional export markets, foreign advertisers have still not experienced the same difficulties with the CSA.

However, in view of the fact that the 'Code of Good Conduct' has no status at law, the position adopted by the CSA could, if maintained in the future, compromise the television coverage of sporting and cultural events in France taking place abroad, if the brand names of alcoholic drinks appear on the screen.

However, we can see that the strict interpretation of the Evin Law, formulated by the CSA, opposes more 'permissive' interpretations by the latter of texts forbidding television advertising by other business sectors such as supermarkets or the media. Prohibited from advertising on television, these sectors nonetheless continue to exercise their legal right to advertise on hoardings in stadiums and to appear during sporting events on the TV screens which at the same time forbid the names of alcoholic drinks. This 'two-speed' vigilance by the CSA has no basis in law but there are grave consequences in terms of the repeated hindrance of the free provision of services within the Union, and this is one of the questions which still remains unanswered.