

**THE IMPACT OF SATELLITE AND CABLE TELEVISION
ON ADVERTISING**

**LES CONSEQUENCES DE LA TELEVISION PAR SATELLITE ET PAR CABLE
SUR LA PUBLICITE TELEVISEE**

Final report prepared for
the Directorate General for
the Environment, Consumer
Protection & Nuclear Safety

Contract number V(82)237

Impact on advertising of satellite
television and radio

Impact de la télévision par
satellite sur la publicité et le
contenu des programmes

August 1983

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CONTENTS

Page

INTRODUCTION

CHAPTER 1 : FUTURE OF TELEVISION AND TELEVISION ADVERTISING

 DEVELOPMENT OF SATELLITE AND CABLE NETWORKS
 IN THE EUROPEAN COMMUNITY

 DIRECT BROADCASTING SATELLITES (DBS)

 International dimension of DBS

 State of DBS projects

 TELECOMMUNICATIONS SATELLITES

 CABLE TELEVISION

 TELEVISION ADVERTISING TOMORROW

 MARKET OUTLETS

 The national market

 The international market

 Local specialized markets

 MOVEMENT OF ADVERTISING CAPITAL AND
 INFLUENCE ON THE QUALITY OF THE PRO-
 GRAMMES

 NEW FORMS OF TELEVISION ADVERTISING

REFERENCES

CHAPTER 2 : TELEVISION ADVERTISING IN MEMBER STATES

 TRADITIONAL CONTROL MEASURES AND PRESSURES FOR
 DEREGULATION

 TRADITIONAL CONTROL OF TELEVISION ADVERTISING
 IN THE MEMBER STATES

 LIMITS ON TELEVISION ADVERTISING

 Maximum duration

 Limitations concerning the days and hours for broad-
 casting advertising

Interruption of programmes and advertising blocks

Limitations on advertising revenue

Strict separation between advertising and programmes/the problem of sponsorship

CONTENTS AND PRESENTATION OF TELEVISION

ADVERTISING

 Broad framework

 Sensitive areas

 Advertising to children

CONTROL AND INTERPRETATION OF THE RULES GOVERNING THE CONTENTS AND PRESENTATION OF TELEVISION ADVERTISING

 Bodies responsible for preventive control/Participation of consumers

 How preventive control works in practise

 Case law resulting from preventive control

 Post facto control through complaints from viewers

RISKS OF DEREGULATION OF NATIONAL RULES ON ADVERTISING

THE FRENCH LAW ON AUDIOVISUAL COMMUNICATION

 Access of private initiative to television

 End of traditional control of television advertising?

THE UK WHITE PAPER ON CABLE

 Pressure for deregulation

 Principles of traditional control of television advertising remain valid

DE FACTO DEREGULATION IN ITALY

 Access of private initiative to off-air and cable television

 Lack of responsibility of television advertising

REFERENCES

CHAPTER 3 : INTERNATIONAL ACTIVITIES OF TELEVISION ADVERTISING IN THE CONTEXT OF NEW MEDIA	
UNILATERAL, BILATERAL AND MULTILATERAL ACTIVITIES IN THE COMMUNITY	
LUXEMBOURG	
THE NETHERLANDS	
FEDERAL REPUBLIC OF GERMANY	
FRANCE	
ITALY	
THE UNITED KINGDOM	
CONFERENCE ON THE EUROPEAN AREA FOR AUDIOVISUAL CO-OPERATION	
SELF-REGULATORY EFFORTS BY TELEVISION COMPANIES – PRINCIPLES OF THE EUROPEAN BROADCASTING UNION ON COMMERCIAL TELEVISION ADVERTISING BROADCAST DIRECTLY BY SATELLITE/DBS	
THE GENERAL FRAMEWORK OF THE EBU RULES	
Principles concerning exclusively DBS	
Distinction between broadcasts destined or not to a foreign public	
Contribution of the International Chamber of Com- merce	
SCHEDULING ADVERTISING BROADCASTS	
Limitation of advertising time	
Practice of the advertising block	
Sponsorship	
CONTENTS OF ADVERTISEMENTS BROADCAST	
CONTROL OF THE EBU PRINCIPLES	
EFFORTS BY THE COUNCIL OF EUROPE	
MAIN ISSUES DISCUSSED IN THE PREPARATORY WORK OF THE COUNCIL	
Advantages and disadvantages of DBS and cable television	

Advertising and freedom of expression

Legal safeguard and the question of a Council of
Europe Convention

**DRAFT PRELIMINARY RECOMMENDATION BY THE
PRINCIPLES GOVERNING TELEVISION ADVERTIS-
ING**

THE EUROPEAN COMMUNITY

**EEC REGIME FOR TELEVISION ADVERTISING
BEFORE HARMONIZATION**

Advertising messages destined to a foreign public

Until there is harmonization, the advertising rules of
the State receiving television broadcasts remain
applicable and take precedence over those of the
broadcasting country

Freedom of advertisers to distribute their messages
through television channels in a neighbouring State

**HARMONIZATION OF REGULATIONS GOVERNING
TELEVISION ADVERTISING**

Objectives

Contents of the draft directive

REFERENCES

CONCLUSIONS

MAIN ABBREVIATIONS USED IN THE REPORT

(1) National television channels

RTL	:	Luxembourg television
RTBF	:	French speaking Belgian television
RAI	:	Italian television
ARD	:	First German channel
ZDF	:	Second German channel
TF1	:	First French channel
A2	:	Second French channel
FR3	:	Third French channel
NOS	:	Dutch television
RTE	:	Irish television
ITV	:	British Independent television (ie commercial)
ITCA	:	Association of the ITV companies
EBU	:	European Broadcasting Union grouping national television channels

(2) Some advertising control bodies

RFP	:	French body controlling television advertising
SACIS	:	Italian body controlling television advertising
STER	:	Dutch body controlling television advertising
IBA	:	British body controlling television advertising
ASA	:	British body controlling non-television advertising

(3) Miscellaneous

DBS	:	Direct Broadcasting by Satellite (ie reception without relay or retransmission)
WARC	:	1977 International Agreement of the World Administrative Radio Communications Council on DBS
TDF ₁	:	French DBS satellite
Council of Europe/		
MMPO	:	Experts Committee on Media Policy

Council of Europe/

- **CDMM** : **Steering Committee on mass communication means**
- ZAW** : **German association of advertisers**
- OECD** : **Organization for Economic Cooperation and Development**

INTRODUCTION

In the discussion about the development of satellite, cable television and new information media the technological and industrial aspects which have taken precedence, and the interests of viewers and users have received insufficient attention. New technical services are to be provided, but their contents, what is to be offered to viewers remains unclear. In theory, increasing the number of channels and the scope for transnational broadcasting ought to enrich choice, and strengthen Europe's cultural heritage. It can be argued equally that there is no automatic guarantee that increasing the number of television channels will enlarge consumer choice. On the contrary the cost of producing new programmes to fill the expansion of outlets may lead to an increase both of the commercial influence over television and of the repetition of existing "popular" material to the detriment of minority interests. The advantages and disadvantages of direct broadcasting by satellite (DBS) have been analysed particularly by the Council of Europe (see Chapter 3), but essentially the impact on choice and quality remains in the area of pure speculation.

This study is not concerned with these broader aspects, but with the effect of satellite and cable television on advertising regulations, which has been recognized by the European Broadcasting Union (EBU), the Council of Europe and the EEC as one of the most urgent problems. The EEC Commission is to produce a "green paper" on satellite and cable television by the end of 1983, to which we hope this study will provide a contribution.

CHAPTER 1 deals with the plans for the development of DBS and cable television to the extent that they will effect national advertising regulations. Many of the early ambitious plans for DBS have been postponed or abandoned. The risk of transnational advertising overriding divergent national laws or restrictions on television advertising might appear less immediate. But this would be a short-sighted view, since the danger that purely commercial DBS or telecommunications satellite broadcasts will undermine national controls remains. There is now greater emphasis on developing cable networks as opposed to DBS, allowing for greater national control. But there is still the risk of statutory self-regulation of television advertising being eroded from within if different regimes are applied to cable, as opposed to traditional television. Some countries are likely to be more affected by cable, others by DBS.

CHAPTER 2 analyses the legal basis and functioning of the various statutory self-regulatory bodies in EEC countries. It covers general rules on television advertising, limits on the scheduling of advertisements, pre-vetting of advertisements, and the jurisprudence developed in sensitive areas : tobacco, alcohol, pharmaceutical products and advertising to children. Whilst in many countries, the control of the contents of traditional spot advertisements is satisfactory, the systems are widely divergent on the volume of advertising. They range from a total ban in Denmark, to severe limitations and concentration on block advertisements in, for example, Holland and Germany, to the more liberal regimes of RTL and ITV. Because of these wide divergencies, some consumer representatives in countries where advertising is banned, argue that advertising on television should remain a national issue; as advertising via DBS will not have any positive consequences for consumers, there should as a start be agreement that satellite programmes received abroad should not carry advertising. When it comes to harmonizing advertising rules in the EEC, the real difficulties lie in the area of the volume of spot advertising, and the appearance of new techniques, particularly sponsorship. The chapter ends with an analysis of trends towards deregulation — in particular the Italian situation — and recent developments in France and the United Kingdom, where both governments have foreseen the creation of new authorities to ensure that traditional control over television advertising is nevertheless extended to cable.

CHAPTER 3 concerns European co-operation on television advertising, beginning with an analysis of attitudes country by country. It is striking that although there is an evident requirement for European co-operation in this area, governments have reacted in divergent ways to the plans of neighbouring countries to introduce new channels, and attempts have been made to solve problems bilaterally rather than through the European organizations. This lack of European solidarity is no doubt the real cause of the very general EBU guidelines, and the decision by the Committee of Ministers of the Council of Europe to adopt recommendations, rather than to draw up a convention as the Assembly recommended. Will the same lowest common denominator approach characterize the efforts of the Commission? We can be relatively more optimistic, since the judgments by the European Court of Justice (the Debaube and other cases) clearly establish that divergent national television advertising regimes may be maintained until they are harmonized. Television is a service of a special nature, not to be assimilated to the EEC Treaty rules on the free circulation of goods. The chapter ends with specific recommendations to the Commission for a directive.

CHAPTER 1

FUTURE OF TELEVISION AND TELEVISION ADVERTISING

In this Chapter, we examine the short-term implications of direct broadcasting by satellite and expansion of cable and their effects on advertising regulations. But this will be only the first stage in a process which will fundamentally change the nature of television.

Satellites, optical fibre cable, video recording and reception equipment⁽¹⁾ open up new horizons for television⁽²⁾. Video games, videogrammes and video films, individual video recordings, special programmes by cable for local distribution, videotex (teletext and view data, broadcasts by satellite, pay TV, will be among the novelties. One has to imagine the situation of the viewer, who in most countries has been used to passively watching programmes from national public service organizations. In the future the domestic receiver (the present "television screen"), coupled with a control panel, will become a "terminal" which will give access to several services (telecommunications, data banks, different supplies). Traditional television will only be one of these services. The receiver will be fed by cable networks and by dish aerials which will capture either satellite signals or those transmitted by land.

I. DEVELOPMENT OF SATELLITE AND CABLE NETWORKS IN THE EUROPEAN COMMUNITY

The Report of the EEC Commission on Realities and Trends in television in Europe of 25.3.1983 summarizes the national activities of Member States as well as some neighbouring countries.

1. DIRECT BROADCASTING SATELLITES (DBS)

DBS satellites are powerful geostationary satellites whose signals can be received by television sets at home, either with an individual aerial in the form of a dish 90cm in diameter, or through a collective aerial. An earth station sends the signal towards the satellite which transmits and amplifies it towards the intended zone of coverage.

(a) International dimension of DBS

The press has talked of a "war of the airwaves" among the nations, because DBS can, from the *technical point of view* cover not only ones own national territory, but also *reach directly* the viewers in several neighbouring countries without the

permission of the authorities of these countries. The aerials become more and more powerful and the footprint (ie the zone covered) by the satellite becomes more and more extensive⁽³⁾. It is true that there are obstacles to "direct" maximum coverage : differences in technical standards⁽⁴⁾ limit the possibilities of reception of DBS coming from foreign countries and the price of individual reception equipment remains high (equivalent to the price of a modern colour television set or a small video tape recorder). Experience proves however that few technical problems remain unsolved and one must above all not underestimate the potential of DBS, even if its broadcasts should, in the first instance be relayed largely by cable (cf recent study by CIT Research on DBS).

In legal terms the international dimension of DBS is very much more limited. The basic rules governing DBS in Europe were defined in 1977 by the World Administrative Conference on Radio Communication (which we will refer to simply as WARC). These rules entered into force in 1979 for a duration of fifteen years. The basic principal is *national coverage*. The corolary of this is the notion of *inevitable technical overspill*. The countries which do not wish to be "covered" by foreign satellites have the right to "occupy" on the ground the broadcasting frequencies of foreign DBS. Even the advertisers recognize that this right of the receiving country takes precedence over basic rights concerning freedom of information and communication except in the case of an abusive use of the frequencies in the receiving country⁽⁵⁾.

For viewers, DBS ought to enlarge the choice of programmes, by opening up national frontiers. A distinction should be made however between broadcasting and advertising. In our view freedom to advertise cannot be assimilated to freedom of expression (cf Chapter 3), and the advertising rules of the receiving country must be respected, until they are harmonized.

(b) State of DBS projects

According to the Commission⁽⁶⁾ Germany will be the first to launch a satellite for DBS in the spring of 1985, followed by France in the summer of 1985 and the United Kingdom in June 1986. In conformity with the WARC agreement the three countries aim to cover their national territory⁽⁷⁾.

Many *uncertainties*⁽⁸⁾ remain about the cultural innovations which will be brought about by those satellites, which have been primarily promoted for

industrial and technological reasons. Financial considerations seem to have pushed France and Luxembourg to negotiations over the participation of Radio Television Luxembourg — RTL — in the French satellite; an agreement is not expected before the autumn of 1983. Luxembourg seems therefore to have delayed and even abandoned its own satellite project, and it was precisely this project which created within the Community, the most serious apprehensions about an excessive commercialisation of television (cf below, Chapter 3 I). In general, there has been a certain slowing down of initial ambitious projects for DBS, for example the case of Nordsat, a satellite planned by the Nordic countries.

Does this mean that the commercialisation of DBS in the Community will be limited? Certainly, initial fears that rapid expansion in DBS channels would threaten national broadcasting systems, and overturn advertising regulations, were exaggerated. The emphasis on telecommunications systems and cable allowing for a greater degree of national control have unfortunately reduced the pressure on governments to reach European agreements on advertising; (see Chapter 3). This is a short-sighted view and one should remain cautious, since it is not only a question of looking within the EEC. In its interim report on television in Europe, the Commission itself underlines that it is “not difficult to imagine pressures put on small countries by powerful commercial interests”. There is no doubt that it is not by chance that among the neighbouring countries, the Commission examines the case of Andora which is studying the possibilities for DBS and is looking for “sponsors”. The Council of Europe also drew attention to the dangers of satellite channels being sold to commercial operators.

2. TELECOMMUNICATIONS SATELLITES OR “POINT TO POINT SATELLITES”

By “point to point” satellites one means fixed services between a broadcasting station and one or several receiving installations — in particular cable networks — which provide a relay to individual homes. Contrary to DBS, there is no direct reception by viewers, even if some optimists foresee this possibility⁽⁹⁾. According to the EEC Commission⁽¹⁰⁾, the distinction with DBS is becoming more and more unclear (hybride satellites; DBS is received as telecommunication satellites by community antennae).

As opposed to DBS, there are already in Europe embryonic trans-frontier programmes distributed by an international telecommunications satellite — the Orbital Test

Satellite/OTS — exploited moreover by a private company — Satellite Television Limited, London — and financed by advertising. Only the countries which have expressed their agreement receive these broadcasts in part of their territory (Switzerland, Norway, Finland, Malta). No member state of the Community receives them; approached by SATV certain countries refused reception to protect the public monopoly or because the broadcasts were incompatible with the national advertising rules. *Reception of telecommunication satellite broadcasts is therefore at present well under the control of the receiving countries.*

A new stage will be reached with the launching of the European communications satellite ECS — the first was launched with success in June 1983 the second is planned for March 1984. This satellite has nine channels for television and telephone links. After some heated discussions, eight countries (the Federal Republic of Germany, France, Italy, the Netherlands, Norway, United Kingdom, Switzerland, Belgium) have been authorized to use this satellite. Not only SATV, but other private companies intend to participate in the international distribution of televised programmes through ECS. These private companies hope to finance their programmes either by advertising and sponsorship (this is the case for SATV), or through pay television.

In addition to these international telecommunication satellites, there are plans for national satellites, particularly in France and Germany (Telecom 1). The French postal authorities think that even by comparison with Telecom 1 — for which finance is already guaranteed — the satellite for DBS (TDF1) is unnecessarily expensive and that it would be better to provide additional money for programmes, rather than launch this satellite⁽¹¹⁾. Will the development of telecommunication satellites slow down or even prevent the advent of DBS, particularly since several States are banking on the development of cable networks (i.e. an infrastructure adapted to the reception of broadcast distributed through point to point satellites)?

3. CABLE TELEVISION

Some EEC countries (Belgium and the Netherlands) are already cabled 70/80 per cent. The networks however only use a limited number of channels and broadcast traditional television programmes. According to some forecasts the future may see the development of *optical fibre cables* characterized by their enormous capacity for transmission and their particular aptitude for transmitting information in a digital form; they will offer an increased possibility of sound, pictures, figures, interactive services.

The Commission report on television in Europe recognizes the great importance of optical fibre cables but does not think that at the international level they will have the same new impact as DBS satellites, given that cable remains, by its very nature, a national activity (page 10 of the report). But we believe that one should not underestimate the international aspects of cable : the participation of foreign capital, programmes made abroad, the reception of foreign television signals and also the risk of broadcasts towards other countries by cable companies of programmes which would be forbidden in the country of origin. We would also like to warn the Commission of the following risk : although the local character of cable may justify a certain flexibility in regulations, one should avoid new and unjustifiable practices developing first of all at the local, then national and finally at the international level. In this study, we will warn particularly against the danger of *breaches in regulations on advertising*. In our view, this danger of erosion of national statutory self-regulation of advertising is more likely to come from differences in controls for cable as opposed to traditional television networks, than directly through the development of transnational broadcasting (see Chapter 2).

Since the publication of the report on television in Europe several national decisions have been taken confirming that the expansion of cable network is in the forefront of national policy. The British government published its White Paper on cable in April; whilst awaiting the adoption of legislation, a dozen new pilot projects are planned. In early May, the Danish government proposed to eliminate the legislative restrictions affecting cable television in order to set up a national network. In France an interministerial unit for television distribution services officially took up its functions at the end of April; an investment plan spread over fifteen years has been set up. In Germany, there is still disagreement in the government coalition on the expansion plan; the competent minister wishes no further time to be wasted and is pressing for the development of copper cable, whilst others wish to invest in optical fibre cable. In January 1984 RTL will launch a programme in German by traditional off-air* broadcasting counting on the development of cable networks in Germany.

What will be the rhythm for the expansion of cable? A study carried out in November 1982 by CIT Research on cable television gave the following estimations for 1992 : according to the most optimistic assumption, 27 per cent of European

* Off-air means traditional terrestrial broadcasting.

families would be linked by cable, whereas the pessimistic assumption would be only 16 per cent. Will these recent political decisions allow for accelerated expansion?

II. TELEVISION ADVERTISING TOMORROW

1. MARKET OUTLETS

With these different possibilities, tomorrow's television does open up new markets for advertisers.

(a) The national market

The advertisers recognize readily that in the absence of restrictions on airtime they would certainly make greater use of television advertising. In the Community the potential which is not exploited is particularly high in the Netherlands and in Germany (the demand appears to be three to five times above what is offered in terms of broadcasting time)⁽¹²⁾. Some advertising associations consider that the British length of advertising time (between 80 and 90 minutes a day) does allow the demand to be satisfied and make it clear that they would not be against such a practise in other countries. It should be underlined though that the British length of advertising time is higher than all the national television channels in the Community. The danger in exporting this volume of television advertising to the rest of Europe is that in other countries equivalent control mechanisms do not always function so well as in the UK.

(b) The international market

By this we mean televised broadcasts which are addressed to several national audiences and present an international character. The advertisers claim that they are little interested in this type of television which obliges them to give their advertising an international character. They argue that the products and consumption habits are so different among countries that it is very difficult to conceive of an efficient international advertising policy; at the same time the viewers are not particularly interested in international broadcasts. This claim must be treated with scepticism. Not only is there the commercial interest in new markets, but there are, as consumer organizations know from their own tests, significant numbers of products sold under the same brand names throughout Europe. Advertisements in the cinema, in magazines and periodicals of an international character, show that international publicity campaigns are used. Such advertising could also increase on television, if there is emphasis on "non-verbal campaigns",

and other ways are found of overcoming the language barriers.

In practise, there is the experience of Satellite Television Ltd/ SATV which has succeeded in being financed by advertising although it covers very dissimilar markets (Switzerland, Norway, Finland, Malta). This company considers that there are about forty groups of products which lend themselves to advertisements of an international type. Let us mention the current regular advertisements : Coca Cola, Ford, Timex, Polaroid, British Airways, Pepsi Cola, Johnson Wax, Cadbury Schweppes. According to SATV it is enough to attract 2 percent of the audience in each country to be profitable, if broadcasts are distributed from Iceland to Tunisia. SATV remains in any case optimistic, intends to extend its broadcasting hours and will open up to *sponsorship* in 1984. This may well revive the interest of the advertisers.

(c) **Local specialized markets**

Cable television is by nature adapted to cover these markets. The American experience shows however that the advertisers remain reticent, because of the fragmentation of the public and the difficulty of measuring their impact. American cable operators consider that the advertisers will in the end be attracted to programmes aiming at reduced and limited audiences — narrowcasting — (television channels only distributing information or sport, programmes aiming at minorities, cultural channels)⁽¹³⁾.

In Europe also well many experts and advertisers are of the opinion that the advertisers as well as the viewers could show a preference for “narrow casting”⁽¹⁴⁾.

However, CIT Research comes to the conclusion that cable would not in the near future attract more than 10 per cent of the total advertising resources in Europe. The local press and radio could however suffer to the benefit of cable, above all if classified advertising and sponsored programmes are allowed (cf White Paper on cable).

In conclusion, we note that advertising revenue alone will not be enough to finance the use of new television projects (cf in particular the report of the Home Office study “Direct broadcasting by satellite”). In general it is assumed that

there will be a mixture of advertising and pay TV. The interest of advertisers could however be stimulated by the development of new forms of publicity (cf below).

2. MOVEMENT OF ADVERTISING CAPITAL AND INFLUENCE ON THE QUALITY OF THE PROGRAMMES

In the discussion in Europe on the free circulation of television programmes, the expatriation of advertising revenue to the benefit of foreign television companies and at the expense of the national media is a major pre-occupation. In the framework of the "European audiovisual area" (cf below) which brings together a certain number of EEC Member States, there was talk of setting up a consultative mechanism to overcome the threat to the existing arrangements for financing different television networks. The race in Europe for advertising revenue may dilute the restrictions on advertising, in particular as far as the length and hours of broadcasting is concerned, in order to retain capital in the country. A Dutch study of January 1980 presented to the Dutch viewers a spectre of an RTL satellite draining publicity revenue from their country. Whilst initially only 24 per cent were in favour of an extension of television advertising, 60 per cent were no longer opposed to it when confronted with the danger from RTL⁽¹⁵⁾.

The quality of the programmes may suffer because of the race for advertising revenue. The Stoffelen report of the Parliamentary Assembly of the Council of Europe presents a detailed scenario⁽¹⁶⁾, which it considers realistic and which was established after consulting several experts. Basically the report foresees the following development : satellites or at least a channel is sold to a commercial company. To attract the maximum publicity revenue, this television channel seeks to reach as wide an audience as possible. To succeed, it will broadcast, above all, light entertainment programmes. A part of the advertising revenue from classical television will be taken. Perhaps the Stoffelen report is too pessimistic; it is equally possible that DBS and cable will open up better scope for catering to minority tastes and opinions. Nevertheless, the fear of deteriorating quality, following cut-throat competition to attract advertising, is found in almost all studies .

Are there signs which justify these fears? It is known that powerful american interests are trying to establish themselves in Europe in the area of the new media, particularly through the smaller countries. Even if we only look at Europe, we al-

ready have the example of Italy which, according to a recent study by the advertising agency of Walter Thompson, has a genuinely commercial television⁽¹⁷⁾. According to a representative of the RAI⁽¹⁸⁾, the audience of the RAI has dropped as a result by 20 per cent which has led it to broadcast four or five films per week, as opposed to two in the past. Since 1976, the purchase of television programmes from foreign countries has more or less quadrupled. As far as private broadcasting stations are concerned, 84 per cent of their programmes are covered by American or Japanese productions.

It is possible that this mediocrity only occurs in the phase of struggle for survival between too many private initiatives and that quality will improve as soon as the stronger organizations have emerged. Should one however show blind confidence in private initiative and powerful commercial interests? Consumer associations are of the opinion that one should preserve minority tastes and stimulate creativity. This view is shared by the British government in the White Paper on cable.

3. NEW FORMS OF TELEVISION ADVERTISING

There are a number of different signs that the era of classical spot advertising is changing.

- * **Crowding of viewing periods** : Advertisers of course seek to broadcast their messages when there is the largest audience. There are a limited number of peak viewing times, which vary from one country to the next. To judge from the French experience (cf President of RFP A2 in "Stratégies" No 279), there is little scope for adding further advertisements during these periods. Will advertisers not be encouraged to seek new forms of television advertising rather than to broadcast classical spot advertisements at less popular viewing times?
- * **Boredom and loss of viewers** : We know that research has been done showing the interest of the public and in particular of children in television advertising. The analysis of these results should be the subject of a separate study. According to our information it seems evident though that excessive advertising does provoke a loss of viewers, particularly with by remote control of television, (allowing one to switch instantly from one channel to the next). Boredom among American viewers is notorious. Similarly, those responsible for SACIS in Italy (the company responsible for advertising on RAI) have no doubt about the phenomenon of loss of viewers in their country. According to them the need to subject the

programmes themselves to advertising requirements by introducing new advertising elements into programmes will be more and more apparent.

- * **Search for sponsors** : The more television channels (national, local, specialised, international) the more demand there will be for programmes to broadcast. Either companies will use old television series (above all American or Japanese), or look for new, rare and expensive programmes. They have to be financed, often produced by the company itself. What would be more natural than to turn to sponsors? Signs of such a development are not lacking. It is enough to mention the search for sponsors by DBS Andora or the sponsors for the first attempt at "free TV" in France. Let us not forget either that the British White Paper expressly authorizes sponsorship for cable networks.
- * **The search for a close link between advertising and information** : To make publicity more credible, there is the additional risk that it will be presented as information; there is even a neologism ("informercial") to describe this practise.

The appearance of televised services (teletex, videotex), alongside traditional programmes, makes the danger even more real. These future services aim at informing, to provide reliable, exact and clear data; the viewers will rely particularly on this new medium. The pilot projects with Bildschirmtext in Germany have already shown, in practise, the risk of confusion between information and advertising.

As far as traditional programmes are concerned, we should warn against the development of broadcasts of the "Home Shopping Show" type in the United States⁽¹⁹⁾; it is a half-hour talk show with "guests" who are in fact commercial sponsors.

In conclusion, we consider that advertising will develop at the same time as television. It will seek to adapt to the new medium and to find a new effectiveness. National and international authorities would therefore be wrong to limit their attention to classical forms of television advertising.

REFERENCES

- (1) This equipment is not the subject of this study.
- (2) For further details cf in particular report of the EEC Commission on realities and trends in television in Europe and in particular its Annex 2 "Technological development".
- (3) Maps of the reception zones of the DBS in Europe : cf Annex 9 of the report by the EEC Commission mentioned above.
- (4) EBU is working on harmonization standards, but fundamental differences continue to exist in particular between on the one hand France and Germany and on the other the United Kingdom (cf Business Brief No 970, p.8).
- (5) "Werbung über Satelliten"; edition ZAW (Zentralausschuss der Werbewirtschaft).
- (6) Annex 8 of the Report on television in Europe mentioned above.
- (7) Notably Convention between France and Germany on technical and industrial co-operation in the area of Satellite broadcasting of 19.4.1980 : article 1,3.
- (8) Cf in particular "Le Monde" of 16.6.1983 : "the uncertain future of TDF1".
- (9) Cf Brian Haynes - Director of SATV - in "Beam us up, Broadcasting Man" (in Intermedia July 81/volume 9/No 4).
- (10) Annex 2, p.44 of the Report on television in Europe.
- (11) Cf article mentioned above in "Le Monde" 16.6.1983.
- (12) "Union Belge des Annonceurs : 'Télévision et Publicité' - 1980".
- (13) Financial Times, 6.7.1982 : "US cable televisions - now for the hard part".
- (14) Advertising Age's Focus Oct 82 : "Switch will be slow"; Europe 82 : "Satellite television - new links for Europe?".
- (15) Cf "Ster en Satelliet" by the "Instituut voor Sociale Kommunikatie en Marktonderzoek".
- (16) Cf annex.
- (17) Several hundred private companies (of which three or four big channels have emerged) compete with RAI (the public television).
- (18) Cf "Libération" of 11.2.1982.
- (19) Cf annex "Advertising Issues in New Communications Technologies" by Mrs Pridgen, Wyoming University, USA.

CHAPTER 2

TELEVISION ADVERTISING IN MEMBER STATES
TRADITIONAL CONTROL MEASURES AND PRESSURES FOR DEREGULATION

“Television advertising is powerful. It has sound, movement, colour and an open invitation right into the homes of millions of families... By its nature it is a family medium... A medium of such direct impact has to take great care to avoid offending any significant body of viewers”. This opinion by the Independent Television Companies Association in the UK (ITCA) is echoed in similar terms in the self-regulatory codes as well as the laws of other Member States. The special attention given to television advertising results from the special nature of television. If the introduction of new technologies (cable, video, satellites) calls fundamentally into question the special nature of television, it is highly probable that strict regulation of television advertising will not survive either. It is essential, in view of future EEC rules to draw attention to the traditional controls for advertising and to examine the national pressures for deregulation.

Any EEC legislation will, in effect, have to be based on national situations. The judgment by the Court of Justice of the European Community of 18 March 1980 in the Debaue case, the basis of the future Community regime for television advertising, is clearly founded on the “special nature of televised messages”. The interim report of the Commission on television in Europe of 25 March 1983, is already much less categorical about this special nature by stating that “In view of the medium term prospects the question whether the existing legal principles need to be reviewed in the light of a completely changed situation will have to be considered by the end of the decade”.

I. TRADITIONAL CONTROL OF TELEVISION ADVERTISING IN THE MEMBER STATES

Existing regulations⁽¹⁾ only applying to *national* television networks (all members of the European Broadcasting Union (EBU)), are a mixture of legislative governmental and statutory self-regulatory rules. It is essential to stress their legal basis in the light of future EEC harmonization; it is clear that the rules of a legislative and governmental nature are of fundamental importance to the Member States and must be considered as basic principles for the protection of the general interest.

In almost all Member States *scheduling*, ie the extent and the conditions for the broadcasting of television advertising, come under the direct control of public authorities in

order to limit the influence of advertising and ensure a strict separation between programmes and advertising. The rules about when advertisements may be screened are essential to what is at stake for the authorities, the television networks, the advertisers and the viewers.

The *contents and presentation* of television advertisements are first of all governed by rules concerning advertising in general (fi misleading and unfair advertising, advertising for pharmaceutical products). Then in all Member States, except in the Federal Republic of Germany there are specific rules for television advertising drawn up by the television companies and/or by the bodies specially responsible for television advertising. In general the law gives a mandate for the drawing up of rules so that one should speak of statutory self-discipline, particularly since the authorities retain overall responsibility. Thus, the "Code de la Regie Française de publicité" (RFP) specifies at the outset that the rules can be changed at any moment in the interests of the public service. The legal status applies equally to commercial television in Britain (ITCA), governed by a code which is the work of a public body, the Independent Broadcasting Authority (IBA). IBA defines itself as "one of the country's official instruments of consumer protection".

On the other hand, the code of ethics of the other purely commercial network "Radio Television Luxembourg" (RTL) should be considered as non-statutory self discipline since the Luxembourg Government has not fixed limits to the advertising activities of RTL.

Even if the exercise of public authority over these codes controlling television advertising is not always very direct, it is essential to underline the difference between statutory self-discipline and voluntary self-discipline (which prevails above all in the written press). This latter form of control relies essentially on the goodwill of the advertisers who establish and apply their own rules freely.

Not only in law, but also in practise, this distinction is essential. Statutory self-discipline with regard to television leads to genuine controls, which moreover are preventive, to ensure that the rules are being respected, whilst one of the main weaknesses of voluntary self-discipline is precisely the weakness of the controls.

Except for some standards established by ZDF, the German channels ARD and ZDF do not have specific codes. They respect the rules concerning advertising in general, which are based on fifteen federal laws and regulations (the most important being those con-

cerning misleading and unfair advertising and pharmaceutical products), rules made by the Laender (exclusively for ARD), and non-statutory self-disciplinary codes (the most important being those for alcoholic drinks and children). When it comes to implementation, the German networks are however in line with those of other countries in carrying out preventive controls to ensure that this body of disparate rules is respected.

We refer to the statement (see annex) by IOCU/BEUC concerning "Direct broadcasting by satellite and the Consumer" for the Council of Europe as a complementary analysis of the different ways of regulating advertising (pages 2 to 5). We will now examine in detail the rules applied to the scheduling of television advertisements, their contents, presentation and control.

(i) SCHEDULING OF TELEVISION ADVERTISING

(a) Maximum duration

All⁽²⁾ television channels in the European Community limit the maximum duration of advertising messages. These restrictions are calculated in different ways :

- **Limitation by the hour** : IBA allows advertising for an average of six minutes per hour. As a general rule the total amount of advertising messages during a given hour must not exceed seven minutes. This system allows IBA/ITCA to have the highest total duration in the EEC (eighty-four/ninety minutes per day). Irish Television (RTE) is limited to seven and a half minutes per hour within a fixed daily limit equal to 10 per cent of broadcasting time.
- **Limit by the day** : The annual average duration per day is twenty minutes in the Federal Republic of Germany (ARD and ZDF) and eighteen minutes in France (subject to a ceiling of twenty-four minutes); the German limit has not varied since the introduction of television advertising there twenty years ago, despite constant pressures from the beginning from the advertisers! The limit for RTL is twenty per cent of broadcasting time per day (equivalent to 62 minutes per day in 1980). Greek television can broadcast 30 minutes per day with a maximum of ten minutes per programme.
- **Limit by the week** : Three hours of advertising per week in the Netherlands; the government is seeking, however, to add half an hour per week.
- **Limit which is less specific** : Five per cent of broadcasting time on RAI in Italy.

On the basis of the figures published in 1980 by the Belgian Union of Advertisers (in "Television et publicité") we obtain the following table : Netherlands fifteen minutes per day (for each channel), Federal Republic of Germany twenty minutes per day (for each channel), France twenty-three minutes per day (for each channel), Italy twenty-five minutes per day, Greece thirty minutes per day, Ireland forty-five minutes per day, Luxembourg sixty-two minutes per day, United Kingdom eighty minutes per day.

As far as the legal basis of these time limitations is concerned, there is a clear difference between the public networks and the commercial ones (IBA and RTL). For the first the precise duration is fixed either by the legislator or by the executive authorities. RTL has established its own limit but it is not subject to legislative control. On the other hand ITV limits are clearly based on the British Broadcasting Act.

(b) Limitations concerning the days and hours for broadcasting advertising

- **General limitations** : Germany and the Netherlands are the two countries in the Community which give the greatest importance to this kind of rule. Thus, ARD and ZDF only broadcast advertising between 6 and 8 p.m. and do not do so at all on Sundays and public holidays : on its own initiative ZDF has extended this list still further. In the Netherlands advertising is concentrated around the evening news and no advertising is broadcast on Sundays, Good Friday, Christmas and Ascension.
- **Special limitations** : Some television networks have rules about the broadcasting of advertising messages for certain products in terms of the type of programme or the hour of the day. For instance, IBA refuses to broadcast advertising involving health problems during childrens' television time. NOS does the same for certain types of sweets and RAI on alcohol above 21° and for personal hygiene goods.

(c) Interruption of programmes

Whilst generally broadcasting advertising messages between two programmes, RTE in Ireland also shows them between natural breaks during cinema films and lengthy broadcasts. Other public broadcasting networks, as those in France, only do so on exceptional occasions (for example, during sports programmes). In the light of future EEC harmonization, Special attention should be given to the commercial channels IBA and RTL. IBA broadcasts advertising during "natural

breaks". For IBA these are moments when even without advertising, there is in any case an interruption in the continuity of the programme. But the break is regulated by a series of strict rules depending on the nature of the programmes and their duration. This detailed regulation has the effect of guaranteeing that except for the transmission of films, sporting events or lengthy variety programmes, no programme is interrupted for more than three minutes. We welcome these precautions without however subscribing to the principal of interruption of programmes.

RTL for its part hardly provides for any rules about the interruption of programmes, except for the clear identification of advertising messages. According to those responsible at RTL, programmes cannot be interrupted too often without annoying the public; in the past an attempt to increase the number of interruptions has provoked an "avalanche of protests". In conclusion, the interruption of programmes is a characteristic only of the purely commercial channels.

(d) Limitations on advertising revenue

Imposing financial constraint is another way of limiting the influence of advertisers.

- **Maximum amount of advertising revenue** : Before the adoption of the new law in 1982, France laid down that the proportion of advertising revenue could not exceed 25 per cent of the total resources of each of the television broadcasting organizations. In Italy a parliamentary commission decides annually on the maximum amount of advertising revenue for the following year (21.80 per cent for 1981). In Germany the State Treaty (Staatsvertrag) provides explicitly that advertising can only be the second source of revenue after license fees on ZDF.
- **Monopoly of television advertising** : It is interesting to note that in the United Kingdom competition to attract advertising revenue — outside ITCA members — has been avoided; a special agreement was reached to this effect between ITCA and Channel 4 when this new channel appeared. The objective is clear : to avoid a situation where advertisers are able to bargain from a position of strength. Competition however exists now between ITCA members and TV-am (breakfast television), but, the latter has not met with a big success with advertisers.
- **Centralization of advertising revenue** : Dutch television made up of different broadcasting organizations, has sought to avoid direct links between these

companies and advertisers and given the task of collecting revenue to a central organization, the STER; the advertising revenue is then divided up among the broadcasting organizations.

(e) Strict separation between advertising and programmes/the problem of sponsorship

The rules already mentioned aim to limit the importance of television advertising. Are they sufficient to guarantee the strict separation between advertising and programmes? According to RTBF (French speaking Belgium television) "placing publicity blocks exclusively around the news programmes, on the basis of the Dutch model, would best preserve the structure and the contents of the programmes"⁽³⁾. But even the television news can be influenced by advertising if one is to believe the report of a French Senator, Mr Caillavet⁽⁴⁾. In addition to specific rules limiting the duration, the hours when advertising is broadcast, etc., one finds in different laws (Staatsvertrag, the British Broadcasting Act) as well as in several self-regulatory codes, an additional *very general* clause guaranteeing the separation between advertising and programmes.

These rules aim without doubt at the identification of spot advertisements, but do also cover sponsorship of programmes. However those responsible at the EBU told us that most television networks benefit in one form or another from sponsorship, although this practise remains formally banned almost everywhere. This is a reason for not relying on the very general rule mentioned above and to go further into the problem. The IBA has gone further than other authorities by drawing up complementary rules on sponsorship in 1982⁽⁵⁾. Although there are a multitude of possible forms of sponsorship, we will try to define five main categories :

- **Programmes giving the impression of sponsorship** : There is a widespread wish on the part of television companies (cf in particular the English, French and Dutch codes), to avoid being wrongly associated with advertisers. It is essential to prevent a programme or a whole channel being considered as sponsored when they are not; conversely, the channel cannot give the impression of supporting one or other advertiser. The broadcasting authorities give particular attention to the following situations :
 - * The staff of television programmes must not appear in advertisements.
 - * Advertisements (televised or distributed in any other manner) concerning products or services made popular by television programmes (i.e. child-

rens' programmes) must not mention these programmes.

- * Advertisements whose contents are close to a particular programme (eg an advertisement for agricultural tractors during a farming programme) : may in principle be broadcast during such programmes, except if it gives rise to the impression of sponsorship.
- * It is only in exceptional circumstances that a programme can, for example, mention that books or musical recordings which are linked to it are available in the shops.

Such guidelines are not easy to enforce. The last rule, for example, about mentioning source material, is more honoured in the breach than the observance.

- **Sponsorship of events transmitted by television** : In the last few years the number of sporting and artistic events patronized by commercial interests, has increased rapidly. In the United Kingdom, for example, the twenty most important sporting events from the point of view of sponsorship represented, in the course of the first half of 1982, 35 per cent of all televised sports programmes (an increase of 4 per cent by comparison with the previous year). The big problem is the appearance on the screen of advertisements for products or services which are not authorized in classical spot advertisements. We are thinking in particular of tobacco advertising⁽⁶⁾. There are instances where the advertisers themselves limit the sponsorship of events to avoid unfair competition among them. Thus, the German advertising association ZAW adopted self-regulatory rules concerning publicity at sporting events in 1974 : any advertising specially put up for being transmitted by television should be forbidden whilst permanent advertisements would be acceptable.

The importance of sponsorship of events, above all sports events, is underlined by the adoption a few years ago of principles by the European Broadcasting Union (cf below).

- **Programmes financed by advertising** : The financing of television programmes merits particular attention with the expected introduction of new channels. The programmes will become an increasingly rare and an expensive product and any form of financing will be welcome. Some advertizers demand that sponsored programmes should not be assimilated to advertising. Consumer associations maintain on the other hand that they are advertising and should be treated as such. It is difficult to gather a picture of current

sponsored programmes. In the official reports (for example, the Stoffelen report of the Council of Europe, or the draft report by Mr Hutton for the European Parliament) it is concluded that only Ireland and Germany allow sponsored programmes. The Irish television does in fact, permit sponsored shows, but only between 2 and 3 p.m. and they are submitted to the general rules concerning the contents and the presentation of advertising. The German channels on the other hand, formally deny receiving any sponsorship. Is this kind of confusion (on whether sponsorship happens or not) due to misunderstanding about what is meant by sponsorship?

This ambiguity proves in any case that sponsorship must be given special attention by the EEC authorities. If further evidence is needed to show that one cannot avoid the problem by proclaiming that sponsorship does not exist, we recall that even television companies formally forbidding all advertising, accept co-productions with sponsors (thus the Belgian television networks allow for sponsorship by public authorities and non-profit making organizations). The caution with which IBA has gradually admitted sponsorship should be noted.⁽⁷⁾ In principle, sponsorship remains forbidden by the law. Only the sponsorship of factual programmes is allowed (factual portrayals of doings, happenings, places or things), provided they do not contain any undue element of advertising. On the basis of the law, IBA has added the following specifications : a brief mention of the sponsor may be broadcast provided the programme contains no publicity or promotion in favour of the sponsor.

IBA continues to consider that "the absence of sponsorship contributed to create a system of television broadcasting which whilst being financed by advertising, is envied in Europe and North America; this system is protected from commercial pressures and prevents the advertisers from turning away from spot advertising towards sponsorship"⁽⁸⁾.

- **Prizes and goods offered by sponsors :** (Prizes, premiums, gifts for television games, books used in the preparation of programmes) : IBA (commercial television) refuses, in principle, contributions such as prizes, premiums whilst, for example, the Belgian television (public) accepts this kind of gift. When such material is used for the preparation of programmes, IBA accepts that donators should be thanked briefly during the programme in an informative style, not to be associated with advertising.

- **Advertising itself taking the form of programmes** : In principle, sponsored programmes remain in the hands of the producers and not the advertisers. This is no longer the case if the advertisers are at the center of real publicity programmes (magazines, talk shows, games). If it is a question of filling a publicity bloc of five minutes in "a more lively manner" but leaving no doubt as to the advertising nature of the programme, one might welcome this effort of imagination. If on the other hand, it is a half-hour programme during which "the host" interviews his "guests", concealing the fact that they are sponsors having paid the equivalent of nine minutes of advertising time, (cf "Home Shopping Show" in the United States), we can no longer agree. In order to warn against this development and to stimulate the discussion, we summarize below the efforts of some of the European channels to make advertising "more attractive" and "more informative".

The desire to make advertising more amusing, to make it more easily acceptable to the public, was already there in the early years of television.

- The *Italian experience* with a programme entitled "Carosello" which began in 1957 and lasted for twenty years, remains famous. It was a question of accompanying each spot advertisement with a little entertainment (fi sketch, ballet) quite distinct from the make of the product advertised. Then in 1974 a sort of "publicity journal" was broadcast on RAI, which aimed to present advertising messages of an informative kind. This initiative by RAI was not at the time supported by the advertisers and as a result the idea was given up before long.

"Featured advertisements" on IBA : In principle the UK law only authorizes advertising spots and forbids the presentation of advertising in the form of magazine programmes. However, exceptions are possible, particularly to allow for a more original type of presentation.

"Themed breaks" and individual longer advertisements are allowed. With themed breaks a publicity break is entirely reserved for advertisements concerning products or services of the same nature, (eg reserved for products concerning gardening or marriage). It is essential for IBA that the title and the caption in this sequence do not mask its purely advertising nature.

“Long advertisements” : A single advertisement can last for as much as seven minutes and present a range of products from the same firm or perhaps different uses of the same product. IBA lays down guarantees so that the public does not confuse this kind of advertisement with programmes. The name of the make or of the manufacturer must be constantly visible on the screen, the term “programme” must never be used, the title announcing the sequence must clearly indicate that it is an advertisement.

“Sonderformen” by German ZDF : These are sequences lasting five to six minutes (corresponding to the normal length of advertising blocs), which ZDF broadcast as “informative, entertaining, linked to particular subjects”. Let us quote as examples : *“Schaufenster am Donnerstag”* (Window on Thursday) is informative advertising in the form of a televised journal. This type of publicity was broadcast eighteen times in 1981; *“Meine Familie und Ich”* (My Family and I) : products are presented during a fictional scene of family life (broadcast six times in 1981); *“Empfehlenswert”* (to be recommended) : a presenter communicates the results of independent comparative tests established by Stiftung Warentest, which ensure that their recommendations concerning the use of their comparative tests as publicity are respected. *“Empfehlenswert”* is not, however, limited to publishing simply the results of objective tests, but allows them to be surrounded with genuinely subjective advertising messages; thanks to an appropriate visual presentation, an attempt is made to avoid the confusion between tests and advertising. The programme *“Empfehlenswert”* which according to ZDF has substantial credibility with the public, was broadcast six times in 1981.

In the past *RTL broadcast a programme called “Ram Dam”* in which three advertisers participated each time. The confusion between editorial material and advertising being too flagrant, this programme became so much a target for the partisans of public service broadcasting, that in July 1981 RTL abandoned this sort of publicity.

- **Conclusion on sponsorship** : It is difficult enough to know what is currently happening particularly since the existing broadcasting organizations proudly proclaim their “independence” from advertisers. But there is an abundance of hidden sponsorship in documentary and other programmes mentioning organizations, publications, products and services. It is time to face up to the

problem particularly since there is no lack of indications of increasing reliance on sponsorship. An effort of imagination on the part of advertisers is not to be rejected as such, but this process must be brought into the open and tackled in the framework of advertising rules.

(ii) CONTENTS AND PRESENTATION OF TELEVISION ADVERTISING

(a) Broad framework

- *Techniques of presentation*

In addition to the presentational techniques examined in the section on sponsorship, we draw particular attention to the following :

- * *Subliminal advertising* (unconscious perception of certain messages because of the brevity of their appearance) : A consensus exists that this should be generally forbidden and this is done in a number of codes.
- * *Direct sale advertising or direct marketing by television* : This is advertising inviting viewers to react by telephone or by letter to order the products or services concerned. Three codes deal explicitly with this promotional technique. The French code stipulates that no appeal to buy nor any request for a reply can be inserted (except with the explicit authorization of the RFP). On the other hand the UK and Irish codes authorize the principle of television marketing (under certain conditions); IBA forbids it however in messages addressed to children and only allows it after 9 o'clock in the evening, for products and services of direct interest to children.

The potential interest of this technique for advertising is clearly shown in the remarks of one of those responsible for advertising on RTL (cf the Belgian magazine "Tendances" of 13 January 1983). "We are going to propose to advertisers and agents to make spots based on the need to impress on people who look at them to pick up their telephone A well made thirty seconds spot would lead, in the twenty minutes following, the screening to several million calls....". The risk of ill-considered reaction by the viewers is evident. In future the appearance of interactive services of the videotex type will seriously increase the dangers and it appears essential to regulate these promotional practises strictly for classical television as well as for the television of the future.

- *General rules concerning the contents of advertising*

The International Chamber of Commerce Code has been the general basis for the codes regulating television advertising. The essential requirements are decency (i.e. not to offend good taste), loyalty (i.e. not to exploit feelings of fear, superstition or to encourage violence), truth (i.e. not to mislead). All codes go beyond the general framework outlined by the Chamber of Commerce. Thus the French, Greek, Italian rules lay down that advertising should provide information to the consumer; the French, German, Italian and Luxembourg rules specify that the messages must not shock moral, religious or political convictions. Furthermore, the French broadcasting authorities and RTL are particularly concerned about the use of women in advertising.

- *Misleading and unfair advertising* : More attention should be given to this fundamental problem in television advertising because of the techniques of reproduction, the speed of the message, the combination of sound, image and colour. Putting a brake on the "excessive imagination" of the advertisers means on the one hand establishing standards going beyond the general guideline concerning truthfulness and on the other hand giving them a concrete and tangible interpretation as a basis for preventive control. In this area a comparison between the case law developed by the control bodies is particularly necessary with a view to concrete harmonization by the EEC of misleading and unfair television advertising.

The RTL code of ethics, which has only been in existence since June 1982, says practically nothing about this problem; this is a sign for us of the very limited practical value of this code.

On the other hand, the other codes do give importance to this question and stress the following :

* *Testimonials and endorsements on the part of people and authorities* :

In general the control bodies demand real, signed proof that claims are well founded and authentic. Strict limitations, even bans, are applied in sensitive areas such as children, pharmaceutical products, alcoholic drinks (cf below) or to avoid the impression of sponsorship (cf above). The fact that a committee of OECD has carried out a comparative study and adopted recommendations⁽⁹⁾, by underlining the increasing recourse to these practises in order to establish greater credibility and an artificial

differentiation of products shows in itself how serious the problem is.

- * *Use of the words "guarantee" and "approved"* : In general, such terms may only be used if the control bodies have been able to verify whether they are well founded and that the advertisement indicates the precise conditions and where any necessary further information can be obtained.
- * *Use of superlatives and comparatives* : These are not generally acceptable unless they correspond to an evident truth and illustrate specific and concrete differences.
- * *Scientific and technical language* : No error in interpretation on the part of the general public should result from its use.

(b) Sensitive areas

- *Alcoholic drinks*

- * *Bans* : Only French television completely forbids advertising for all kinds of alcoholic drinks. The British and Irish televisions prohibit advertising for spirits such as whisky and vodka.
- * *Limitation on the hours of scheduling* : IBA forbids advertising for alcoholic drinks between 4 and 6 p.m. as well as before, during and just after childrens' programmes. RAI only shows advertisements for alcohol of more than 21⁰ after 9.30. NOS does not show any advertising for alcoholic drinks around the time of 7 p.m.
- * *Authorization submitted to strict conditions* : the RTL code is the most brief (it is forbidden to encourage excessive consumption, to show minors, sporting personalities or drivers). The code of the RAI is already much more explicit but still leaves a wide margin for interpretation. On the other hand the UK, Irish, Dutch and German rules (the last of which are not specific to television) are fairly similar, although the number of specific conditions vary. We can group the main pre-occupations as follows : avoid excessive consumption; particular care should be taken as regards young people, sport, drivers; claims relating to health; claims relating to psychological states (fi fear, conflicts, timidity); claims relating to prestige, masculinity, etc.

- *Tobacco products*

There are more general prohibitions than for alcoholic drinks. Advertising for all tobacco products is forbidden on French television, by the RAI and RTL, as well as by the NOS in the Netherlands. With Denmark and Belgium, who it should be remembered forbid all television advertising, that makes a

majority of Member States in the EEC. The English, Irish and German televisions simply forbid publicity for cigarettes and cigarette tobacco. On the other hand advertising for cigars and pipe tobacco are allowed. German law submits this advertising to restrictive conditions. It cannot give the impression of beneficial effect, encourage the young to smoke, or draw attention to the inhalation of smoke. British television, for its part has imposed restrictions on programming : no such advertisements before, during or just after childrens' programmes.

In conclusion, the amount of tobacco advertising in all its forms is formally very limited . But one should not forget that such advertising comes back to the screen via events sponsored by tobacco companies.

Pharmaceutical products and health care

Before looking at the various bans and the restrictive conditions, the question arises of whether the different codes cover the same products and services : unfortunately this is not the case. Certain broadcasting authorities, like the French channels, IBA and RTE cover a very wide range, others such as RTL a much more limited one. Let us compare, for example, the French and Luxembourg definitions. France : "Medicines, and products other than medicines as well as equipment, treatment, health care centers, medical and paramedical treatment, goods or methods presented as having beneficial effects on health". Luxembourg : "Pharmaceutical products sold to the general public or medical treatment". The longer the list, the greater the impact of the bans, authorizations or conditions which follow.

- * *Bans* : German, Dutch, British and Irish television in general forbid advertising for medicines bought on subscription. The English and Irish television furthermore forbid advertising for a whole range of treatment and para-medical products (anti-tobacco treatment, anti-alcoholism, hair loss treatment, contact lenses, contraceptives, personal hygiene items, etc.,). French television forbids advertising for slimming products.
- * *Prior authorisation of the Ministry of Health* : In France permission must be asked in advance in all cases from the Ministry and as a result the RFP code does not itself define the conditions for accepting television advertising. RAI and RTL also require authorizations from their Ministries but have nevertheless seen fit to lay down their own codes (which are rather vague!). Their margin of manoeuvre seems therefore much larger than that of French television. RTL demands visas from the Foreign Ministries

of Health for foreign advertising (mainly French and Belgian). In the Netherlands, for advertising pharmaceutical products authorized on television there are also procedures for prior authorization, which are partly public and partly private. (Statutory self-discipline).

- * *Restrictive conditions on the advertisements authorized* : The German and Dutch televisions allow, under certain conditions, for advertising of products not requiring a prescription : in Germany side-effects must be mentioned and in Holland people are advised to consult the information sheet before purchase. There are other kinds of restrictions. Special annexes to the codes of the IBA and RTE list a whole variety of conditions covering recommendations/claims, the ban on testimonials on the part of personalities, publicity for vitamins, slimming products. Before broadcasting such advertisements IBA asks for the opinion of at least one member of a Medical Advisory Panel. IBA has also imposed its own limitations on scheduling : no advertisements before 9 p.m. for medicines for children and certain vitamins.

- *Miscellaneous*

- * *Other forbidden products, services, areas*

There is a long and varied list of products and services banned for health, moral and commercial reasons. For example matrimonial agencies (RAI/IBA/RTE), loans (RAI), employment agencies (France/RAI/RTE/IBA), war toys (ZDF), margarine (France), textiles (France), jewellery and furs (RAI), betting (IBA/RTE). A ban with very wide scope is that in France excluding the whole distribution sector (except for own brands) from television advertising.

- * *Products and services to which special attention is given*

We should quote in particular the following products and services which have received attention in several codes.

Publicity of a financial nature : This type of advertising is covered particularly by the French, British and Irish codes, the first of which requires prior authorization by the Ministry of Economy and Finance. The other two have established several precise rules (those of IBA have just been modified to permit easier access for this type of advertising!) It should also be recalled that advertising for loans is forbidden on RAI.

Professional training : Several codes (English, French, Italian Dutch) lay down that such advertisements must neither promise guaranteed results nor mention unrecognized qualifications. The French code prohibits advertisements of correspondence courses.

Mail order sales : The English and Dutch codes have special provisions in this respect. The French code prohibits this type of television advertising.

Dietary products : The Italian and Dutch codes deal with the problems raised by this type of advertising.

(c) Advertising to children

The comparative analysis and the recommendation by the consumer committee of OECD (cf above) have underlined the need for extreme caution, where television advertising presents children or is directed at them. The most radical measures were discussed in the United States : no advertising for children less than 8 years old; advertising for sweets giving rise to dental hygiene problems forbidden for children between 8 and 11 years old; appropriate nutritional information alongside publicity for other sweets to children above the age of 11. But these proposals have now been abandoned.

In examining the different European codes one finds once more that the larger number of specific regulations by the IBA are the most advanced. These show a concern both for advertising addressed to children and their participation in advertisements as actors. Certain codes which are less explicit have fortunately been completed by detailed case law on the part of the control bodies (we are thinking in particular of France). Other codes, such as that of RTL are precise as far as advertisements addressed to children are concerned, but are almost completely silent on the question of their participation in them as actors. The great merit of NOS in the Netherlands has been, in the past, to place the time for showing all advertisements as late as possible in order to protect children.

* *Contents of advertisements addressed to children* : All the codes try to avoid advertising which could create problems in the relations between children and adults (i.e. where children are pushed to persuade adults to buy products for them). The good faith of children must not be abused (i.e. misleading competitions) and dangerous situations must be avoided. Certain codes

(IBA/RTE/RTL) or case law (France) add a number of rules in order not to raise false expectations (dimension, nature, performance, degree of skill involved, price). Some bodies limit or forbid the appearance in advertisements of people or scenes made popular by childrens television.

- * *Performance of children in advertising* : Certain codes (in particular in the United Kingdom, France, Ireland and Germany) ensure that children are not the principal actors except where there is a direct link between them and the service or product concerned and that misleading testimonials on the part of children are avoided.
- * *Health and hygiene* : Particular attention is given to the link between dangerous products such as alcoholic drinks, tobacco, pharmaceutical products and children and adolescents (avoid encouraging them to consume by forbidding, for example, sports personalities as actors). Certain codes like those of the Dutch television and IBA are also concerned about the effects of advertising for sweets. The Dutch code is particularly original in this respect in laying down that for a certain number of products children of less than 14 years of age cannot be presented in the advertisements and one should show a toothbrush (as a warning symbol) in such advertisements which cannot be broadcast before 8 p.m.
- * *Scheduling* : In addition to the Dutch rule on sweets, we recall the limitations on alcoholic drinks, tobacco and pharmaceutical products and which aim at protecting children (IBA/RAI/NOS). IBA also foresees other restrictions on broadcasting (matches, competitions and premium offers).

(iii) CONTROL AND INTERPRETATION OF THE RULES GOVERNING THE CONTENTS AND PRESENTATION OF TELEVISION ADVERTISING

The main difference between statutory and voluntary self-regulatory codes is found here.

(a) Bodies responsible for preventive control⁽¹⁰⁾/Participation of consumers

Three criteria have struck us : separation between the drafting of the code and its application; the independence of the control body from commercial operation of television advertising space⁽¹¹⁾; participation by consumers.

- **Separation between the framing of the code and its application** : For ARD and ZDF there is of course a distinction between the drawing up of the code and control of its rules given that the rules were established independently

from television broadcasting and do not specifically concern television advertising. IBA/ITCA and NOS have established a dual responsibility : in the United Kingdom the overall responsibility is conferred on IBA — nominated by the Home Secretary — which elaborates the code and participates in its control. The day-to-day control is however left to ITCA. In the Netherlands, the Publicity Council (Reklameraad) — nominated by the Minister of Culture — establishes the code and intervenes in the control as an appeals court; day-to-day control in the first instance is carried out by the STER (advertising department). In other countries the drawing up of the code and its control are carried out by the same bodies.

- **Separation between control and the sale of advertising time** : France and Italy separate the functions of selling time and control of the advertising rules within their advertising departments. In the United Kingdom advertising time is sold by the individual television companies so that ITCA only intervenes to control but has nothing to do with sales. On the other hand STER, the advertising departments of ARD and of RTL, as well as the service in ZDF responsible for advertising (Werbefernsehen, Mainz) more closely associate the functions of selling and control. The advertising bodies of ARD are even responsible for the programmes surrounding the advertising spots which could lead one to doubt whether there are guarantees of separation between advertising and programmes.
- **Participation of consumers** : With RTL, ARD, ZDF, there is no trace of consumer participation. In Italy the publicity body SACIS proposed the constitution of an advisory committee including consumers, but faced with a certain resistance, they are moving more in the direction of periodic and informal contacts with the interests concerned including consumers. In the United Kingdom consumers nominated on an individual basis collaborate in the framework of an advisory committee set up by IBA; its function is to give an opinion on the code and any changes to it but not to participate in its control.

In the Netherlands the consumer organizations sit in the Reklameraad and therefore intervene in controls in case of appeals. Only the Regie Française de Publicité (RFP) permits the participation by consumer representatives (in this case the "Institut National de la Consommation") in the daily control of advertisements. What are the views of INC, the only consumer organization to participate in the practical control of television advertising? Their direct

participation seems useful and their attention is concentrated specifically on questions such as safety, the use of children, the image of women, the economic value of products and services. INC has developed its own system for classification of scripts.

(b) How preventive control works in practise

All television channels seem to agree on the principle of preventive control but not all of them have set up a systematic and well established procedure. RTL in particular recognizes the "great flexibility" of its procedure for verification which resembles a system of spot checks. According to those responsible at Luxembourg television, this practise allowing for advertisements to be presented the day before they are broadcast, constitutes one of its attractions. RTL underlines that despite this flexibility, there have not been any real disputes in recent years.

To be able to present advertisements at the last minute before broadcasting on the RTL model, is in principle, an exception on other networks; as a general rule advertisements are submitted several weeks in advance. The British, French and Italian televisions first of all examine the script, then at a later stage the films and videocassettes. The Dutch and Germans limit themselves to checking the films and video cassettes but do not control the scripts. The following figures give an idea of the extent of the task of verification. 12.000 scripts were checked in one year by ITCA/IBA and 2000 by the "Regie Française de Publicité" (in 1982); the difference between these figures shows the difference between the role of advertising on commercial television and on public service television. Systematic control is by no means useless judging by the statistics from some control bodies : in the United Kingdom 20 per cent of scripts have to be changed, in France about 28 per cent and in Italy 30 per cent.

At least in France, according to INC, one of the most critical problems seems to be the large number of "urgent" scripts only submitted at the time of screening to the screening committee.

(c) "Case law" resulting from preventive control

Beyond individual sanctions against advertising messages (changes or refusal to broadcast), the system has the advantage of building up over the years a series of rules which interpret the basic code. These give advertisers guidelines and are

a decisive factor in favour of commercial efficiency and the legal safety of the companies. RFP points out however one drawback : "the abundance of decisions brings about complex jurisprudence in certain fields such as that of advertising addressed to children; case law is in danger of becoming formal".

However this case law is central to advertising ethics. To be persuaded of this one should examine the notes of guidance by ITCA in the UK which often go further than the IBA code and moreover give it concrete and tangible meaning, particularly in all the sensitive areas (visual presentation of the advertisements, testimonials, comparisons, guarantees, sponsorship, medicines, children, financial advertisements, food products). The case law in other instances such as that of RFP, is also very important; if one takes only the cases dealt with in 1981 in France, we observe that the RFP is developing genuine complimentary rules (in this instance in the area of testimonials and warning symbols concerning all toxic and dangerous products).

In other words a straightforward comparative examination of the codes (cf above) does not give an overall view of the rules really applied in the different Member States of the EEC. Furthermore the rules which are more or less similar in different national codes may give rise to different practical interpretation. Let us give some examples :

- * The Dutch and British rules both forbid all advertising for cigarettes. In practise IBA/ITCA give such a rigorous interpretation that any cigarette, even shown incidentally in any sort of message is prohibited whilst STER in the Netherlands permits the appearance of cigarettes in spot advertisements, on the condition that no brand name is put forward.
- * Misleading comparisons are forbidden everywhere. But in practise, how many organizations share the view of ITCA that, for example, comparisons of whiteness for washing powders must not be admitted (because the quality of the reproduction on the screens is not good enough to guarantee a faithful image)?
- * The British consider that sex appeal has no place in publicity for alcoholic drinks. However everyone knows that this is one of the themes used in other countries.

In conclusion, comparing the national codes literally, is on the one hand insufficient because they do not contain all the rules and on the other hand rather

theoretical because they do not reflect the national differences in susceptibility, tradition and good sense.

(d) Post facto control through complaints from viewers

Some television channels set out to prove their openness to consumers by inviting them to make known their complaints. In particular RTL and NOS accompany their advertising with an address to contact. To our knowledge there is not much reaction. Between 1967 and 1979, the Dutch Reklameraad dealt with 127, officially retained, complaints from individuals, 20 from consumer organizations, 19 from competitors. IBA also invites the public to react and in 1981/1982 received more than a thousand letters and telephone calls; according to IBA these were however largely on minor problems concerning individual taste, the difficulty of obtaining products which had been advertised, opposition to certain aspects of advertising in general. Either there are a few complaints or they are of secondary importance. Different reasons can be put forward for this, in particular : preventive control has already eliminated the main problems; the rapidity of the message does not allow a non-expert eye and an untrained mind to detect the critical aspects; since advertising is a passing irritation, viewers do not follow it up; the principal cause of irritation is the quantity and not the contents of the messages. As far as the more specific contribution of consumer organizations is concerned to post facto control, two national experiences merit special attention :

- * In the Netherlands the STER broadcasts once every three weeks all the new advertisements en bloc at a fixed hour. The consumer organization Consumentenbond records them on video and can proceed at leisure to a critical examination. Furthermore STER sends to the consumer organizations the list of new advertisements.
- * In France the "Institut National de la Consommation" (INC), although part of the screening commission of RFP, does not give up its right to criticize. If there is disagreement with the RFP it tries to raise its voice outside this commission. It may, for example, have recourse to its own written press; but it seems to us particularly interesting to mention the possibility of a televised "counter-publicity" by INC in its information programmes for consumers. To achieve this right, INC had a hard struggle with the advertisers and the television companies (legal dispute on the question of whether the law on authors' rights could prevent this counter-advertising). INC won this case and has already broadcast some criticisms. We include, as an example, in the

annex the description of a case of advertising in favour of butter which INC had not been able to prevent at the stage of preventive control.

II. RISK OF DEREGULATION OF NATIONAL RULES ON ADVERTISING

Traditionally television has been subjected to close public control to master the potential power of suggestion and impact (cultural arguments) and to administer the scarcity of air waves (the technical arguments). Technical progress (better use of airwaves, expansion of cable) is progressively eliminating the technical argument. According to some people it follows that television is becoming a more ordinary means of communication, more local, more specialised justifying variations in standards. The cultural reason for control would therefore have no further "raison d'être".

To judge whether the opening up of television to private initiatives will necessarily bring about a deregulation of television advertising, we have chosen to examine three countries in the Community. On the one hand France and the United Kingdom which have at least partly looked at the future role of regulations governing television advertising in the framework of satellite and cable television : these two countries are trying to regulate before a "de facto" situation is established.

On the other hand Italy which has had to catch up with events, is faced with a de facto deregulation of traditional off-air television. It is interesting to examine how this de facto freedom is used by the advertisers and private broadcasters.

In this Chapter, we only deal with the *national* aspects while the international ones will be looked at in Chapter 3.

1. THE FRENCH LAW ON AUDIOVISUAL COMMUNICATION

(a) Access by private companies to television

The title "audiovisual communication" of the French law of 29.7.1982 shows that in this country the innovations go well beyond traditional television and concern the programmes (broadcast by cable or off-air) as well as services (videotex). The new statute is drawn up with the intention of greater freedom breaking with the tradition of public monopoly. This freedom is however more or less circumscribed :

- * *Programmes to be distributed by French satellites or by national or local private television broadcasting off-air* : a public service concession (therefore very strict public control) is necessary because of the scarcity of the available frequencies, the large audiences involved and the importance of the technical investments needed.
- * *Creation of local cable television* : authorization by the new *High Authority*⁽¹²⁾ (independent from the government) is required : the authorization is a form of public control less restrictive than the concession.
- * *Creation of a non-local cable television* : authorization directly by the government contrary to local cable television. This control is stricter than the one by the High Authority, but less than the public service concession.
- * *Creation of an inter-active service (teletext, videotex, prepared audiovisual programmes)* : during a transitional phase authorization is necessary; from 1986 a simple declaration on the part of those who wish to create such a service will be enough. It will in fact be the only regime of total freedom, justified on the grounds that "nothing is imposed on the user who carries out a voluntary act similar to the purchase of a newspaper" (commentary on the Law).

In summary, public control remains in the immediate future the general rule, except for inter-active services from 1986 which it is intended to stimulate (prestige and the technological/industrial challenge). Traditional television is therefore not confined blindly to the market forces. But in the medium term the objective is to "institute a regime of freedom which will find its full expression when everyone will have access to cable" (Ministry of Communications when the draft law was presented). According to current philosophy satellites should escape from this medium term free regime.

(b) End of traditional control of television advertising?

The law distinguishes between public service television (TF1, A2, FR3) and the private televisions.

- **Public service television**

- * *Financing by advertising* : In order to respond to the increasing financial needs, the law breaks certain traditional restrictions; abolition of the ceiling on receipts from advertising (25 per cent), authorisation of advertising on FR3. *But* there is a concern to limit the pressure of

advertising by introducing new guarantees : the maximum share of advertising able to come from the same advertiser will be limited. Advertising revenue from different public channels will be centralized and divided up in terms of their needs and obligations and no longer in terms of the audience and quality of each channel. *The Parliament* will in future have a right to intervene by fixing each year the total amount of revenue able to come from brand advertising.

- * *Duration, arrangements for scheduling and subject of advertising* : As in the past the instructions fixed annually by the government will determine the maximum length of advertising time. A possible new element : in fixing the "subject", it is expected that products, services, sectors, presently forbidden from television may be authorised in the future.
- * *Contents of advertising* : the new High Authority is called upon to define new standards replacing the present regulation of the RFP. At the European Broadcasting Union and the RFP however people do not expect substantial change. In practice the RFP will remain probably in charge of the daily control of these standards. In fact France is going towards a split-level system of the British and Dutch type.

- **Private television**

Here the law innovates, since private channels have not been allowed until now.

- * *Advertising revenue, duration, subject* : All forms of private television, (cable television, videotex,) can draw on commercial advertising to cover a maximum of 80 per cent of their needs through this method of financing (ceiling). But the authorities will fix in *each individual case*, the exact share of advertising revenue taking into account the characteristics of the service and its geographical coverage. There will not therefore be a generalized freedom of manoeuvre for private television companies! Individual regulations will also determine the subject of commercial advertising which the company is authorized to use. Will they also fix the *duration*? The law is not clear on this point.
- * *Contents and control of advertising on private television* : The subject, i.e. the products, services, sectors authorized, are therefore determined by the law. Uncertainty still remains on the contents. In terms of the law the new standards established by the High Authority do not cover private television. The law does not mention either control by the RFP or by the

High Authority. The Moinot report⁽¹³⁾ which prepared the law had suggested that the RFP in future extends its intervention also to the cable network and to satellite channels.

- * *Derogation for videotex and inter-active services* : The authorities have the possibility of not imposing instructions on these new services; the amount of their advertising revenue may not be limited.

The law provides that private television will be dealt with on a *case by case basis*, but clearly basic questions remain unanswered.

In conclusion we will quote some interesting extracts from the Moinot report :

“The limitation of advertising time still remains the best means to control both the financial situation and to protect programmes The present rules show themselves to be inoperable to promote a better scheduling of advertising blocs.

Any regulation would be illusory if efforts were not pursued to put an end to indirect advertising methods, so called clandestine methods and if the broadcasting authority does not have the task of mastering advertising revenue linked to sporting events. The advertising contribution could be increased by relying on cultural sponsorship thus financing the whole of a high quality programme, provided only the name of the sponsor is mentioned in generic terms; but the authorization for such programmes must be given by the board of directors of the programme companies under the control of the High Authority which fixes the limits to avoid the control of programmes by those who finance them.”

The law itself remains silent on the question of sponsorship.

2. THE UK WHITE PAPER ON CABLE

(a) Pressure for deregulation

The French law is the work of a socialist government traditionally favourable to public control. On the other hand the government in the United Kingdom, author of the White Paper on Cable believes above all in private initiative. How-

ever, this document which is the interim result of long debates puts a brake on the pressures aiming at deregulation. The Association of Cable Companies adopted an extreme position in arguing that the only common feature between traditional television broadcasting and cable television would be the television screen; for the rest these companies consider themselves the providers of a private service of limited distribution (narrow casting), directly linked by private contract to individuals. They plead in favour of a self-regulatory statute similar to that of the written press. A first official report on cable (by the Information Technology Advisory Panel, close to the view of industry) also came out in favour of self-regulation. The Hunt report⁽¹⁴⁾ (drawn up for the Home Secretary) concluded on the other hand that one could not consider cable television as a branch of the written press, at least not before the whole country was cabled; according to the report the reading of a book is an individual act, whilst television is viewed in the family context. Film, with its different special and technical effects constitutes a medium with unique power. The report concludes in underlining that self discipline on the part of the cable industry is not acceptable when cable is only beginning to establish itself. The White Paper follows the approach of the Hunt report and recognizes the government has the responsibility of safeguarding public service television; the government would not intend to change the rights and obligations of broadcasters; in the long term the expansion of cable could however make considerable changes necessary in the regulations governing broadcasting.

In conclusion, the British and French governments of such different political complexion, have adopted a cautious approach to avoid too rapid deregulation, but in the medium term foresee a regime of great freedom.

(b) Principles of traditional control of television advertising remain valid

- *Need for special care* : The government White Paper recalls that because of the power and intimate nature of television the broadcasting of television advertising has always created a certain public concern; if in the course of time television advertising has been more and more accepted a great deal of the credit must go to the responsible behaviour of IBA. The White Paper admits that cable broadcasts will be different from those of IBA/ITCA but it underlines the advertising appearing on the same screen will appear much the same whether it is distributed by IBA/ITCA or by cable companies. It concludes that the concern about high standards must be the same for cable

television as for IBA/ITCA. The White Paper makes the following specific suggestions on the basic questions :

- *Maximum duration of advertising on cable television* : If there were no limits for cable television, one should also eliminate for reasons of equity the time limit for IBA/ITCA; but according to the government this restriction has allowed for the high quality of the IBA/ITCA programmes. For this reason the White Paper lays down, as opposed to the Hunt report, that in general cable television will have to respect the time limitations of IBA (global limitation as well as limitation by the hour). The limitations on advertising time will not however concern any channel wholly dedicated to classified or other advertising. But another derogation is mentioned by the White Paper which could open the door to an erosion of standards : “special consideration should be given by the cable authority⁽¹⁵⁾ to any forms of advertising or sponsorship which might be permitted but are not currently allowed in independent broadcasting.” A lot will depend therefore on the prudence of this new cable authority.
- *Contents of advertising broadcast by cable television* :
 - * *Statutory responsibility of the cable authority* : The White Paper gives the cable authority, which has to draw up rules on the contents and the presentation of advertising, a status similar to IBA. This decision is important because it shows the clear distinction with publicity in general where control is given to a non-statutory organization, the Advertising Standards Authority (ASA). Advertising on cable television is therefore assimilated to classical television advertising and requires similar prudence!
 - * *A specific code for cable television* : For the White Paper the IBA code is the basis for cable television. IBA and the cable authority are invited to consult each other in order to establish a set of common rules. Each authority can also add specific rules to its own code. The White Paper sees among other things the need for specific rules for cable in the following areas : information services⁽¹⁶⁾, (videotex); advertising programmes; sponsored programmes.

The government is, in principle, willing to authorize advertising programmes on cable television but without going into details. Does this mean that the fears we expressed earlier about broadcasts of the type “Home Shopping Show” would be founded?(2)

As far as sponsored programmes are concerned, the White Paper does not leave any doubt that they will be allowed and instructs the cable authority to lay down specific rules (for cable); according to the paper, these will be clearly defined standards guaranteeing in particular a separation of the editorial and the advertising parts of the programme.

In summary the White Paper confirms fully that there will inevitably be much more reliance on various forms of sponsorship and that it will be necessary to put forward new types of protective rules.

- *Control of advertising on cable television*

- * *Maintenance of preventive control* : As opposed to the Hunt report, the White Paper retains the principle of preventive control for cable television by recalling that presently 20 per cent of the scripts submitted to IBA/ITCA have to be modified. The White Paper considers that changes are more easily made at the stage of preventive control than after the event (because of the high costs involved in making advertisements).
- * *Control mechanism common to IBA* : Although there would be two codes, the White Paper proposes a procedure and a control apparatus common to IBA and the cable authority.
- * *Flexibility of preventive control of cable television* : As for IBA the local advertisements will be checked on the spot by the cable company concerned. Furthermore "there may be some categories of classified, local or other advertising more analogous to the kind now supervised by the ASA where the Cable Authority would be content for a less formalised clearance arrangement, and a greater degree of reliance on self-regulation". Once again much will depend on the prudence of the cable authority. The debate on the nature of cable television — similar to independent television or on the contrary to the written press — could once more occur!

3. DE FACTO DEREGULATION IN ITALY

(a) Access of private initiative to off-air and cable television

This is the first country in the Community which, thanks to the decisions of the Constitutional Court in 1974/1976, has opened the door to private initiative on the local level for off-air television broadcasting and cable television. Subsequently the situation for cable was laid down through legislation (Law No 103

of 14.4.1975) : the active distribution of programmes is only authorized on a single channel covering 150.000 inhabitants at the most. These limitations have meant that cable is hardly used and even today when several other EEC countries have ambitious projects for the expansion of cable, there are hardly any private or public initiatives to do so in Italy. On the other hand private off-air broadcasting has still not been covered by legislation. For seven years hundreds of private initiatives for off-air broadcasting have developed in an anarchic manner. A process of concentration is coming about (risk of oligopoly). In practise the private channels have got round the limitation on the local level (for example through an exchange of pre-recorded cassettes). They are trying now to obtain legal authorization. So far the constitutional court has resisted, in order to avoid consolidating oligopoly situations in the absence of any legislative control.

In 1981 (decision no 148) the Court again stressed the special nature of television : "because of its evident capacity for immediate penetration in the social milieu (because of its distribution within the home) and because of the suggestive force of image linked to words, it has a power of persuasion and impact on a public opinion as well as on the social cultural side of a very different order from the written press".

In summary, the principles are safeguarded but the reality is very different. In advance of possibly winning the case on the national level one of the main private companies ("Canale 5") has already set up a national off-air channel. The same companies are looking for possibilities of expansion and new markets, and are very interested by the prospects offered by satellite and cable.

(b) Lack of responsibility of television advertising

According to a recent investigation by the advertising agency J Walter Thompson on television in Europe⁽¹⁷⁾, Italy really experiences commercial television to the extent that channels compete for advertising revenues and for the same public.

- *Advertising on private cable television* : On this point the legislator intervened rapidly, after the decision of the court in 1974 in Law No 103 of 1975 : the Region responsible for giving the authorization to broadcast must guarantee that the advertising has only a local character, that the maximum duration does not exceed 5 per cent of the total broadcasting time and six minutes an hour. The maximum duration corresponds therefore exactly with

that fixed for RAI. In practice, private companies are not however interested by cable, but on the other hand very much interested in off-air broadcasting.

Advertising on private television broadcast off-air : Since the decision of the Court in 1976, there has been no law about private off-air broadcasting. Five to six drafts are at present before the Parliament.

The Court had suggested to the legislator the outlines of the regulation to be adopted : as far as advertising is concerned, a limit should be foreseen on the duration equivalent to the restrictions in force for RAI.

How have the private companies and the advertisers reacted to this legal void? "The expectations and the hopes of 'freedom' have to a large extent been disappointed and a primitive "liberalism" of a "Wild West" type has prevailed", according to one of those responsible for the advertising authority SACIS of the RAI⁽¹⁸⁾. The opinions expressed by viewers in Italy confirm this impression.

The adoption of a voluntary code among the private broadcasters and the advertisers on 25 October 1982⁽¹⁹⁾ leads one to suppose that both sides have become aware of the boomerang effect of excessive advertising. The code sets out to rationalize television advertising in order to guarantee greater efficiency. Respect for the public is not the primary concern! The code fixes a maximum duration for advertising (14 per cent per hour from 1 July 1983). This means in practice eight minutes an hour more than IBA and RTL. The length of each advertising bloc must not exceed 2 1/2 minutes and the number of spots must not exceed 5 per bloc.

On the contents of advertising, the private broadcasters and advertisers simply refer to the voluntary self-disciplinary code on advertising in general. Those responsible at SACIS criticise two gaps in particular : the absence of preventive control will continue to make it impossible to check the accuracy and truth of the advertisements. The practice of interrupting programmes with advertising shows that the advertisements themselves are incapable of attracting the attention of viewers, because of their low credibility, lack of information and excessive repetition. It would seem to us desirable for surveys to be carried out of viewers' reactions.

In conclusion, the analysis of the development in three countries of the Community, showing difference in the regulation and practice of television advertising provides us with interesting indications :

- * *To rely solely on market forces* may well bring about, as the Italian example shows, excesses and abuses which are prejudicial not only to the viewers and the public channels, but also to the advertisers and finally to the private broadcasters.
- * *Non-statutory self-discipline*, on the basis of advertising in the written press has without doubt the support of the advertisers. It should be noted however that in the countries of the Community having the most positive experience with voluntary self-discipline (UK), the authorities consider that it is insufficient for the private channels and that a legal framework for television advertising continues to be justified.
- * *The limitation of the duration of advertising* remains the essential guarantee; maintaining this restriction for traditional channels, means extending it, for reasons of equity to private television.
- * *New forms of advertising* (classified advertisements, advertising programmes, sponsorship) will receive authorization, but much, if not all remains to be done in the way of specific regulations.
- * *Different legal regimes are appearing distinguishing between public and private channels*, among programmes and televised services; we underline that the fundamental principle must be the same, in order to avoid confusion and we share the view of the UK White Paper, ie the viewer perceives televised messages in the same way whatever their source.
- * *Preventive control* is favoured by the authorities. What, however, will be its future practise?

Moving to the *broader context of the overall medium policy in the Community*, one is left, at present, with the following picture :

The French law of 1982 on audiovisual communication is the first result but leaves many questions open awaiting the decrees to implement it. The *British White Paper* on cable constitutes another step but reflects a certain confusion in the government about the objectives. Far from solving the problems this document merely serves to launch, according to the "Financial Times" (no blueprint for cable, 28.4.83) the debate on the future of television. The *Dutch government* finally published on 29.8.83 — after a lasting controversy — its "Medianota"

which defines the whole future policy; In *Germany* the competence of the Laender in this area does not help things and has recently brought about the final collapse of any coherent federal policy. The French and Flemish speaking communities of *Belgium* are also following separate objectives. *Italy* has not yet succeeded in mastering the present situation marked by "anarchy" of the private broadcasters. In *Denmark* the minority government is proposing to change legislation in order eventually to bring about a national cable network. The national situations are on the move but a lot of confusion remains.

If national authorities do not know what they want, it will be most difficult for the EC to harmonize in the media field in general and the advertising field in particular.

REFERENCES

- (1) We exclude the rules introduced by French law on audiovisual communication which we will examine in the section "Tendencies towards deregulation".
- (2) This analysis of course does not concern television networks which forbid advertising (Belgium, Denmark, the BBC and the third German channel).
- (3) The RTBF "Le service public et son financement".
- (4) "Le rapport d'information" : French Senate, 2nd ordinary session of 1977-78, No 294, p.209.
- (5) Advertising rules and practices : IBA, January 1983.
- (6) Cf the voluntary agreement of May 1982 on sponsorship of sporting events by tobacco companies in the United Kingdom.
- (7) IBA drew up additional guidelines when Channel 4 appeared : for the first time "independent" producers — that is to say non-members of ITCA — have direct access to national television. IBA is of the opinion that these producers could well rely on commercial sponsors.
- (8) Quotation on a speech on sponsorship by Mr Theobalds responsible for advertising control at IBA : 3.2.1983.
- (9) Endorsements and advertising directed at children : Reports by the Committee on Consumer Policy, Paris 1982.
- (10) Data is lacking on Ireland and Greece.
- (11) The real degree of independence is very difficult to assess.
- (12) Named on a parity basis by the President of the Republic and the Presidents of the House of Representatives and the Senate.
- (13) "Pour une Réforme de l'Audiovisuel". Report to the Prime Minister from the study and orientation group presided by Pierre Moinot.
- (14) Home Office report to the enquiry into cable expansion and broadcasting policy — Chairman Lord Hunt of Tanworth.
- (15) New body named by the Home Secretary in close collaboration with the Ministry of Industry.
- (16) Is the question of adopting more detailed rules than those of the IBA.
- (17) Cf Financial Times, 24.3.1983 : "European ads potential 'vast'".
- (18) G Facchetti, Vice-President of SACIS in his exposé "Pubblicità a Televisione" during the symposium "La Pubblicità nell'era dell'informazione" (Pavia, 15.3.1983).
- (19) Utenti Pubblicità Associati/Normativa concordata tra emittenti private e UPA per la pubblicità televisiva.

CHAPTER 3

**INTERNATIONAL ACTIVITIES ON TELEVISION ADVERTISING
IN THE CONTEXT OF NEW MEDIA**

The work of the European Community will not be completed until there is an agreement on harmonization of legislation. Other international forums above all the European Broadcasting Union (EBU) and the Council of Europe have taken up this issue before the Community and we examine the usefulness of their work in the light of EEC harmonization.

Some important initiatives are being prepared outside the international and supranational organizations, either unilaterally or in the framework of bilateral or multilateral negotiations among governments. These steps are not always brought out into the open and their effects are difficult to measure. But they obviously influence the attitude of governments in the framework of international institutions.

I. UNILATERAL, BILATERAL AND MULTILATERAL ACTIVITIES IN THE COMMUNITY

The project for direct satellite television (DBS) by Radio Television Luxembourg — which now appears more unlikely to happen — caused lively polemics in neighbouring countries and gave rise to unilateral and bilateral activities. There have been different French, German, Belgian and Dutch reactions to RTL plans for expansion and new language channels. Italy is concerned about its own private broadcasters who might in particular wish to participate in a satellite project by Monte Carlo Television. Judging by the White Paper and the preparatory reports, the United Kingdom has the impression of being rather more protected from a “foreign invasion” but nevertheless takes precautions. France tried to go beyond the level of limited steps and took the initiative of a conference on the European Audiovisual Area — which is at present however paralysed and even abandoned.

1. LUXEMBOURG

Conscious of its international role, RTL deals with the international impact of television advertising in its Code of Ethics of June 1982 : for products forbidden or submitted to special restrictions it is stipulated : “..... as far as the countries outside the Grand Duché of Luxembourg are concerned in which its programmes are received in a substantial manner, and to the extent that these programmes correspond to

the language of the country concerned, the CLT (the Luxembourg Television Company) will make efforts to take into account the national laws in force in this area bearing in mind the economic and moral climate in Europe". The very limited nature of this commitment is immediately apparent! It would seem however that in practise RTL requires that for dangerous products such as alcoholic drinks and medicines, visas are required from the foreign ministries for advertising to other countries (essentially Belgium and France).

When there was a real chance of a Luxembourg satellite, bilateral negotiations took place, particularly with the Dutch and German authorities. According to the press, Luxembourg apparently accepted to respect the Dutch rules for their broadcasts in Dutch, "not to interfere in German affairs" and to provide that part of the advertising revenue coming from German programmes on RTL would be sent back to Germany. According to those responsible at Luxembourg television, advertising cannot however be submitted to the specific regulations of other countries, but only to the basic rules concerning public order, health, morality. Above all, it is clear that RTL does *not* want to give up certain arrangements for scheduling, such as the interruption of programmes by advertising (refusal to the Belgian authorities on this point; agreement it seems of the French government if RTL participates in the satellite TDF1).

Those responsible at RTL told us that they wished to avoid excessive competition among the television companies to share the "advertising cake". They wish for a *gentleman's agreement* to ensure : the economic survival of each of the national channels, respect for the public, democratic access of big, as well as small advertisers, taking into account the interests of other media. In concrete terms RTL seems to have convinced the Belgian and French authorities that the francophone advertising market is limited and that there is hardly any room for other commercial channels.

2. THE NETHERLANDS

It is in this country that reactions to the RTL projects have been the most lively. Since 1978 (when a cable network in Sluis was able to relay RTL), the debates have not ceased, even if RTL television has given up the idea of broadcasting a special programme in Dutch. The Dutch government's "Medianota"⁽¹⁾ which defines the whole of the media policy, gives priority to the question of relaying foreign programmes. The government intends to allow the relaying of foreign programmes pre-

sented as such, but to prohibit in any foreign programme, advertising *directed specially at the Dutch public*. Proof that these are serious political guidelines comes from the efforts of the Dutch authorities to have these principles included in the recommendation of the Council of Europe.

The government has asked the opinion of experts on the legality of its intentions. The Boukema Committee⁽²⁾ examined in particular the question from the point of view of the national constitution, and the European Convention on Human Rights and the EEC Treaty.

According to the new Constitution the ban on the relay of foreign programmes destined to the Netherlands would be admissible and the ban on the relay of foreign commercial advertising even more so, given that the new constitution expressly excludes advertising from freedom of information and expression. Provided the measures are not discriminatory the EEC Treaty would not constitute an obstacle either. The European Convention on Human Rights would allow for the cable networks to be submitted to a system of licensing; one of the conditions of authorization could be to forbid uncontrolled advertising or programmes containing advertising. The report does not however rule out the possibility that in future the interpretation of the convention might change and feels that in the long-term a regulation in the transmitting country would be better than measures in the receiving State.

The Consultative Council WRR⁽³⁾ is more explicit on the inadvisability of a protectionist policy. The advent of DBS would render such a policy futile; it would be better to strengthen Dutch television than to forbid foreign channels. By strengthening is meant an extension of the duration of advertising, a simplification of the administrative procedures, in order to avoid Dutch advertisers turning to foreign channels.

In conclusion, protectionism and liberalism have their defender in the Netherlands, the government, at least the competent Minister, being in the first category. The Dutch consumer organizations — traditionally very reserved about advertising — could not in any case subscribe to a liberalisation clearly equivalent to deregulation!

3. FEDERAL REPUBLIC OF GERMANY

As in the Netherlands, the prospect of private commercial television has led to heated discussions and in the past the Federal Government was very hostile. Since the change in the governmental coalition, those in favour of private initiative have come to power. It would be hazardous however to affirm that this country has opted for free competition between public service television and commercial television (German and foreign). The fact that the Laender assume basic responsibility on media policy makes things more difficult, all the more so because there is a basic disagreement on the opening up or not of television to private initiative, and on the role of advertising as a source of revenue for television.

The persistence of these differences appears in the very recent interim report of the *Commission of Enquiry of the Bundestag* concerning new information and communication technology⁽⁴⁾. Reception in Germany of foreign television programmes aimed at the public in the country where the channel is situated does not give rise to any problems. On the other hand, disagreement remains on the question of whether Germany can protect itself against foreign broadcasts specially directed at the Federal Republic and not submitted to German law.

In conclusion, it is difficult to expect a coherent and clear German policy in the international negotiations so long as the internal differences remain so basic.

4. FRANCE

France is presently the country best placed to "convince" RTL not to opt for exaggerated commercialisation. Since the autumn of 1982 negotiations have gone on between this country and Luxembourg with a view to participation of RTL in the satellite TDF₁. The Moinot report had invited the government not only to negotiate but also to issue "directives" stemming from the French public participation in the capital and administration of the peripheral companies (one of which is RTL), to ensure that the role and obligations of public service television are respected. The report concluded that the question of the French satellite should be an integral part of the audiovisual public service.

The Law of 1982 adopts the conclusions concerning the exploitation of French satellites, by submitting them to a regime of public concession (ie very strict public control). On the other hand, on the distribution via cable of foreign television broadcasts, for instance transmitted by satellite, the law provides for a possibility of

derogation including, among other things, the advertising rules. Since it is only a possibility to be used at the discretion of the French authorities, one cannot conclude that the right of supervision has been abandoned. Too liberal an interpretation of the law would contrast with the desire of the government to master the advent of new technologies. Has not the government been accused of favouring expansion by cable instead of DBS in order to guarantee better control and has it not been even feared that the government would forbid the installation of reception discs allowing direct reception of DBS broadcasts?

The result of the negotiations with Luxembourg will allow one to draw clearer conclusions on the real intentions of the French authorities.

A member of the Supreme Council on audiovisual questions⁽⁵⁾ has warned the government that if France decided to retransmit by satellite the two existing national programmes⁽⁶⁾, this would place the owner of the third channel (in practise RTL), in a dominant position. The encouragement for a rapid equipment of homes through parabolic discs depending solely on the nature of the programmes transmitted by the third channel, will, one can imagine, lead to pressure to gradually liberalize the rules which were initially accepted by the third channel.

5. ITALY

Since 1974 the Constitutional Court has recognized the right of private individuals to retransmit foreign television broadcasts, because the monopoly of the RAI would create a national monopoly of the sources of information and would be contrary to the free circulation of ideas (decision no 225/ 74). Law No 103 of 1975 regularizes the situation by authorising in its turn, the private retransmission of foreign public service or other broadcasts provided they are authorized in the country of transmission. Two important limitations have however been added : on the one hand the foreign private channels must not have been created with the aim of distributing programmes in Italy and, on the other hand, the authorization to retransmit in Italy obliges the owner to *eliminate from foreign broadcasts "all elements presenting, in whatever form, the character of advertising"*. As such this restriction, dating from 1975, is more radical than the present Dutch draft! The Commission it seems has already examined the possibility of a breach in the EEC Treaty. It seems in practise however that only broadcasts from countries outside the Community are affected. Several appeals are before the Constitutional Court aiming to condemn Law No 103 as anti-constitutional (the elimination of advertising being an act of censorship).

Considering no doubt that it is not enough to establish strict conditions in the receiving country, RAI concluded in 1982 *an agreement with Monte Carlo Television (TMC)* on the question of the use of the orbital position and frequencies of DBS reserved to the Principality of Monaco. TMC undertook in exchange for a financial contribution from RAI, and the provision by it of four hours of programmes, not to concede to third parties the right to transmit in Italian towards Italy. One should be aware that the large private networks such as Canale 5 have already shown in practice that they are interested in new technology by asking and obtaining the right to retransmit on a regional level events transmitted by satellite, such as the inaugural speech of President Reagan or international soccer games.

6. THE UNITED KINGDOM

The White Paper on cable examines the question of reception by cable of DBS programmes as well as broadcasts distributed by telecommunication satellites. It also deals with the broadcasting of British programmes abroad.

Reception of foreign DBS programmes : According to the White Paper, the owners of cable networks and individuals do not have the right to expect reception without interference of such programmes, because the frequencies of these foreign satellites will continue to be used for British terrestrial networks. With this reservation distribution of foreign programmes is, in principle, authorized. The new cable authority is invited to draw up special rules concerning the relaying of non-British channels. According to the White Paper, one should only allow foreign programmes *responding "grosso modo" to British standards of taste and decency, rules about the contents of advertising and to the percentage of British or EEC programmes.* In looking at foreign DBS programmes, the White Paper considers that on the one hand there will be programmes directed above all at the public where the television channel is situated (i.e. outside the United Kingdom) — it sees little interest in the United Kingdom for such programmes — and, on the other hand, programmes conceived for an international audience.

Two observations should be made :

- * The White Paper justifies flexibility as regards the respect for British standards on the grounds that DBS programmes are basically destined for the public in the broadcasting country. The government therefore places itself in the framework of the WARC agreement ("national coverage" of DBS) and does not foresee the possibility of broadcasts specifically directed at a foreign national public!

* The White Paper requires respect "grosso modo" for the British rules on the contents of publicity, but not the scheduling methods (volume, etc.).

Reception of foreign programmes broadcast by telecommunication satellite : Their reception is authorized but these programmes *must fully respect the rules applied to British broadcasts*; they do not allow for the same flexibility as for DBS. It would be interesting to consider this difference of treatment.

Broadcasts to other countries : For reasons of good neighbourliness the government commits itself to ensure that no broadcast, contrary to British rules should be distributed by satellite to other countries.

7. CONFERENCE ON THE EUROPEAN AREA FOR AUDIOVISUAL CO-OPERATION

On 19 and 20 July 1982 this conference took place in Paris grouping representatives of the Federal Republic of Germany, Belgium, France, Luxembourg, the Netherlands and Austria. The initiative came from France, following the Moinot report which defines the pre-occupation as follows : "The conflicting interests and the real dangers of an uncontrolled development of European satellites should lead the public authorities to initiate, without delay, a European negotiation to obtain better mastery over expansion and the pace at which new channels are introduced, their geographical zones, the access to *advertising markets*, as well as the definition and the co-production of common programmes".

Even if the follow-up to this initiative is apparently blocked, it is interesting to note the results of a *working group on advertising* and methods of financing which met in November 1982. At least in principle, the delegations agreed that it is essential, in future, *to give an equal importance both to the receiving and the broadcasting country* since reception of programmes containing publicity is possible beyond national frontiers; *the principle of the right to forbid foreign advertising programmes* not in conformity with national regulations in the receiving country *should be established*. Those Member States present are therefore against the position of those (such as the advertising associations) who would like the regulations in the broadcasting country to prevail.

When it comes to drawing up EEC legislation one should also take account of the fact that all the delegations agreed in particular that rules should be drawn up to limit the volume of advertising, to forbid subliminal advertising, to harmonize at least

the rules governing alcohol, tobacco, pharmaceutical products, medical care and to take children into account (both their participation in spot advertisements as well as their reaction to advertising).

In conclusion, one sees that all Member States examined — except perhaps Luxembourg and with good reason — are concerned about the respect for their own advertising rules and wish to exercise control of foreign television broadcasts at the level of the country of RECEPTION .

It seems evident in these conditions, that the demand in particular of the advertisers, that only the rules of the broadcasting country should apply, is absolutely unrealistic and the EEC authorities should reject it categorically.

II. SELF-REGULATORY EFFORTS BY TELEVISION COMPANIES – PRINCIPLES OF THE EUROPEAN BROADCASTING UNION⁽⁷⁾ ON COMMERCIAL TELEVISION ADVERTISING BROADCAST DIRECTLY BY SATELLITE/DBS

Following the agreement of the administrative council of the EBU on 27 May 1983, these principles were finally adopted by the General Assembly on 15 July 1983. These guidelines are of essential importance to the extent that the Council of Europe and the Commission of the European Communities intend to make wide use of them. On 16 March the European Bureau of Consumer Unions (BEUC) sent to EBU the comments on the draft principles (see Appendix) and transmitted a copy to the Council of Europe and to the EEC Commission. According to our information the final text of the EBU remains essentially unchanged by comparison with the draft.

A follow-up meeting with one of those responsible at the EBU allows us to add certain supplementary comments. The EBU will not finish its work with the adoption of the principles on DBS because it has a programme of work going beyond this first stage.

1. THE GENERAL FRAMEWORK OF THE EBU RULES

(a) Principles exclusively concern DBS

Contrary to the Council of Europe (cf below), the EBU limits its principles to DBS, in order to be able to draw up a more rigorous text on advertising transmitted by telecommunications satellites which require the relay via cable. On the question of cable it would be normal, according to the EBU that the control in

the receiving countries should be stricter. It seems that a draft is already being studied within the EBU. According to the timetable, the administrative council should reach a decision in December 1983, and the general assembly adopt it in June 1984. EBU aims therefore at creating different legal regimes. The Consumer organizations are opposed, in principle, to the multiplication of different legal regimes given that all broadcasts come via the same television screen (cf British White Paper on cable which shares this view) and that there is no reason therefore to lay down different degrees of consumer protection. However consumer organizations are also aware of the danger that a single body of rules might be less precise (cf below draft recommendation of the Council of Europe).

(b) Distinction between broadcasts destined or not to a foreign public

EBU maintains the *distinction* between advertising unintentionally broadcast to a foreign public and that aimed specially at foreign viewers. According to the EBU the distinction is easily made to the extent that advertising which is deliberately directed to a foreign country, will use the language of that country, indicate the prices in foreign currency, mention the retail outlets in that country. At the outset EBU wished that in this case, the rules of the receiving country should be fully respected, but in "foreseeing possible problems", it has contented itself with a less binding formulation ("respect of the rules of these countries is of fundamental importance"). We observe that at least in principle, the EBU is in agreement with consumer organizations which however go further in demanding that the rules of the receiving countries should also be applied in the case where a foreign public is reached unintentionally. Since the WARC agreement of 1977 only authorizes "unavoidable technical overspill" by DBS, we even wonder if advertising distributed by DBS and aiming intentionally at a foreign audience is legal, without agreement of the authorities of the receiving country (Recommendation 926 of the Council of Europe — cf below — supports our point of view).

(c) Contribution of the International Chamber of Commerce

Among the general principles, the EBU quotes the importance of the international Code of advertising practices by the *International Chamber of Commerce*, with the reservation that adaptations should be made. Consumer associations have shown serious reservations (cf the comments in the Appendix) which seem all the more justified since EBU wishes to make only technical adaptations (i.e. exclude everything which concerns the written press), but in no way substantial

improvements. At the very most the Code of the Chamber of Commerce can play a certain role as regards the contents of televised messages, but in no way as far as the arrangements for scheduling advertising and control are concerned. Programming and control are precisely at the heart of the problem.

2. SCHEDULING ADVERTISING BROADCASTS

In May 1982 an EBU representative told the mass media committee of the Council of Europe that it was considering regulating, in particular, the time limits for advertising and harmonizing the practice of advertising blocks. Neither option figures in the principles adopted by the EBU.

- (a) **Limitation of advertising time** : According to the EBU representatives RTL and IBA did not want to accept such a clause and for this reason there would not "for the time being" be anything in the principles. It is without doubt one of the main gaps in the EBU text. By avoiding this tricky question (the debates on the Council of Europe recommendations prove this), it was much easier to agree on a common text!
- (b) **Practice of the advertising block** : The EBU indicates that there is "a very strong tendency" among the members in favour of publicity blocks, but not an agreement. It considers this practise as fundamental, in order to clearly separate advertising from the rest of the programmes. We hope that there will be an agreement rapidly within EBU.
- (c) **Sponsorship** : In its comments BEUC greatly regretted that this question was not taken up in the principles. EBU recognizes that its text is limited to classical spot advertisements and indicates that it "will come back to" the problem of sponsorship. This is another basic gap all the more so since there are clear indications that sponsorship will play an increasingly important role.

It should be noted however that in 1976, EBU adopted principles concerning publicity placed at sports events transmitted by international television. There is therefore a text on sponsored sporting events but not on the numerous other forms of sponsorship. The EBU met with difficulties in the application of these rules for sport, but, according to them, these have been overcome. In order to make a better judgment of the practical value of the principles and the control mechanisms of the EBU, it would be interesting to examine the practical application of the principles on sport; one might perhaps draw lessons from this as regards the chances of implementating the principles regulating DBS.

3. CONTENTS OF ADVERTISEMENTS BROADCAST

The EBU principles only deal with the sensitive areas : cigarettes, alcoholic drinks, pharmaceutical products and medical care, products which could affect public health, children. We refer in this connection to the comments by BEUC in the Annex.

It is interesting to note that for all these subjects the principles lay down an *obligation to act*, i.e. to review or strengthen the existing national rules or to adopt new measures. EBU confirmed to us orally that for each of these questions it is planned that a working group should be set up with the objective of "practical harmonization". These groups would meet when the first DBS programmes are launched in 1985/1986 and would only include representatives of the States which have launched satellites; in the first instance it would be a question of franco/german discussions in the EBU. Does this mean that the receiving countries of these broadcasts will remain mere spectators?

4. CONTROL OF THE EBU PRINCIPLES

The EBU foresees the setting up of mechanisms allowing for the collection of *complaints by viewers*. Whilst welcoming these provisions (cf comments in the Annex), we draw attention to the fact that experience shows that *preventive control* on the part of the television companies is more efficient. The principles are silent on this subject. EBU agrees that it is an essential gap to be filled and indicates that it intends to examine the question of the control mechanisms during the second half of 1984.

The principles also foresee the creation of a *Special study group* of the administrative council of the EBU, instructed to follow the application of the rules but also according to oral information, to promote their improvement. The group will be set up in 1985 and could include one of the Vice-Presidents, a representative of the commercial channels and a representative of non-commercial channels. Consumers organizations wish to be consulted each time that this group will discuss complaints or improvements with the advertisers.

In conclusion, we note that a number of fundamental gaps remain to be filled; the intentions expressed to us that there will be improvements are reassuring but it would have been better to have included them expressly in the preamble of the current principles. This would have given them a more binding character and clearly

laid down that the current minimal rules are insufficient and will be strengthened. Notwithstanding this the current text with its many shortcomings is much more precise than the draft recommendation of the Council of Europe (cf below); we believe that the credit in this goes largely to the Scandinavian members of the EBU.

III. EFFORTS BY THE COUNCIL OF EUROPE

It was the Parliamentary Assembly which first drew attention, in the reports by Mr Stoffelen (17.7.81)⁽⁸⁾ and by Mr Scholten (9.6.82)⁽⁹⁾, to the role the Council of Europe, embracing nearly all democratic countries in Western Europe, ought to play in this area. The Assembly also stressed the need for a European agreement on advertising broadcast by DBS and telecommunications satellites. On the basis of these parliamentary reports and the work of the government representatives in the committee of experts on media policy (MMPO), the committee of Ministers intends to adopt a recommendation on television advertising, (the draft of which is examined in detail below) by the end of the year. This recommendation will certainly influence the efforts at harmonization by the European Community. The preparatory work done by the Council is substantial, but it is likely that the results on the government side will not live up to the expectations of the Assembly, nor will they take into account the views of consumer organizations (see Annex, BEUC/IOCU paper to the Council of Europe).

1. MAIN ISSUES DISCUSSED IN THE PREPARATORY WORK OF THE COUNCIL

In the Assembly, and in the government expert committees, three main themes emerged : the general debate on the advantages and disadvantages of DBS and cable; whether freedom to advertise can be assimilated to the basic freedoms of the European Convention on Human Rights; the need for legal harmonization and whether or not the Council should draw up a Convention on DBS and cable television.

(a) Advantages and disadvantages of DBS and cable television

The report by Mr Stoffelen, as well as the final activity report of the committee of experts on media policy (adopted on 21-24.9.1982) attempt to present an objective analysis of the advantages of DBS whilst pointing out the possible dangers. Recommendation 926 adopted on the basis of the Stoffelen report concluded (para 12) that "the following dangers may arise :

- i. national legislation may be undermined, as Council of Europe member states will have difficulty to apply their national laws to foreign television programmes;

- ii. the intellectual property rights of authors, composers and performing artists may be affected, especially by cable television;
- iii. the independence of programme-makers vis-à-vis the state and commercial interests may be more severely threatened than at present and thus the exercise of the freedom of expression may be further impeded;
- iv. the same programmes may be broadcast to a large part of Europe and, mainly through the deterioration of the financial resources of existing broadcasting organisations and through the competition for viewers, the intellectual and cultural pluriformity in Council of Europe member states may decline.”

Although this debate is speculative, the extent to which the dangers of excessive commercialisation are judged more or less serious, has conditioned attitudes to the drawing up of a possible Convention, in particular to safeguard national rules on advertising standards.

(b) Advertising and freedom of expression

It is natural that this question should be considered by the Council of Europe, since article 10 of the European Convention on Human Rights sets out the right to benefit from the freedom “..... to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers”. The Scholten report is taken as evidence by advertisers that advertising should be subject to minimal external regulations and control, because it would fall under article 10. It should be pointed out though that the report only accepts this thesis guardedly, pointing out that freedom to advertise is less than other freedoms (para 4) : “Noting that in accordance with the jurisprudence of the European Commission on Human Rights the protection conferred by article 10 is not normally withheld from statements of a commercial nature but that the level of protection may be less than that accorded to the expression of political ideas with which the values underlying the concept of freedom of expression in the convention are chiefly concerned”.

The report also calls for statutory, rather than voluntary self-regulation and safeguards on advertising in the sensitive areas. Consumer organizations have argued that they are not against advertising as such, but do not consider that it should benefit from the protection of the European Convention on Human Rights : “In practice, advertisers already have a considerable advantage over

other members of the community in terms of freedom of expression, since they can buy advertising time. What industry asserts as a basic right is in fact denied to other members of the community" (BEUC/IOCU submission to the Council of Europe, cf Annex). This question is relevant to the desire of governments (eg the Netherlands) to restrict foreign advertising broadcasts, and should be seen also in the light of the judgments by the European Court of Justice (cf below) on television advertising and freedom to provide services in the EEC.

(c) Legal safeguards, and the question of a Council of Europe Convention

Both the Parliament reports recommend legal safeguards, possibly leading to a Council of Europe Convention and that "any action aimed at protecting freedom of expression by regulating commercial advertising is bound to fail unless it is taken up at international level" (Scholten report). The Assembly has also underlined that "in accordance with the WARC decisions, no satellite broadcasts may take place without prior agreement of the State to which territory the broadcasts are primarily directed", but considerable "spill-over" is inevitable (Stoffelen report). Both recommendations recall general principles : strict separation of programmes from advertising, subliminal advertising, misleading advertising and draw attention to sensitive areas such as advertising to children and recall earlier recommendations on alcohol and tobacco advertising.

The reaction by the Committee of Ministers, has been negative to the idea of drawing up a Convention. We regard this as regrettable, since without a Convention, there will be no legal basis for harmonization by the Council of Europe, and recommendations to governments merely have a moral weight. The reasons put forward in the final activity report of the MMPO are not convincing. It is argued that because many of the factors are unknown, and the technical developments progress and change rapidly, the Council of Europe should prepare "flexible solutions". The MMPO also doubts whether the impact of advertising practices of one country on another will be as great as assumed at first, because the development of community reception by cable, rather than DBS, will allow for greater national control. In our view, these are essentially short-term reasons not to act, based on the arguments of prudence, and that no dramatic changes can be expected, put forward by the advertisers.

Having rejected the idea of a Council of Europe Convention, the MMPO also fails to resolve the question of whether national rules on advertising will apply.

According to the MMPO, in the absence of harmonization one should examine to what extent the DBS broadcasters have a formal obligation to respect the regulations of all the States which their broadcasts reach, in an inevitable or deliberate manner. The MMPO did not succeed in reaching any conclusions on this point and called for urgent supplementary studies. The question of whether the rules of the receiving country or the broadcasting country should prevail is therefore left unresolved! However this is a fundamental problem. Will the Committee of Ministers decide by adopting its recommendation before the end of 1983 without awaiting the result of such supplementary studies?

2. DRAFT PRELIMINARY RECOMMENDATION ON THE PRINCIPLES GOVERNING TELEVISION ADVERTISING (cf text in the Appendix)

- General framework

- * According to our information the draft is based on the assumption that the present television advertising regimes, including those of the purely commercial channels, such as IBA and RTL, are acceptable; it is not a question of improving these regimes, but of avoiding their dilution by the appearance of commercial channels neglecting the principles of good advertising practice.
- * As opposed to the EBU principles, the draft covers not only DBS but television advertising in general, whether it is broadcast by satellite or terrestrially. We welcome this approach which will help avoid creating different legal regimes and that the final recommendation will therefore put on the same basis transnational and national television advertising. We hope this will be the case particularly since pressures for deregulation at the national level, above all on cable television, are appearing.
- * The preamble of the draft does not take into account the traditional precaution of the different national laws and codes as regards television advertising (the intrusive character into family life) and puts the emphasis in an exaggerated way on freedom of expression and free circulation of information. The reservations of the Scholten report are in no way reflected. Consumer organizations underline strongly that the special character of television advertising merits particular control by comparison with other forms of communication.

- **Form and presentation of television advertising**

* The draft rightly recalls *three fundamental guarantees*, i.e. the ban on subliminal advertising, clear identification of advertisements and the separation between advertisements and other programmes. The last two provisions have been and remain fundamental to control sponsorship among other things. Given the tendency towards a growth in this practise we doubt however that such a brief rule is sufficient and recall that in February 1982 the CDMM (Steering Committee on the Mass Media) adopted and published a report on "advertising on radio and television" (cf Mass Media files, No 1) which demanded, among other things, more detailed studies on programmes sponsored by advertisers. Have such studies been carried out in the meantime and what are their conclusions?

* The provisions of the recommendation concerning *the interruption of programmes and the volume of publicity* (points 4 and 5) allow us to judge whether a compromise has been reached among the majority of public service televisions and the minority of commercial televisions. Successive changes of the various drafts (as far as volume is concerned the drafters had first of all proposed to introduce purely and simply a limit of 10 per cent of broadcasting time) leads one to consider that the practises of IBA and RTL will not be affected and that there will be no compromise. However, one should avoid diluting the present rules of IBA and RTL; the present formula on the interruption of programmes (point 4) is more liberal and would allow one to justify the same kind of excessive interruption as on American television. The discussions on rules 4 and 5 confirm that at the level of the Council of Europe one should in no way expect that stricter discipline in programming will be imposed on the commercial channels; it is simply a question of preserving the present standards of IBA and RTL and applying them to other future commercial channels.

- **Contents of television advertising**

* The draft lays down that advertisements must *not only be in conformity with legislation of the broadcasting country but also respect as far as possible and in function of the proportion of the audience abroad that of the receiving country*. The draft only examines this key question in the section reserved to the contents of advertising. On the other hand on scheduling (duration of advertising, time of broadcasting, etc.,) there is no provision at all to take into account the regulations of the receiving countries. However it

is precisely on this point that in the absence of harmonization or self-limitation agreements on the volume of publicity etc., that the receiving countries and their television systems will be particularly affected. The criteria about the proportion of the audience abroad will mean that the small countries transmitting television programmes, will have to take more account of the rules of neighbouring countries than the large countries. It is to be feared that the large countries will not consider themselves at all concerned by this provision. Among the small countries, RTL has already promised in its own code of ethics to take into account, under certain conditions the regulations of the neighbouring countries. Will, in reality this draft recommendation, with its broader scope, have any additional practical effect?

- * Point 7 of the draft raises the question of whether *broadcasts specially designed for a foreign country* should be prohibited. As we have seen, the Netherlands are particularly concerned to have such a provision. In conformity with the WARC agreement, recalled by resolution 926 of the assembly, such broadcasts do require the agreement of the receiving country. This agreement does legally limit the international technical possibilities of DBS satellites. We consider that one should not purely and simply ban programmes containing advertising designed for foreign countries, but subject them to the prior agreement of the receiving countries. Such an agreement seems all the more justified if the broadcasting countries do not commit themselves to respect fully the rules in force in the receiving country.
- * The draft asks that particular attention should be given to *tobacco, alcohol, pharmaceutical products and medical treatment* and recalls very briefly the principles regulating advertising to children. Contrary to the principles of EBU there is no question of international measures harmonizing, strengthening, revising the national regulations. This confirms unfortunately that the Council of Europe is content to recall certain principles, but does not want to act, even in the areas such as tobacco and alcohol where the Parliamentary Assembly asked for energetic initiatives, nor on the question of medicines, despite an earlier recommendation of the Committee of Ministers asking for harmonization.

In conclusion, we observe that the draft recommendation :

- * covers all forms of television advertising which we welcome;

- * does not in any way aim at harmonization even partially in the sensitive areas (tobacco, alcohol, pharmaceutical products, children);
- * simply recalls some basic principles traditionally covering television advertising;
- * does not propose any compromise between the programming rules of the public service television and the commercial television;
- * aims to support the practises of national commercial channels such as IBA and RTL, in order to avoid any weakening of their rules with the appearance of new commercial companies;
- * introduces criteria limiting, much more than the EBU principles, the commitment to take into account the regulations of the receiving country;
- * only gives marginal attention to the special problem of broadcasts carrying advertising specifically directed at a foreign country;
- * does not foresee any legal or administrative mechanism responsible for solving difficulties or disputes.

IV. THE EUROPEAN COMMUNITY

The Treaty setting up the EEC does not provide for the creation of a media policy. It is only since 1981 that various separate initiatives of the European Parliament and the work of the Council of Europe and the EBU have raised the technological and cultural challenge for the Europe of the Ten. It is now a question of not only free circulation of television programmes among the Member States, but even of common European programmes (cf Interim report of the Commission on realities and trends in television in Europe).

As far as free circulation and in particular the barriers created by the different advertising rules are concerned, the objectives of the Commission were set out by the Commissioner responsible, Mr Narjes to the European Parliament on 11 March 1982 : "The fundamental European rights which are free establishment and free circulation of services within the Community must also be guaranteed as far as television activities are concerned. And it is to the extent that one uses these rights that *automatically less rigid national structures become necessary*. The restrictions of a legal nature on advertising differ according to the Member States and have, until now, been an obstacle to television distribution within the Community. These rules must therefore be adapted". According to Mr Narjes, the *Common Market* in the area of cable and satellite television will be achieved *in stages* and a memorandum will inform the public. The Commission

services hope to present this memorandum or green paper⁽⁸⁾ by the end of 1983. There will therefore be first of all a discussion with all the interests concerned and only after that the drawing up of a draft directive.

In our view, the Commission has to reconcile two objectives. On the one hand, there is the desire for greater European co-operation and exchange of television programmes, expressed in particular by the European Parliament (Hahn report) and taken up by the Commission in its interim report on television in Europe, which argue in favour of opening up the market.

On the other hand, the Commission must recognize the traditions of public monopoly of national broadcasting, legitimised by the Sacchi judgment of the European Court of Justice on 30.4.1975 (case 155/73), and the fear of excessive commercialisation of television reflected for example in the WARC agreement, which limits in principle broadcasting to the national territory of countries; these factors argue for respect of national regulations.

In our opinion, only harmonization at the optimum level will allow the Commission to satisfy at the same time those in favour of opening up the market and the defenders of the existing structures and regulations; only such an approach can possibly combat effectively both deregulation and protectionism.

1. EEC REGIME FOR TELEVISION ADVERTISING BEFORE HARMONIZATION

In the absence of explicit rules in the Treaty, the principles developed by the Court, particularly in the Debaue case (52/79) (judgment of 18.3.1980) are of fundamental importance.

In its opinion on the Hahn report, the legal committee of the European Parliament "protests against the fashion in which the Court judgments are minimized" in this area. In the same sense a draft resolution (doc 1-422/ 80) "calls on the Commission and the Council to draw conclusions for all Member States from the consequences of these two judgments⁽⁹⁾, by the Court of Justice on Belgium television distribution for the future organization of information media". Whilst awaiting harmonization it would in fact be desirable that the Commission should publish, as it did in interpreting the decision of the Court on "Cassis de Dijon" concerning free

circulation of goods, a communication on televised messages, in particular television advertising.

Let us briefly recall the facts in the Debaue case. In Belgium the law forbids broadcast of a commercial advertising nature and a Royal Decree, obliges as a result, television distributors not to transmit such broadcasts. However the television distributors relay foreign broadcasts of a commercial character, e.g. the programmes of Radio Television Luxembourg. Consumer organizations complained of infringement on the part of the television distributors. The Belgian courts asked the European Court if the domestic regulation was contrary to the freedom to provide services, because :

- * on the one hand, the foreign television companies would derive an appreciable part of their revenue from advertising in such a way that the banning of advertising messages in Belgium could lead Belgian advertisers to restrict or to suppress their commercial advertising;
- * on the other hand, the advertisers established in the neighbouring countries would reach the Belgium market in a more limited way.

Let us summarize the principal lessons of the court judgment :

(a) Advertising messages directed at a foreign public

The Debaue case certainly covers messages destined to a foreign public. Neither the Court nor any of the parties concerned affirmed that the Belgian advertisers do not have the right to have recourse to a foreign broadcaster — in this case RTL — to distribute their messages in Belgium. On the contrary such a step helps to establish the intra-Community nature⁽¹⁰⁾ of their activity and allows for the provisions of the EEC Treaty to be applied. Within the Community one cannot therefore invoke among the Member States the WARC agreement of 1977 according to which no broadcast can be destined to a foreign country without the agreement of that country. The freedom of the advertisers and the television companies within the Community does however have some limits (cf below).

(b) Until there is harmonization, the advertising rules of the State receiving television broadcasts remain applicable and take precedence over those of the broadcasting country

“In the absence of any approximation of national laws and taking into account the considerations of general interest underlying the restrictive rules in this area,

the application of the laws in question cannot be regarded as a restriction upon freedom to provide services so long as those laws treat all such services identically whatever their origin or the nationality or place of establishment of the persons providing them". (13th recital of the judgment). In the absence of harmonization the competence is left to each Member State "to regulate, restrict or even totally prohibit television advertising on its territory on grounds of general interest". (15th recital). The court arrives at this conclusion for the following reasons :

- Television broadcasts, including television advertising, are not only *a provision of services* in the sense of the EEC Treaty (art 59 et seq) but even a *provision of a particular nature* (12th recital) :
 - * Following the Sacchi case, the Court repeats that televised messages fall into the area of services and not that of product regardless of whether the message is transmitted off-air or by cable. For senior officials in the Commission⁽¹¹⁾ there is no doubt at all that this definition also covers programmes transmitted by satellite.
 - * It is essential to underline that the televised message is not a product. One cannot therefore apply Rule 30 of the Treaty nor the well known communication on "Cassis de Dijon" by the Commission; in the area of products the national rules which are barriers to trade, cannot, in principle be invoked against products imported from other Member States in the absence of EEC directives, except in exceptional cases. On the other hand for services (art 59 et seq), the principle of the maintenance of national rules, towards imported services, prevails in the absence of harmonization.
 - * For the Court, maintaining national rules is all the more justified because it recognizes *the particular nature of televised messages and the general interest* inherent in the restrictive regulations in this area. The Court did not distinguish between advertising rules in the general interest and other advertising rules which do not have this character. Whilst awaiting harmonization, one should recognize generally, without any distinction, the general interest nature of all national advertising rules in force in the receiving countries.

An exception could however be products or services forbidden from television for purely economic reasons; in this connection one should

take a careful look at the long list of bans and heterogeneous restrictions in different Member States (margarine, textiles, jewelry, furs, etc). One may not only doubt the general interest of such bans, but also wonder whether if in these cases, articles 30 et seq should not be applied exceptionally, given the close link between the advertising and the products concerned.

- In the absence of harmonization, the maintenance of the rules of the receiving country is all the more necessary since the legal regimes governing advertising messages are widely divergent in the various Member States (13th recital).

The Court notes that the rules go "from almost total prohibition, as in Belgium, by way of rules comprising more or less strict restrictions, to systems affording broad commercial freedom". The Court therefore stresses these differences, which the Commission should not forget, if there is any tendency to apply the principles of "Cassis de Dijon", (according to which protection is more or less equivalent in different Member States, despite the existence of divergent national rules). The weakness of the Council of Europe draft recommendation (cf above) should not be copied by the European Community!

(c) Freedom of advertisers to distribute their messages through television channels in a neighbouring State

According to the Debaue judgment, advertising rules in the receiving country are therefore to be applied, in the absence of harmonization, but only "to the extent to which a provider of services established in another Member State is not subject to similar regulations there". (12th recital).

Given the "widely divergent systems of law" (13th recital) among Member States, it must be concluded that at present one cannot, in many cases, talk of "similar regulations" insofar as advertising rules are concerned.

It seems useful in this connection to remind the advertisers wishing to use a television channel in another country as well as to the channels accepting to distribute foreign advertising messages, of the Van Binsbergen judgment of 3.12.1974 (case 33/74) : "One could not prevent a Member State from having

the right to take measures aimed at preventing the freedom guaranteed by article 59 used by a provider of services whose activities would be entirely or mainly directed towards its territory, in order to escape the professional rules which would be applicable if he were established on the territory of the State". The Boukema report in Holland comes to the conclusion that basic advertising rules (such as the hour for broadcasting advertising television, control on the basis of established codes, the central allocation of publicity revenue) are certainly professional rules in the sense of this judgment.

According to the Commission services, it would in any case be possible to go to national Courts against national advertisers distributing through a foreign channel towards the national territory, advertisements breaking the national rules; under *national law* the means of action would be *unfair competition*. According to the Commission, it would however have to be a serious breach. They consider that one could pursue not only the advertisers but also the foreign television company concerned. However the limits to such action are very apparent. What does one mean by a serious infringement in an area made of nuances and subtleties? Furthermore, consumer organizations could not bring such an action, but only competing advertisers.

In conclusion, we recommend that the Commission should clearly specify the legal possibilities for the protection of receiving countries, whilst awaiting harmonization, even if we doubt their practical application. Let us quote the contribution of the Belgian television distributors in the Debaue case : "At the beginning, certain television distributors would have cut advertising sequences. Then as the number of foreign channels broadcasting publicity messages increased, it would have become impossible to cut the sequences". Added to this problem is the risk of administrative tolerance of a breach of law as in Belgium.

The only real protection faced with the reception of broadcasts from other Community countries, which is both inevitable and desirable, will be harmonization of advertising regulations at the highest level. Either the other EEC institutions will ignore the Court judgments, or if they recognize them they will have no alternative but to adopt a directive.

2. HARMONIZATION OF REGULATIONS GOVERNING TELEVISION ADVERTISING

(a) Objectives

- *Harmonization is an end in itself and not simply a means of opening up the market*

From the consumer viewpoint, the objective of harmonization should be to reconcile the requirement to open up the market to create more real choice, hoise, and at the same time to preserve national advertising rules and controls. The legal possibility exists within the EEC to block foreign advertisements which contravene national rules. In many cases programmes and advertisements are not sold as a "package", so that these conflicting objectives can be reconciled. It would be better to find solutions to make it unnecessary for national governments to use this blocking power. But this can only be achieved if the Commission accepts that the aim of harmonization is not only to open up the market; indeed, if this aim is to be achieved, the directive will at the same time have to aim for the highest possible harmonization of television advertising standards.

- *Limited role of self-discipline at the Community level*

The strength of the national rules lies in the fact that they cleverly integrate basic legal rules and the self-disciplinary codes of the broadcasting organizations. Almost everywhere they have avoided recourse to simply non-statutory and voluntary codes which would have given too much weight to the interests of advertisers. The organizations drawing up and applying these national self-disciplinary codes are in general responsible under the law or even directly to the Parliament. Given the structure of the Community institutions, such a form of self-discipline is excluded at EEC level. It could also be incompatible with the EEC Treaty rules on competition (articles 85 and 86). It follows that the harmonization directive should be itself as explicit and precise as possible.

- *Basis of the harmonization work*

- * The work carried out in other international forums (Council of Europe, EBU) is of little use for the EEC Commission. The code of the International Chamber of Commerce is also an insufficient basis.
- * To draw up on the other hand a draft directive solely on the basis of the national codes would amount to neglecting the concrete interpretation

which is given to them over the years by the organizations set up to carry out preventive control. The drawing up of a directive should be the opportunity for an exchange of experience allowing the Commission to appreciate the key role played by these organizations and to draw lessons for the drafting of its directive. The Commission might for example organize a symposium or hearing by inviting also other interested parties such as the advertisers and consumer organizations.

- * At the same time work on television advertising should bring to the foreground unless they are adopted in the meantime, the draft directives concerning misleading and unfair advertising, claims for foodstuffs, advertising for pharmaceutical products⁽¹²⁾.

- *Areas covered by the directive*

- * The directive should cover all forms of television broadcasting whatever the technical basis (off-air, satellites, cables) to the extent that they have a trans-frontier impact. It is possible that rules concerning advertising transmitted by satellite — DBS and telecommunications satellites — should be stricter because on the one hand their geographical coverage is wider and on the other one can invoke the argument that no advertising practices yet exist which should be taken into account.
- * The television of tomorrow will not only offer classical programmes which the viewer will look at passively, but also services requiring an active choice on the part of consumers (videotex, pay TV,). In the first stage a Community directive should without doubt concentrate on advertising rules for classical programmes, but it should already require Member States to inform the Commission of advertising rules concerning televised services with a view to a follow-up directive covering contracts and cooling off periods, etc.
- * Such a directive can only take effect within the Community. There should be negotiations⁽¹³⁾ with third countries whose television broadcasts can or will be received in the Member States so that they respect EEC rules. In the meantime the Community should ensure that with these countries the WARC agreement is maintained according to which no broadcast can be specially directed towards a foreign country without the agreement of that country.

(b) Contents of the draft directive

We will limit ourselves to identifying on the basis of the comparative examination of the existing regulations as well as the interpretative rules drawn up by the control bodies, some general guidelines.

- *Scheduling of television advertising*

As we have seen, the rules governing programming are the cornerstone allowing excessive commercial pressures to be resisted. If the EEC directive does not arrive at an agreement on precise rules, it will have failed and open the door to excessive competition for advertising revenue which could cause bad relations among the Member States.

* *Maximum duration of advertising* : The directive should go further than the draft recommendation of the Council of Europe which is likely simply to adopt the provision of the British Broadcasting Act ("The moment of time shall not be so great as to detract from the value of the programmes as a media of information, education and entertainment")(14). It should fix a maximum percentage which could be revised by common agreement through a committee set up by the directive (cf below) taking into account the appearance or not of new private channels and their needs.

If the British formula was to be adopted it would be necessary at least to guarantee that in each Member State, the authorities or the independent organizations set up by them, should specify the exact duration in order to avoid individual companies interpreting the formula to suit their own interests.

* *Days and hours for broadcasting advertising* : It seems difficult to generalize for the whole Community, the restrictive practices of the German and Dutch type, but they should be respected in foreign programmes received in those countries. A future directive should by no means overrule the existing national restrictions.

On the other hand the directive should try to limit, even forbid the distribution of advertising, at least for a certain number of dangerous products, during *childrens' programmes or usual viewing time for children*.

- * *Bloc advertisements and interruption of programmes by advertising* : The directive should require that advertisements should always be presented in the form of advertising bloc, particularly since this is an almost generalized practise and considered by the EBU itself as essential to distinguish programmes from advertising spots.

The commercial channels ITV and RTL do not seem ready to give up the interruption of programmes by advertising. Nevertheless the directive should not purely and simply fix the British concept of the "natural break" but at least look for a compromise which could, among other things : forbid interruptions during programmes for children (cf below recommendation by OECD); fix the exact and very limited number of interruptions. Consumers would of course by far prefer not to have any interruption of programmes.

The authors of the draft directive should in any case not forget that the British practise is itself surrounded by severe limitations.

- * *Sponsorship* : The directive should not limit its attention to publicity spots because there is increasing attention being given to sponsorship, at all levels, local (cf the White Paper on cable) as at the international level. (According to our information, SATV in the United Kingdom will broadcast sponsored programmes from 1984). This is an extremely difficult area offering numerous possibilities for the imagination.

We think that this problem should be examined separately. We recommend that the work being done in different forums (the White Paper, for example, requires the cable authority to draw up rules; the EBU has also indicated that it would examine the question), should be co-ordinated at the Community level and that the American experience should be taken into account. We ask that the Commission should examine at least three aspects of sponsorship :

- ** *Televised sponsored events* : Having examined their usefulness the directive should take up and annex the principles of the EBU regulating advertising at sports grounds; particular attention should be given to advertising for dangerous products such as tobacco and alcohol, in order to limit or to forbid their presence. The patronage of cultural and variety events should also be examined very carefully.

**** *Sponsored programmes* :** Although this practice is still forbidden almost everywhere in the Community, almost all television channels have recourse to it in one way or another according to those responsible at the EBU. The draft Hutton report of the European Parliament, talking of the danger which the commercialisation of new means of information represents for pluralism of opinions “wonders whether the present ban on this form of financing should not be replaced by certain strict limitations”. Consumer organizations would prefer it if one could do without sponsored programmes. If this practise should however spread, consumers should clearly know what programme is patronized by what special or other interests. Similarly to the “white square” which is used on certain channels throughout the film to draw the viewers attention to the fact that it is reserved for adults, one might have a signal for sponsored programmes.

Limits should however be introduced : the number of sponsored programmes should be limited. In order to encourage the “cultural sponsorship (“mécénat”)", one should avoid close links between sponsored programmes and the commercial interest of the sponsor. Sponsored programmes should be subject to preventive controls in the same way as spot advertisements.

These are only initial ideas in an area which remains to be examined further. The Commission should not neglect its responsibility in tackling this very problematic question.

**** *Advertising presented in the form of programmes* :** We have in mind here the efforts of imagination to present advertisements in other forms than classical spots. We refer to the examples concerning the United Kingdom and the Federal Republic of Germany mentioned above. American experience of the “Home Shopping Show” type leads us to be extremely reserved.

To avoid a confusion between advertising, information and fiction, we hope that the directive will authorize only traditional advertising spots grouped in blocks.

- *Presentation and contents of advertising messages*

Without neglecting important aspects such as subliminal advertising and direct marketing by television which we would like to see forbidden, the issues are the following :

* *Misleading and unfair advertising* : The existing draft directive covers all forms of advertising and therefore also television advertising. It is enough to refer to the national codes governing television advertising without even taking into consideration the case law which has resulted from them to be aware that the provisions of this proposed directive are formulated in far too general a manner. On the other hand, the draft directive concerning claims in advertising for foodstuffs, of course more limited in its purposes, seems to us better adapted (thanks to its bans and limitations) to the needs of television advertising. Given the fact that in many Member States, foodstuffs traditionally cover between 30 and 40 per cent of television advertising, the importance of this proposal is immediately apparent.

The future draft directive on television advertising should specify the following points :

** *Testimonials and recommendations* : Testimonials are messages involving people who describe a real personal experience, (fi film stars, housewives). A recommendation is made by a person having a reputation for competence in connection with the product or service concerned.

According to the consumer policy committee of OECD these practises have considerably developed recently and aim at reassuring the public and artificially differentiating products. At least some of the control bodies for television advertising have elaborated precise case law on these problems (in particular the French and British organizations); the Commission should examine this question in detail in order to limit these practises as far as possible.

** *Comparisons, superlatives, technical and scientific terms* : The brevity of televised messages as well as the combination between colour and sound makes control particularly necessary. Special attention should be given to *reproduction techniques* which may falsify comparison.

**** Guarantees :** The terms “guarantee” or “approved” should not be used unless the specific conditions and the rights open to the buyer are indicated.

To be as clear as possible as far as misleading and unfair advertising is concerned, the authors of the draft directive should bear in mind that traditionally foodstuffs, drinks (alcoholic or not) hygiene products and cosmetics, household cleaning products are the main subjects for television advertising. They should examine together with the national control bodies the principal practical problems, particularly as far as these products are concerned.

*** Advertising concerning children :** Apart from testimonials and recommendations, the consumer policy committee of OECD selected this area as presenting serious problems. In its recommendations it suggests in particular the following :

**** Particular attention should be given to the relationship between children and parents (one should avoid techniques deliberately encouraging children to solicit purchase of goods from their parents; an indication of the prices should be given, in particular for toys).**

**** Television programmes specially destined for children should not be interrupted by advertising. Actors or characters appearing in childrens’ programmes, should not caution advertising destined to children.**

**** There should be a strict and responsible control of the contents of advertising concerning sweets and a warning of the dangers for health and hygiene.**

**** One should avoid showing dangerous situations and underline the risks associated with certain products.**

The national codes covering television advertising as well as the case law which have developed over the years in certain Member States are very detailed. Since everyone, including the advertisers, recognize that it is a very sensitive area, the directive should aim particularly on this problem, at the highest level of harmonization.

*** Products submitted to bans or strict limitations :** All Member States agree that tobacco, alcoholic drinks, pharmaceutical products and medical treatment give rise to serious problems.

**** Tobacco :** All that remains authorized in a few Member States is advertising for cigars, cigarettos, pipe tobacco; on the other hand televised messages for cigarettes and cigarette tobacco are generally banned. On this last point the draft directive should not therefore give rise to any problems and should lay down a straightforward ban. For the first category of products we suggest that there should also be a ban, following a transitional phase allowing for the countries concerned to adapt. In the meantime these countries should commit themselves to limit this kind of publicity as far as possible and not to distribute it by satellite, (because of its important trans-frontier impact).

Member States should also commit themselves to reduce as far as possible the sponsorship of events, particularly sporting events, by tobacco companies, given the flagrant contradiction between sport and tobacco.

**** Alcoholic drinks :** Apart from the total bans in Denmark and Belgium on all television advertising, only one Member State — France — totally forbids alcohol advertising. Other Member States provide for strict limitations which are broadly similar in the Federal Republic of Germany, the Netherlands, the United Kingdom and Ireland. The minority, including Luxembourg, provide for less detailed limitations. There are very important differences not only in the regulations, but also in consumption habits, and it is quite clear that harmonization will be harder to achieve in this than in other "sensitive areas". Until there is agreement, there should be no alcohol advertising on DBS channels.

The ideal would be to recognize at the outset, that because of the complexity of reconciling different national rules, it will be very difficult to reach a consensus, and that even if an agreement were to be reached, it could only be at the expense of violating some of these rules. This should lead to the conclusion that DBS ought not to be used as a new medium for alcohol advertising.

An alternative would be to seek a ban on advertising for spirits, but agreement to allow advertising for beers and wines.

**** Pharmaceutical products and medical treatment :** According to the EBU it is very difficult to see clearly, particularly because the products and services included in this category vary greatly from one country to the next. Within the Community harmonization should be sought rapidly. The governments committed themselves to do so in the past (eight of the ten Member States subscribed in 1969 to a resolution of the Committee of Ministers of the Council of Europe concerning advertising of medicines to the public⁽¹⁵⁾). Furthermore, there is a draft directive on advertising of pharmaceutical products dating from 1967! Contrary to the wishes of the consumer organizations this proposal has been withdrawn. It should be brought out in the framework of the activities on television advertising, particularly since it refers explicitly to the problem of television advertising. Let us recall some of its provisions concerning advertising to the public : "Any advertising is forbidden when it provokes in particular through television, sensations or excessive expectations or ideas which have nothing to do with its purpose".

"Member States shall take all necessary measures to avoid any publicity to the public concerning pharmaceutical products which can only be sold on prescription".

The national codes covering television advertising cover these aspects as well as many other provisions. The draft directive should be based on the rules of the codes and the case law which are most developed and aim at harmonization at the highest level by including the widest range of products and services in the area of pharmaceutical products and medical treatment.

**** Other products and services submitted to strict limitations :** Together with the bodies charged with preventive control, the EEC Commission should examine carefully the other products and services considered as sensitive under national rules, in particular those which are covered by two or more national codes. Consumer organizations

draw particular attention to *financial advertising, mail order sales, educational and training courses.*

- *Control of advertising messages :*

* *Preventive control*

Throughout this study we have stressed that preventive control of advertising messages on television is the strength of the whole self-disciplinary system. The British White Paper on cable recognizes this, and extends it despite contrary opinions (cf the Hunt report in particular) to cable television. If the British authorities retain this mechanism as indispensable even for television programmes of a more limited nature, it is evident that television advertising of a trans-frontier character can not escape from it.

Judging from the different national codes, all national organizations undertake systematic preventive control; according to our information however there are *important practical differences*. Thus, control by RTL seems extremely flexible and is certainly less restrictive for advertisers.

The co-existence in the EEC of preventive controls which are rigorous and flexible could encourage advertisers in future to turn their attention rather more to the channels which are the least strict. This could result in distortions of competition, and the risk of pressure towards alignment on the least severe conditions of control (the deregulation spiral).

It is not therefore enough that the draft directive lays down that all Member States should carry out preventive controls. It should also be established that there should be sufficient time between the submission of the script or advertising film to the control body and the broadcasting of the advertisement should allow for genuine verification with some exceptions (standard advertisements, urgent announcements). It would be even better to agree on a precise time limit. The participation of consumers in the control body should be encouraged by the directive.

* *Post facto control* : Some organizations appeal for complaints from viewers. Although we consider preventive control as far more efficient, we would welcome a provision providing for post facto control. We assume that the principles of the draft directive concerning misleading

and unfair advertising, in particular the reversal of the burden of proof, will be applied. According to this the advertiser must prove that his claims are well-founded, rather than the viewer prove the misleading nature of the advertisement.

- *General clauses of the directive*

- * *Setting up of a committee for the execution of the directive* : We hope that the directive will be as precise as possible. We are however aware that a certain number of points, either are difficult to negotiate (volume of advertising), or require adaptation to progress and gradual refinement (certain areas of harmonization, such as alcoholic drinks). We recommend that a committee should be set up under the directive, including the Commission, government experts, and representatives of the television companies. Each time representatives of the advertisers are consulted, the opinion of consumer organizations should be asked for on an equal basis.

There is however one reservation. Questions of principle or of basic importance requiring democratic consultation of the European Parliament and all interested parties cannot be included in the competence of the committee.

- * *Safeguard clause for of the Member States forbidding television advertising* : Advertising broadcasts which would be partially or totally directed at these countries by television companies from other Member States are forbidden, in the absence of their agreement.

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- (2) Recommendations of the Boukema committee Rijswijk, October 1982. Ministry of Cultural Affairs, Recreation and Social Welfare.
- (3) Wetenschappelijke Raad voor het Regeringsbeleid : "Naar en samenhangend Media-beleid".
- (4) Bundestag/Zwischenbericht de Enquêtekommission "Neue Informations —und Kommunikationstechniken".
- (5) Jean d'Arcy : "Des satellites pour tous", le Monde, 26.6.1981.
- (6) For some time it has been a question of not broadcasting new programmes on TDF1. The objective seems to have changed in the meantime but the real intentions remain vague.
- (7) The EBU includes more than 100 broadcasting organizations spread in almost 80 countries. All the national organizations in the EEC are active members, the organizations of the United States, of Canada and of Japan are associate members.
- (8) It will deal with questions of advertising and authors' rights.
- (9) The only judgment which interests us here is that concerning advertising; the other case concerns protection of authors' rights.
- (10) On the other hand messages destined to the national territory of the broadcasting State could possibly not fall under Community law (cf 9th recital of the DEBAUVE judgment), intervention of the German government in the same case.
- (11) Dr Ivo Schwartz : "Die Liberalisierung der Nationalen Hörfunk-und Fernseh-systeme aufgrund des Gemeinschaftsrechts", Markenartikel 12/1982.
- (12) Misleading and unfair advertising (OJ CE C194 of 1.8.1979); Claims, presentation, advertising of foodstuffs (OJ C198 of 6.8.81).
Advertising of pharmaceutical products (OJ No 248 of 13.10.1967 and OJ C35 of 28.3.1974).
- (13) On the basis of what is done in the area of trade marks and patents.
- (14) On the basis of this provision IBA fixed a maximum average six minutes per hour of advertising.
- (15) This text provides in particular : "Considering that advertising could not be limited to national frontiers, the legislation in force or foreseen in each State becomes a question of common interest and for this reason it is necessary to arrive, as soon as possible, to a harmonization".

CONCLUSIONS

1. The advantages of DBS and the expansion of cable television in terms of greater choice of programmes and increased European co-operation in broadcasting will not be fulfilled without efforts to reach common European advertising standards. The legal situation in the EEC is that national rules in the receiving country take precedence until they are harmonized. Our main recommendation, spelt out in detail in Chapter 3, for the drawing up of an EEC directive on television advertising, is therefore realistic assuming the other EEC institutions take the rulings of the Court of Justice into account. Once the "green paper" is published by the Commission at the end of this year, we suggest a public seminar might be organized with the different interests involved, to discuss the options for such a directive.

2. In several EEC countries, the emphasis has now been placed on the development of cable television, but this does not make the issue of advertising less European, especially where cable is used to distribute DBS programmes. Apart from the expansion of purely commercial DBS channels, the threat to national advertising standards is less likely to come directly from foreign broadcasts, than from a difference in treatment between classical television and cable networks and the emergence of new forms of advertising (i.e. sponsorship). If less strict rules are applied to cable, the national standards gradually built up by the statutory self-regulatory bodies will be eroded. The viewer sees advertising on the same screen, whatever its source. We recommend therefore that the same rules should be applied to television advertising, irrespective of its geographical origin or technical means of transmission.

3. It is astonishing that despite the 1986 deadline for the introduction of DBS channels, there is a European legal vacuum for transnational television broadcasting in relation to advertising rules. It was because of this delay that, for example, BEUC and the EAT (European Advertising Tripartite) decided to send a joint letter to the EEC Council of Ministers, calling for adoption of the directive on misleading and unfair advertising. Governments have reacted in different ways to the plans of neighbouring countries, and much of the discussion is bilateral. This explains the weak and very general EBU guidelines, and the even more disappointing draft recommendation by the Council of Europe. The mountain (i.e. extensive preparatory work in the Assembly and by government experts) has given birth to a mouse (i.e. a vague text which solves none of the basic problems).

4. The Commission will have to adopt a different approach. It is not enough to examine the national codes and rules, but also to draw on the case law developed by the statutory self-regulatory bodies, which generally function satisfactorily. If national control has a legal statutory basis, it is not enough for transnational broadcasting to refer to voluntary codes or recommendations to governments. This does not mean of course that all problems have to be solved in a directive by 1986 — the important point is to ensure that the work is begun now to provide a legal basis for the general aspects of advertising practice; the “sensitive areas”; the volume of advertising; pre-screening and complaints. Above all there will be a need for new national and European rules on sponsorship.
5. Expansion of DBS and cable television provides an opportunity for broadcasting authorities to examine whether the volume and viewing times of television programmes for consumers are sufficient, particularly since any increase in advertising ought to be counter-balanced by more objective information on goods and services. Consumers should be represented in advertising control bodies, whether nationally or at European level.
6. Finally, consideration should be given to the setting up of a statutory European control authority for advertising standards on transnational DBS and cable networks, on the lines of the new authorities some Member States intend to create. We wish merely to raise the need for some multilateral mechanism to ensure that complaints are settled and standards maintained, rather than to make specific proposals at this stage. The EBU might be the most competent body to take on such a function, provided it was given a legal statutory basis by the EEC and the Council of Europe.

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ANNEXES TO THE STUDY

- (1) Joint submission by IOCU/BEUC to Council of Europe on "DBS and the consumer" (March 1983).
- (2) BEUC comments on the EBU declaration of principles regarding commercial television advertising broadcast by DBS.
- (3) Council of Europe preliminary draft recommendation of the Committee of Ministers on principles on television advertising.
- (4) EBU principles on advertising placed at sports grounds.
- (5) Extract from the Report by Mr Stoffelen to the Parliamentary Assembly of the Council of Europe. Doc 4756 of 17 July 1981, p25 to 29.
- (6) Advertising issues in New Communication Technologies by D Pridgen - USA.
- (7) Television programme by INC : "butter — a difficult ad to digest".
- (8) Extract from "television today and television tomorrow" (JWT) — Table of advertising rules.

DIRECT BROADCASTING BY SATELLITE (DBS) AND THE
CONSUMER

Joint submission to the Council of Europe Committee of
Experts on Media Policy (MM-PO) by the International
Organisation of Consumers Unions (IOCU) and the Bureau
Europeen des Unions de Consommateurs (BEUC)

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March 1983 •

1. It was only three weeks ago that IOCU and BEUC were invited to make a submission to the Council's Committee of Experts on Media Policy. This submission has therefore been prepared at great speed. There has not yet been time to draw fully on the experience and ideas of our national consumer organisations in the member states of the Council of Europe, or on the research which both IOCU and BEUC have in hand. We hope to present a fuller submission at a later date, if the Committee's timetable allows this.
2. The submission deals mainly with the regulation of advertising, and in particular with the distinctive problems presented to consumers by transfrontier advertising via DBS. However, DBS has other implications for consumers, particularly in the medium and longer terms. At the end of our submission we outline some of the issues arising from transfrontier direct response selling via DBS, and from the use of DBS for information services.

Advertising and freedom of expression

3. The advertising industry claims that advertising should be subject to minimal external regulation and control, on the grounds that Article 10 of the European Convention on Human Rights sets out the right to benefit from the freedom "... to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers." The relevance to advertising of this Article and of the Council of Europe's Declaration on the Freedom of Expression and Information need to be examined with some scepticism.
4. From a theoretical standpoint, no right of this kind to freedom of expression is unqualified. There is no absolute right to freedom of expression, for an advertiser or for anyone else. For example, it is accepted even by the advertising industry that constraints exist in respect of public health, competition policy and other factors.
5. In practice, advertisers already have a considerable advantage over other members of the community in terms of freedom of expression. For example, in most member countries of the Council of Europe, an advertiser may buy advertising time on television to communicate his or her message to the public. What the advertising industry asserts to be a basic right is in fact denied to other members of the community, who are generally prohibited from buying time on television. For example, consumer organisations cannot buy television time to give test results or state their views on goods and services. Their ability to present information and views on television depends on the broadcasting authorities' decision as to whether or not what they have to say makes good programme material. The same is normally true of other individuals and groups in society, with the exception of advertisers.
6. The advertising industry's invocation of freedom of expression to put them on a par with other groups does not stand up to examination. So far as the media in general (and television in particular) are concerned, advertisers are already in a privileged position. It is only proper that this privileged form of communication which advertisers - and advertisers alone - are able to buy, should be the subject of appropriate controls which do not necessarily apply to other forms of expression.
7. In stressing the need for appropriate control systems for advertising, we do not wish to give the impression that we are opposed to advertising as such. As might be expected, there is a variety of views among our national member organisations about the harm and benefits that advertising brings to consumers. We are however united in aiming to minimise the harm that advertising can cause and maximising the benefits it can bring.

Types of advertising regulation

8. The variety of legal systems and organisational structures within member states of the Council of Europe does not make it easy to use any standard classification of advertising controls. However, we find it helpful to use the following terminology:
- Legal regulation;
 - Regulation exercised by broadcasting organisations;
 - Self-regulatory systems;
 - Codes of practice;
9. The borderlines between these categories are not always clearcut. Also, the different categories should not necessarily be seen as alternatives. Typically, the totality of advertising controls within any country may comprise two, three or even all four categories, operating either in conjunction with each other or independently.
10. In general, the subject matter of regulation extends with each category: within any country, controls exercised by broadcasting organisations cover a wider range of matter than legal controls, self-regulatory systems a wider range than broadcasting organisations' controls, and so on. Conversely, the sanctions available become weaker from category to category.

Legal regulation

11. We will not go in detail into the marked variations there are between member States in the legal regulation of television advertising. These variations are not in themselves a matter for criticism in the context of conventional television transmissions, which are mostly contained within national boundaries. They take on great importance with the advent of transfrontier DBS services.
12. The power of legal regulation in the country receiving DBS services will be considerably weakened. Receiving countries, whether specifically targeted for DBS services or not, will depend on the goodwill of the broadcasting organisations which are transmitting advertising by DBS.
13. This situation will be unsatisfactory for consumers in two important respects. First, it removes incoming DBS advertising from legal control. Second, it shifts responsibility outside national boundaries to broadcasting organisations in other countries. Unless there is convincing evidence that advertising via DBS is likely to present few problems, and that these can be dealt with effectively by national broadcasting organisations and self-regulatory systems, an international legal framework would seem to be an urgent necessity. The roles of broadcasting organisations and self-regulatory systems, and the kind of problems that transfrontier advertising via DBS will present, are examined below.

Regulations exercised by broadcasting organisations

14. These are extremely powerful in relation to conventional television broadcasting within any country. It is the broadcasting organisation which normally has the power of decision over which programmes and advertisements are televised. The sanction of not transmitting an advertisement which fails to conform either with the law or with other requirements laid down by the broadcasting organisation is in practice virtually complete.

15. Many broadcasting organisations (e.g. in Ireland, France, the Netherlands and the UK) operate a pre-screening clearance system for advertisements, either internally or in conjunction with a self-regulatory system. The importance of this cannot be over-emphasised from the consumer's point of view. Pre-screening clearance is no formality. For example, in the United Kingdom, out of 7,092 pre-production television advertising scripts submitted for clearance, no less than 21.7% needed changes, to satisfy the IBA's requirements.¹ This is a surprisingly high figure in the context of a well-established television advertising system in which the broadcasting organisation's requirements and statutory responsibilities are well known among advertisers and advertising agencies. This evidence strongly suggests that the absence of a pre-screening clearance system operated or supervised by the broadcasting organisation would soon lead to a decline in the standards of advertising.
16. There are of course current examples of the control powers of broadcasting organisations within their own countries being considerably diluted in practice. People in parts of Belgium, Denmark and Norway, where there has been no advertising on television, are able to receive televised broadcasts carrying advertising from neighbouring countries, which are not subject to national control.
17. DBS will erode the control that broadcasting organisations exercise over television advertising within their own countries. It will not of course directly affect their powers of control over advertisements that they themselves transmit, though they may come under pressure from advertising interests to relax their criteria if television advertising received via DBS meets less stringent standards. The control they will be able to exercise over incoming DBS advertising will depend on technical and institutional arrangements. If individual home receiving equipment (in the form of a dish antenna) is used, on the basis assumed by the WARC-BS plan, then the broadcasting organisation in the receiving country will have no control. If community reception is used, then control will depend on whether or not the broadcasting organisation has responsibility for the final distribution of incoming DBS services via cable to people's homes.
18. While broadcasting organisations will continue to play an important part in the control of advertising, there is little doubt that the coming of DBS will see an erosion of their power within their own national boundaries.

Self-regulatory systems

19. The four characteristics set out by the European Advertising Tripartite (EAT) form a good basis for considering the role of self-regulation:²
- a universally applicable code of practice, drawn up on a co-operative basis by the industry it is designed to control, and expressed in clear, unambiguous terms;
 - wide publicity for the code to the business [community] concerned and to its customers and potential customers;
 - an efficient and consistent monitoring, complaints handling and arbitration procedure to investigate and adjudicate apparent breaches of the code and which is provided by the industry concerned;
 - effective sanctions should the code be infringed.

20. To these we would add three further characteristics which are important from the consumer's point of view:
- consumer interests should be consulted about the code of practice and the design and functioning of the self-regulatory system;
 - there should be a healthy measure of independence from advertising interests in both the financing of the system and the composition of its key bodies - for example, a complaints handling committee should have a significant proportion of members drawn from outside the advertising industry;
 - decisions on complaints and on sanctions should be announced publicly, as should the results of regular monitoring: this provides a form of public accountability.
21. Self-regulatory systems have developed to a fairly advanced level in a number of countries, but looking at Europe as a whole (and at all media, not just television) the impression is distinctly patchy. For example, in Denmark, Luxembourg, Turkey and Iceland, our information is that self-regulatory systems are non-existent (or virtually so). In Greece and Portugal the situation is little better. In Italy and Spain, the self-regulatory systems have marked deficiencies. In Norway and Sweden, there is no self-regulatory system as such, though trade associations give guidance to their members.
22. Even where a developed self-regulatory system exists, it cannot be assumed that all advertising complies with the requirements of the system. For example, a review of the UK self-regulatory system of advertising control was carried out in 1978 by the Director General of Fair Trading. The review covered newspaper and magazine advertising and found that 98 per cent of advertisements conformed to the code on which the self-regulatory system is based. The seven per cent failure rate rose to 13 per cent for national (as distinct from local) newspapers and magazines.³ While this failure rate is low in percentage terms, it does mean that every day there is nevertheless a significant volume of advertising to consumers published which does not meet the standards of a relatively sophisticated self-regulatory system.
23. These figures for printed media have of course no direct relevance to television advertising, whether conventional or DBS. We have quoted them as evidence that self-regulation cannot be relied on as the sole method of advertising control.
24. Taking into account the highly variable nature and effectiveness of self-regulation throughout the member states of the Council of Europe, it is clear to us that while national self-regulatory systems may have a useful part to play, it would be a mistake to see them as the cornerstones of advertising regulation on DBS services.

Codes of practice

25. There is a great deal of confusion in discussions about self-regulatory systems and codes of practice. Most effective self-regulatory systems include a code of practice, but also meet the general requirements set out in the last section. But codes of practice are also often drawn up by industry or trade associations with the intention of describing 'best practice' in terms of the commercial behaviour of member firms to consumers and to each other. Other codes of practice focus on a particular form of commercial activity, such as mail order trading, or television advertising. Some codes of practice are sanctioned by official bodies.
26. The usefulness of codes of practice to consumers varies according to the extent to which the trade association's membership includes all the relevant firms, the degree of commitment of member firms and the effectiveness of procedures for monitoring the code. Many consumer organisations are sceptical of the real value to consumers of codes of practice, on the grounds that those firms most likely to exploit the vulnerability of consumers either do not belong to trade associations or do not feel bound by codes of practice. They are also critical of weak or non-existent sanctions on firms which contravene codes. However, codes of practice probably do some good, in terms of setting desirable standards for a trade or commercial activity.
27. Some codes of practice are relevant to conventional broadcast television advertising, but they should not be thought of as substitutes for other forms of advertising regulation which are more effective.
28. The International Code of Advertising Practice of the International Chamber of Commerce (ICC) is an example of a code of practice which encourages advertisers to adopt reasonable standards but which involves no commitment or sanctions. From the consumer point of view it is a marginally helpful aid to raising advertising standards without being integrally necessary to a proper control system.

Particular problem areas

29. So far, our comments have been about the general aspects of advertising regulation on DBS. There are a number of areas which have given rise to particular problems in conventional television advertising. We do no more than outline these below, though we are currently engaged in detailed research, the results of which we shall be glad to provide to the Committee at a later date.
30. Alcoholic drinks: the situation varies widely from country to country. For example, in Ireland, Denmark, Norway and Belgium there are no television advertisements for alcoholic drinks. In France, there are legal controls on which alcoholic drinks may be advertised on television and which not. In the UK, controls are exercised by the relevant broadcasting organisation (IBA). In Italy and the Federal Republic of Germany there are no restrictions but there are codes of practice about the advertising themes that may be used.
31. Tobacco: cigarette advertising is widely banned on television, either by law or by the broadcasting organisations. The situation in respect of other tobacco products is more complex.

32. Other sensitive areas where the regulation of advertising varies widely between countries include:

- Medical and semi-medical products;
- Investment and savings facilities;
- Advertising aimed at children.

33. We consider that resolution of the problems that exist at present in relation to these specific types of advertising will be compounded by DBS, though some will be easier to deal with than others. Cigarette advertising on television is banned virtually everywhere. On televised advertisements for other tobacco products, medical and semi-medical products and advertising aimed at children there is a strong element of convergence in national legal and other regulatory measures which should make it possible to achieve a considerable measure of harmonisation. Televised advertisements for investment and savings facilities and (especially) alcoholic drinks present considerable problems in terms of the differences that already exist. We doubt whether these can be resolved between broadcasting organisations or self-regulatory systems, not least because of the differences in legal provisions between the countries concerned.

34. Another problem area is the wide variation that exists in controls over the amount of television advertising that is currently permitted (in terms of minutes per hour, or per day), the hours between which advertisements may be shown, and the way that advertisements are grouped and presented.

Commercially sponsored programmes on DBS

35. In most countries, great care is taken to distinguish clearly between television programmes and advertisements. The ways in which such distinctions are made vary considerably from country to country. Advertisements may be grouped, or scheduled to appear at certain times, or only in 'natural breaks' in programmes. Whatever the technique used, we hold most strongly that consumers should be able easily to distinguish between programmes and advertisements. We also hold that advertisers should not be able to control or influence the content or presentation of programmes.

36. While these principles are at present generally accepted by broadcasting authorities, often in the context of national legislation, they are coming under increasing pressure. In recent years, broadcast television in a number of countries has seen the rapid growth of commercially sponsored sporting and artistic events. For example, in the United Kingdom in the first half of 1982, the top 20 commercially sponsored sports events in terms of television coverage took up 35 per cent of all televised sport, an increase of 4 per cent over the same period in the previous year.⁴

37. The motivation of the different parties involved in sponsored events is fairly self-evident. Sport and the arts are hungry for money. Often, commercial sponsors will only agree to sponsor an event in the knowledge that the event will be televised. Many (but by no means all) sponsors are commercial firms which would not be permitted either by law or by the broadcasting authorities to broadcast normal advertisements. For example, in the United Kingdom

cigarettes may not be advertised on television, but the brand name of a cigarette may be used in the title of a televised event. Also, bookmakers may not advertise their betting facilities on television, but they sponsor horse races which are televised not only on the ITV channels, which include advertisements, but also on the BBC channels which do not: huge bookmakers' advertising hoardings are positioned on the racecourses from which the television pictures are transmitted, so that they can be seen by viewers. Despite the awareness and efforts of the broadcasting organisations, therefore, commercial sponsorship of events is increasingly being used as a way of by-passing systems for the control of advertising.

38. DBS and the prospective revolution in cable television are already leading to pressure from many parts of the advertising industry to extend commercial sponsorship from events that are televised to actual television programmes themselves. It is being claimed by many advertising interests that commercially sponsored programmes should not be treated in the same way as advertisements and that they should be considered as a valuable way of enhancing the opportunities that programme makers have to bring information and entertainment to consumers. DBS services are seen as presenting the advertising industry with a major opportunity for developing new forms of communication with consumers.
39. Commercially sponsored programmes may take a variety of different forms. The most innocuous form might be a programme which is wholly or partly funded by a commercial sponsor, which acknowledges this in vision only, not on sound, at the beginning or the end of the programme, and in which there is no hint either of advertising or of promotion of the sponsor's interest. At the other extreme, US cable television provides an example of the "Home Shopping Show", a half-hour programme in which a 'host' appears to interview 'guests', masking the reality that each of the 'guests' is really a sponsor who has paid for a nine minute commercial.⁵ Between these two extremes, there are many possible variations. There is little point in exploring them in detail here.
40. We are not opposed to the development of new forms of advertising, in response to the opportunities offered by the advent of DBS and cable television. However, we hold that commercially sponsored programmes are clearly a form of advertising and should be treated as such. We have already said that consumers should be able to easily distinguish between programmes and advertisements and that commercial advertisers should not be able to control or influence the content or presentation of programmes. Commercial sponsorship increases the risk that these two principles will be breached and that advertisers will develop a new hybrid which will undermine the critical faculties that consumers may, if they choose, bring into play when watching identifiable advertisements.
41. While many broadcasting authorities are aware of the problems that commercial sponsorship of programmes involves, we doubt very much whether the existing national legal and other regulatory frameworks for television advertising are equipped to deal with the problems of transfrontier DBS broadcasts which include commercially sponsored programmes, or with the pressure there will be from the advertising industry to include these. Also, we do not consider that the problems can be dealt with bilaterally between broadcasting organisations or self-regulatory systems, as national legal frameworks will themselves be in question.

Direct response selling via DBS

42. Most television advertising is designed to stimulate sales through shops or other conventional outlets for consumer goods and services. In some countries, there is a growth of direct response selling in television advertising. This form of selling invites consumers to place an order for goods or services directly with the advertiser, by writing or telephoning. The advertiser's address or telephone number is given in the advertisement. Some goods are sold only by this method and are not available from conventional retail outlets.
43. On public service viewdata systems, such as Bildschirmtext in the Federal Republic of Germany and Prestel in the UK, it is already possible for the consumer to order goods and services directly via the keypad, and to have his or her bank or credit card account debited in payment. A similar development is likely in the context of new broadband cable systems, possibly linked with DBS services.
44. Whatever the technology used for ordering and paying for goods and services, DBS is likely to provide an opportunity for the development of transfrontier direct response selling. That is, in response to a direct sales advertisement transmitted via DBS, consumers in one country will be able to carry out a transaction directly with the advertiser in another country.
45. In principle, we welcome the extended choice which transfrontier direct response selling via DBS will bring to consumers. At this stage, we can do no more than list some of the questions which need to be answered. Which country's laws will govern the transaction? Will there be a "cooling-off" period during which consumers can change their minds and cancel the transaction? What redress will be available to consumers who get defective products? Normally, such questions can be dealt with by national laws. Transfrontier direct selling via DBS raises problems which need to be looked at within an international legal framework.

Information services

46. There is a tendency to assume that DBS is a way of providing additional television (and perhaps radio) channels, and no more. However, consumers are interested in the possible use of DBS for providing a wide range of information services. Examples are:
- Teletext: this is a service which is already provided by some broadcasting organisations. There are, however, technical limitations to the number of teletext information pages which can be carried on any one channel. Extra DBS channels provide an opportunity for expanded teletext systems.
 - Telesoftware: computer programmes could be 'downloaded' to suitably adapted television receivers via DBS. There is a rapidly increasing interest by consumers in the use of home computers.
 - Educational services for schools and adult education groups: consumer organisations might well have a role to play in helping to provide these.

47. We urge strongly that the potential that DBS offers to widen and enhance the range of information services available to consumers should be explored at both international and national levels.

Conclusions

48. The advertising industry's claim that advertising is a form of communication which should be subject to no more regulation than other forms of communication should be treated with considerable scepticism. In the context of television, advertisers are in the privileged position of being able to buy time in order to communicate with the public, an advantage which is denied to other sectors of the community. It is therefore appropriate that advertising should be subject to suitable forms of regulation which do not necessarily apply to other forms of communication.
49. The present pattern of regulation for television advertising is a complex mixture of controls exercised by the law, by broadcasting organisations and by self-regulatory systems. The proportions of the mixture vary markedly from country to country. The different forms of regulation should not be seen as alternatives to each other, but as mutually complementary. In particular, self-regulatory systems should not be considered as a substitute for effective legal regulation. In the words of a leading advertising industry spokesman:-⁶
- "There is a place for both self-regulation of advertising and state regulation to protect the consumer and the advertiser. They are not mutually exclusive but complementary and the issue is often concerned with where the frontiers should lie between them."
50. The existing forms of regulation will still be important in relation to trans-frontier DBS advertising, but all will be significantly weaker within national boundaries. DBS inevitably involves an erosion of existing regulatory structures based on national laws and organisations.
51. In almost every other aspect of life, what happens within a nation's frontiers is subject to that nation's laws. The nature of the technology means that this does not apply to transfrontier DBS services. This is a characteristic that DBS shares with conventional broadcast radio, but the greater immediacy and impact of television throw the problem into sharper focus.
52. There are certain problem areas at present with conventional television advertising. These include alcoholic drinks, cigarettes and other tobacco products, medical and semi-medical products, investment and saving facilities and advertising aimed at children. These are dealt with very differently in the member States of the Council of Europe: there are wide variations both in the law and in other forms of regulation. There are also big differences in the quantity, scheduling and presentation of television advertisements. Transfrontier advertising via DBS will compound these problems.
53. The introduction of DBS is likely to be accompanied by pressure from the advertising industry for the development of commercially sponsored programmes. The implications of this hybrid for regulatory controls need to be examined very carefully.

54. The use of DBS for transfrontier direct response selling, while in principle a welcome development, will pose a number of legal questions which can only be resolved within an international legal framework.
55. DBS services provide opportunities for the extension of information services. These should be explored both internationally and nationally.
56. The complex nature of the problems presented by transfrontier advertising via DBS, the variations in existing patterns of national regulation, and the prospective weakening of the powers of national broadcasting organisations and self-regulatory systems all point to the need for an international legal framework. Without such a new framework, we find it difficult to see how existing standards of television advertising could be maintained. The bad would inevitably tend to drive out the good, to the detriment both of consumers and of the economies of member States. At this stage, we are not able to be precise about the form such an international legal framework might take - whether for example a Convention agreed by member states is preferable to a new supranational authority - or about the points which it should cover, although we have indicated some areas of concern from the consumer standpoint. We will return to these issues at a later date.
57. We appreciate that drawing up a Convention or establishing a supranational regulatory authority is not something which can be undertaken lightly or rapidly, and that the timetable for the introduction of DBS services virtually rules out the possibility that an international legal framework could be ready and working by 1984-85. Nevertheless, we believe that it is possible to make interim arrangements which would prevent or inhibit the erosion of television advertising standards in the early years of DBS services. Inevitably, these arrangements would be largely in the hands of broadcasting organisations, but their authority would be greatly strengthened if there was a clearly expressed intention to build an international legal framework. We have already noted that within any country the controls exercised by broadcasting organisations and by self-regulatory systems are more effective in the context of proper legal regulation. The same is true internationally.
58. In devising interim arrangements, we believe it is already possible to set down some generally agreed principles - for example, that subliminal advertising should be banned, that there should be a clear distinction between advertisements and programme material and that advertisers should not be able to influence programme content (though we have doubts about how the commercial sponsorship of programmes will affect the last two principles). On some, though not all, problem areas it should be possible to get agreement in advance of more formal harmonisation. We have commented separately on the European Broadcasting Union's draft guidelines. Suitably amended and strengthened, these could form a basis for any interim arrangements.
59. There is, however, one point of principle on which there is a remarkable unanimity and strength of feeling among our members. We believe that until there is a proper international legal framework, broadcasting organisations should accept responsibility for ensuring that the DBS advertisements they transmit meet the legal and other regulatory requirements of all the countries which receive the signal, whether they are specifically targeted or not. This is not expressed sufficiently clearly and unambiguously in the EBU's draft guidelines. We consider it should be a major statement of principle.

Notes

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1. Independent Broadcasting Authority Annual Report and Accounts 1980-81. London 1981.
 2. Self-regulation and Codes of Practice. European Advertising Tripartite. Mimeo. Brussels 1983.
 3. Review of the UK self-regulatory system of advertising control. Office of Fair Trading. London 1978.
 4. Personal communication.
 5. Pridgen, Dee. Advertising Issues in New Communications Technologies. Mimeo. Wyoming 1982.
 6. Burleton, Eric. The Self-Regulation of Advertising in Europe. Mimeo. London 1982.
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**COMMENTS ON THE
EBU DECLARATION OF PRINCIPLES
REGARDING COMMERCIAL TV ADVERTISING
BROADCAST BY DBS**

BEUC/42/83
16 March 1983

DECLARATION ON PRINCIPLES REGARDING COMMERCIAL TV ADVERTISING BROADCAST BY DBS

The EBU Administrative Council adopted the following Declaration and proposed it to the General Assembly of for approval by EBU active members.

The member broadcasting organizations of the EBU

- aware of the importance that commercial television advertising broadcast by DBS may soon assume;
- determined to respect freedom of expression in all fields, within the framework of the laws in force, and the autonomy of broadcasting organizations in the programme field;
- aware that broadcast advertising is variously regulated in the countries to which the member organizations of the EBU belong;
- mindful of the possible implications of television advertising broadcast by DBS with respect to culture, public order and public health, protection of consumers and protection of minors in the countries where the broadcasts can be received;
- desirous of maintaining close and effective professional cooperation among themselves;
- desirous of basing their activities on common principles;

have deemed it necessary to make known in the appropriate quarters their adherence to the following principles :

COMMENTS ON THE EBU DECLARATION OF PRINCIPLES REGARDING COMMERCIAL TV ADVERTISING BROADCAST BY DBS

BEUC is grateful for the opportunity to comment on the declaration of principles, and hopes that the views of consumers will be taken into account. This would correct the imbalance in international co-operation on DBS which has focussed on the technological aspects and the opportunity for advertisers, rather than on the contents of programmes, the choice for viewers and the effect on national rules on television advertising.

We welcome the initiative by the EBU in drawing up guidelines provided they are not interpreted as a substitute for legal instruments by the EEC and the Council of Europe, to which we are sending a copy of our observations.

Consumer organizations consider that the guidelines should ensure that national rules and practices as regards the contents and volume of television advertising are not gradually undermined by the increase in transnational broadcasting. To prevent this happening, paragraph 4 of the guidelines in particular ought to be strengthened.

In terms of the EEC Treaty, and in particular articles 59 and 60, restrictions on the broadcast of advertising messages can be maintained, provided they are not discriminatory in terms of nationality. The European Court of Justice in the Coditel/Debaube case underlined this principle and called for harmonization of advertising laws.

Freedom to advertise is subject to restrictions and cannot be assimilated to freedom to broadcast or to the provisions of article 10 of the European Convention on Human Rights. The second introductory paragraph by referring to "freedom of expression in all fields", might be misinterpreted as blurring the distinction between advertisements and programmes, is necessary to safeguard the autonomy of broadcasting organizations.

2.

In our comments on points 1-14, we have sought to strengthen the principles to ensure that national rules are not undermined. We are aware that these principles are considered as the absolute minimum required for the immediate introduction of DBS in 1985-86. There is a danger though that minimum principles once set, would be hard to modify. We therefore urge firmer guidelines and a longer-term perspective, bearing in mind the situation where a far greater number of channels would be broadcast over a wider geographical area, and also the future link between television and videotext services, providing for transnational direct selling.

On the scope of the declaration, it is not clear, for example, whether it applies only to direct satellite reception, or also to community reception by cable. The question of sponsorship arises and is not referred to in the text. In our view it is essential to avoid the development of sponsored programmes via DBS to maintain the independence of broadcasters. Consideration should also be given to applying the guidelines to radio broadcasting by satellite.

If DBS were to lead to an increase in commercial television advertising, the EBU should consider enlarging the scope for consumer information and consumer programmes.

Comments paragraph by paragraph.

A. General principles

1. The member organizations of the EBU recall that it is the duty of an EBU member using a DBS to comply with the domestic law applicable to it in its country. They also consider it their duty to comply with the following principles concerning commercial advertising broadcast by DBS.
2. They consider that the provisions of the International Code of Advertising Practice of the International Chamber of Commerce are a summary of the normal advertising practices they are desirous of following, with all the

A. General Principles

Paragraph 1

The text should be strengthened to lay down that an EBU member using DBS must comply with the domestic laws, codes regulatory and selfregulatory practices of the country from which any commercial advertising is broadcast.

Paragraph 2

A definition should be provided of the adaptations necessary if the ICC code is to be applied to DBS advertising. As it stands the text begs this question. More generally, BEUC points out that

3.

adaptations necessary for the operation of DBS advertising broadcasts.

3. They regard it as their duty to ensure, in the spirit of professional cooperation which animates EBU members, by means of bilateral or multilateral professional consultation and arrangements, settlement of the practical problems posed by DBS advertising broadcasts.

4. They will endeavour to have full regard for the domestic law of foreign countries which can receive advertising broadcasts by the DBS they use, even if such advertising is not intended for the audience in those countries.

Where the audiences in certain foreign countries are the specific target audiences for broadcast advertising, observance of the domestic law of those countries in the TV advertising field assumes fundamental importance.

5. The broadcasting organizations whose DBS advertising broadcasts can be received in foreign countries undertake to use their best endeavours, if

the ICC code is of a voluntary nature and complaints handling and sanctions are left to national authorities and self-regulatory bodies. It does not in itself provide a valid basis for DBS advertising. Our position is that national rules on advertising should apply until they are harmonized.

Reference should be made to the draft EEC directive on unfair and misleading advertising⁽¹⁾.

Paragraph 3

BEUC suggests that it is not clear which interests should be involved in "professional" consultation and arrangements, and whether or not consumer interests are included, something which might be encouraged by the EBU. We also suggest that there should be more emphasis on multilateral consultation. The text should be modified to read: "*by means of multilateral or bilateral consultations and arrangements with all interests involved, including consumers.*"

Paragraph 4

BEUC considers it essential to strengthen this clause to ensure that national rules in receiving countries are fully respected. This should apply equally to cases where the broadcasts are intended for a particular country and to cases where they are received by other audiences in the same "footprint".

"Where the audiences in certain foreign countries are the specific target for broadcast advertising, the domestic laws, codes regulatory and self-regulatory practices of those countries must be complied with to the full. The domestic advertising law and practices must also be respected fully in cases where such advertising is not intended for the audience in those countries".

Paragraph 5

BEUC welcomes this provision, which we understand has been introduced to give viewers the possibility of

(1) BEUC has again written, together with the EAT to the Council of Ministers to urge the early adoption of the directive in the light of the introduction of DBS.

4.

necessary in conjunction with the broadcasting organization(s) of those countries, to establish procedures for receiving and taking the necessary action on queries concerning their DBS advertising from television viewers in those countries.

addressing complaints in their country of residence about advertisements on foreign broadcasts. It is certain that consumers would be discouraged from expressing their concerns to a body outside their own country. BEUC suggests that the text should be clarified and that there should be provision for advertising the possibility of complaints :

“The broadcasting organizations whose DBS programmes carrying advertising can be received in foreign countries shall set up machinery for receiving and acting on enquiries and complaints from viewers. This should be done where appropriate in conjunction with existing bodies in the receiving country. The broadcasting organizations must regularly make known the name and address of the office to which complaints should be sent in the receiving country, particularly through their own broadcasts”.

B. Principles regarding the content of DBS advertising broadcasts

6. EBU members will endeavour to strengthen their internal rules in order to avoid the broadcasting of advertising for cigarettes. They will also endeavour to strengthen, where the need exists, their restrictive internal rules on broadcast advertising for alcoholic beverages, to take into account the domestic law of countries in which their DBS advertising can be received.

B. Principles regarding the content of DBS Advertising Broadcasts

BEUC hopes to have the opportunity of commenting at greater length on the problems raised by advertising for certain products and advertising to children. We regard it as essential that the EBU principles should cover these areas explicitly.

Paragraph 6

We propose that since television advertising for cigarettes is, in practice, banned, that the text should confirm this situation : *“EBU members will not broadcast advertising for cigarettes. They will guard against indirect advertising for cigarettes”.*

Differences in consumption habits, laws and practice about alcohol advertising make it practically impossible to ensure that national rules will not be undermined through DBS broadcasts. Until such time as common rules and policies are drawn up, we urge that there should be no alcohol advertising through DBS.

5.

- 7. EBU members undertake to keep under review their internal rules on advertising for pharmaceutical products and medical treatments, to take into account the regulations observed by countries which can receive their DBS broadcasts.
- 8. Concerning products which may affect public health, EBU members whose DBS advertising broadcasts are receivable in other countries will enter into periodic consultation with the broadcasters in those countries for the adoption of internal rules taking into account the rules in force in those countries.
- 9. With regard to advertising broadcasts affecting children, all due consideration will be given to their natural credulity, sensitivity and sense of loyalty and members will adopt rules which will prevent any advertisement or method of advertising, including the use of children in broadcast advertising, which might result in harm to children's personality either physically, mentally or morally.
- 10. EBU member organizations which broadcast commercial advertising by DBS consider that the present Declaration concerns only advertising for commercial products or services and not any other types of broadcast.

C. Principles on scheduling of DBS advertising broadcasts

- 11. EBU member organizations undertake not to broadcast subliminal advertising.
- 12. They undertake to take all necessary steps to ensure that the advertising broadcasts are at all times very clearly separated from other programmes so as to be always very easily identifiable as such.

Paragraphs 7, 8 and 9

BEUC considers that by comparison with alcohol advertising, it is easier to harmonize national legislation and practices on pharmaceutical products, health products and claims, as well as children, since there is a good deal of convergence in these areas. BEUC will put forward precise proposals in the near future to the EBU, the EEC Commission and the Council of Europe. In our view harmonization should also cover credit, insurance and other services.

Paragraph 10

BEUC considers that the scope given to the Declaration is too narrow, and leaves open questions such as advertising for non-commercial services, advertising by political parties, churches, etc. We propose the following definition : *"The Declaration covers all messages considered as advertising under national rules"*.

C. Principles on scheduling of DBS advertising broadcasts

Paragraph 11

On subliminal advertising, BEUC welcomes the undertaking and stresses that it must be properly controlled.

Paragraph 12

BEUC supports this clause, as essential and urges that it should be retained.

6.

- 13. They consider that advertising broadcasts may be grouped or scheduled only between programmes or at times corresponding to natural breaks within programmes, taking their nature into account.

D. Implementation

- 14. A special Study Group of the EBU Administrative Council has been entrusted with monitoring EBU members' implementation of the principles in this Declaration. Any member organization may refer difficulties of implementation to this Study Group. It shall express its opinion on such difficulties at the earliest possible moment to the President and Vice-Presidents of the EBU and to the members concerned, who may refer the matter to the Administrative Council.

Paragraph 13

If our earlier observation is accepted on the respect of national rules, this clause would have a more binding character. In striking a balance between consumer and advertising interests, it should be borne in mind that for viewers regulating the volume of advertising is more important than the contents of advertising messages. Either there should be European advertising time-slots, or a guarantee that there will be no undermining of national time limits through advertising via DBS.

D. Implementation

BEUC proposes that a new clause should be introduced, providing as is the case for most countries, that there should be arrangements for prior submission and verification of all advertisements broadcast via DBS. Whilst we welcome the provision for complaints handling in receiving countries and the setting-up of a study group by the EBU, experience suggests that it would be wrong to place the onus entirely on viewers to come forward with complaints : pre-screening is a far more effective means of control.

Paragraph 14

BEUC understands the study group to be a kind of "Court of Appeal", in cases where problems cannot be solved in bilateral contacts. We hope that consumer interests will be represented in the study group, whenever complaints have to be discussed with advertisers. The mandate of the study group should include a provision to receive regular reports on the pattern of complaints from the national authorities and the new machinery to be set up for DBS.

Already, the question arises of how the study group is to solve "difficulties of implementation" and enforce its opinions. The moral authority of such opinions by the EBU will no doubt be sufficient to ensure their respect in the majority of instances.

7.

But, where there is no agreement, the sanction of exclusion from the EBU is in our view too heavy to solve the problems relating to transnational advertising. In our view, the proposal by the EBU raises the whole question of whether, for example in relation to a Council of Europe Convention, arbitration mechanisms with legal authority should be set up.

The present Declaration was adopted by the Administrative Council of the EBU and approved by the General Assembly attended by active members at on

COUNCIL OF EUROPE
 PRELIMINARY DRAFT RECOMMENDATION
 OF THE
 COMMITTEE OF MINISTERS ON PRINCIPLES ON TELEVISION ADVERTISING

The Committee of Ministers of the Council of Europe,

- Considering that the aim of the Council of Europe is to achieve a greater unity between its members;
- Conscious that the electronic media enable a contribution of growing importance to be made towards communication and better understanding between individuals and peoples;
- Recalling its commitment to the freedom of expression and the free flow of information as embodied, inter alia, in its Declaration of 29 April 1982;
- Bearing in mind Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms;
- Noting that member States adopt different attitudes towards advertising on television;
- Conscious of the importance which advertising may have for the financing of the media;
- Mindful of the importance of safeguarding the interests of the public in relation to advertising;
- Aware that the development of new technologies, particularly involving the use of satellites, has made it more urgent to arrive at common European standards in this field;
- Taking into account the independence of broadcasting organizations in matters of programming;

RECOMMENDS that the Governments of the Member States

- (a) should satisfy themselves that the following principles concerning advertising are respected and
- (b) to that end give these principles the widest possible circulation both to the competent bodies and to members of the public.

PRINCIPLES

The following principles shall apply to television advertising, especially when transmitted by satellite.

I. FORM AND PRESENTATION

1. No subliminal advertising shall be permitted.
2. Advertising must be always clearly identifiable as such.
3. Advertising shall be clearly separated from programmes and shall not influence programme content in any way.
4. Advertising should not be scheduled in such a way as to prejudice the integrity and value of programmes or their natural continuity.
5. Either (Alternative A)

Advertisements, especially when transmitted by satellite, should not constitute more than (%) of broadcasting time.

Or (Alternative B)

The role of television as a medium of information, education and entertainment shall not be weakened through the amount of time allowed for advertising.

II. CONTENT

6. All advertisements should be fair, honest, truthful and decent.
7. Advertisements shall conform not only to the law applicable in the country of transmission but also, depending on the proportion of the audience which is in another country, shall also as far as possible observe the law of that country (and shall not be specifically intended for the audience in that country).
8. Special attention should be given to the dangers which may arise from advertisements concerning tobacco, alcohol, pharmaceutical products and medical treatments.
9. Advertising messages addressed to or using children should avoid anything likely to harm their interests and should respect their physical, mental and moral personality.
10. Advertisements should be prepared with a sense of responsibility towards society and give particular attention to the moral values common to the member states, such as democracy, tolerance, non-discrimination and non-violence.

425.6

MANIFESTATIONS SPORTIVES

Publicité apparaissant lors de la télévision internationale

Le Conseil d'Administration a décidé de recommander aux organismes membres actifs et actifs supplémentaires d'appliquer les principes suivants relatifs à la publicité placée sur les lieux des événements sportifs faisant l'objet d'une transmission télévisuelle internationale et de demander à ceux qui ne pourraient appliquer lesdits principes de le notifier par écrit au Secrétaire général aussi rapidement que possible (décision du Conseil d'Administration du 10 décembre 1976; pour commentaire cf circulaire SG 51 du 23 février 1977 ainsi que l'interprétation authentique sous 425.7) :

PRINCIPES CONCERNANT LA PUBLICITE PLACEE SUR LES LIEUX
DES EVENEMENTS SPORTIFS FAISANT L'OBJET
D'UNE TRANSMISSION TELEVISUELLE INTERNATIONALE

Il est recommandé aux organismes membres actifs, lorsqu'ils sont à l'origine d'une transmission télévisuelle internationale d'un événement sportif, de récuser la publicité qui ne respecterait pas les principes ci-dessous exposés qui représentent un minimum. Des dérogations à ces principes ne devraient être admises qu'exceptionnellement, dans des cas particuliers, pour des raisons jugées absolument impératives par lesdits organismes qui informeront le plus rapidement possible les Services permanents de la dérogation.

- 1) Les annonces publicitaires ne doivent pas nuire à la qualité du reportage, non plus qu'à une vision parfaite et esthétique de l'événement sportif par les téléspectateurs, par exemple en étant installées sur deux ou plusieurs rangs placés dans le champ des caméras.
- 2) Les annonces publicitaires ne doivent pas être installées entre la caméra et l'action.
- 3) Les couleurs utilisées pour les mentions publicitaires ne doivent pas dénaturer l'image apparaissant sur les écrans de télévision et l'emploi des couleurs fluorescentes doit être banni, ainsi que les annonces lumineuses.
- 4) Les annonces publicitaires doivent être portées sur des supports permanents faisant partie intégrante des lieux, à l'exclusion d'installations occasionnelles. Cette prohibition est applicable mutatis mutandis au cas où l'événement se déroule dans des lieux dépourvus d'installations permanentes.

Toute publicité sur des supports mobiles, tels que banderoles, fanions, etc., doit être prohibée.

- 5) Les dimensions des panneaux, ainsi que celles des mentions publicitaires, doivent rester dans les limites compatibles avec une image de l'événement sportif visible sur les écrans de télévision en totalité et sous tous les angles.

6) Aucune publicité sonore ne doit être diffusée pendant les transmissions.

7) La publicité ne doit pas enfreindre les règles nationales du pays où se déroule l'événement sportif.

8) La publicité ne doit pas apparaître dans des caractères qui ne sont pas en usage dans le pays où se déroule l'événement sportif. Les textes publicitaires rédigés dans une langue autre que la langue nationale du pays où se déroule l'événement sportif sont prohibés.

9) Les mentions publicitaires figurant sur les vêtements, les équipements, la surface où se déroule l'événement sportif sont en principe prohibées et ne seront admises que dans la mesure où une telle publicité est devenue usuelle pour la catégorie d'événement sportif en cause.

17 July 1982

Doc 4756

17 juillet 1981

Doc 4756

Télévision par câble et radiodiffusion directe par satellites

Doc. 4756

with each of them may prove lengthy and cumbersome.

11. Together with the International Federation of Film Producers' Associations (FIAPF), CISAC and EBU are now elaborating a model contract to be used in licensing agreements with cable distributors whenever the rightholders concerned are prepared to grant such a licence. They will approach international cable distributors' organisations or, where they do not exist, representatives of the most important cable systems in a given country in order to obtain their agreement in principle on the application of the model contract. The three categories of rightholders are: authors, film producers and broadcasters.

12. For these and other reasons it is essential to conclude a European agreement which should contain international rules governing broadcasting satellites and which should subsequently be applied by our member states.

13. As far as transmission by cable is concerned the authors may receive a second payment from the distribution service. In fact, a Belgian court already once awarded a second payment for the cable distribution of terrestrial programme services for which a first remuneration had already been paid by the originating organisation. A similar decision was reached by the Swiss federal court in its judgment of 20 January 1981 in which the court decided that no television programme could be transmitted by a cable distributor without prior consent of SUISA.¹ At the same time, the court decided that prior authorisation was also needed in the case of distribution of foreign television programmes.²

14. There is no doubt that the rights of authors, composers and performing artists must be adequately protected both by national and by international legal rules. Work is being carried out by the Council of Europe with a view to the revision of the European Agreement of 22 June 1960 on the protection of television broadcasts in the light of distribution by cable.³ Unfortunately, it seems that little progress is being made here.

The future

15. Last year the Anglo-Swiss television company Tel-Sat announced that it had the intention to produce daily commercial television pro-

1. Société suisse de protection des droits d'auteurs (Swiss society for the protection of copyrights).

2. In this case, the programmes of ORF, the Austrian broadcasting organisation.

3. See "Material for a European Media Concept", Council of Europe 1980, p. 40.

parvenir à des accords séparés avec chacun d'eux risque d'être long et malaisé.

11. Avec la Fédération internationale des associations de producteurs de films (FIAPF), la CISAC et l'UER élaborent actuellement un contrat type à utiliser dans les accords de licence passés avec les distributeurs d'émissions de télévision par câble lorsque les ayants droit intéressés sont disposés à donner leur autorisation. Elles se mettront en contact avec les organisations internationales de distributeurs d'émissions de télévision par câble ou, s'il n'en existe pas, avec les représentants des principaux réseaux de télévision par câble d'un pays donné afin d'obtenir leur accord de principe sur l'application du contrat type. Les trois catégories d'ayants droit intéressés sont: les auteurs, les producteurs de films et les diffuseurs.

12. Pour ces raisons et pour d'autres aussi, il est indispensable de conclure un accord européen qui contienne des règles internationales régissant les satellites de radiodiffusion et qui soit appliqué ensuite par nos Etats membres.

13. En ce qui concerne la transmission par câble, les auteurs percevront probablement du service de distribution une deuxième rémunération. D'ailleurs, un tribunal belge a déjà accordé une deuxième rémunération pour la distribution par câble de programmes terrestres au titre desquels une première rémunération avait déjà été versée par l'organisme d'origine. Le Tribunal fédéral suisse a rendu un arrêt analogue le 20 janvier 1981 en décidant qu'aucun programme de télévision ne pouvait être transmis par câble sans le consentement préalable de la SUISA¹. D'autre part, le tribunal a décidé que cette autorisation préalable s'imposait également en cas de distribution de programmes de télévision étrangers².

14. Il ne fait aucun doute que les droits des auteurs, compositeurs et interprètes doivent être suffisamment protégés par des textes juridiques nationaux et internationaux. Des travaux sont en cours au sein du Conseil de l'Europe en vue de la révision, pour tenir compte de la distribution par câble, de l'Accord européen du 22 juin 1960 sur la protection des émissions de télévision³. Malheureusement, il semble que l'on ait accompli peu de progrès à cet égard.

L'avenir

15. L'année dernière, la Société anglo-suisse de télévision Tel-Sat a annoncé qu'elle avait l'intention de produire, à partir de 1984, des pro-

1. Société suisse de protection des droits d'auteurs.

2. En l'occurrence, les programmes de l'ORF, l'organisme autrichien de radiodiffusion.

3. Voir «Material for a European Media Concept», Conseil de l'Europe, 1980, p. 40.

grammes as from 1984, to be broadcast by the Swiss satellite. It was the intention to broadcast in French, German and Italian, the official languages of Switzerland. Because of the overspill, the programmes might reach at least 5 million families in central Europe. Last year, Mr Jim Shaw, a director of Thames Television in England, and one of the initiators of this project, declared in a Dutch television programme that it was the intention to broadcast an entire spectrum of programmes, such as light entertainment, plays, films, serials and much international news. The advertising revenues might be up to 500 million Swiss francs two to three years after the broadcasts had started.

In its licence request, Tel-Sat had made a demand for three television channels of the Swiss satellite, which may have five television channels in all. However, each television channel will have two sound channels. These sound channels can be used for stereophonic performances but can also be used for different languages. Tel-Sat might therefore show an American film and transmit it, for instance, in English on the first sound channel and in German on the second channel. Making use of the teletext system as well, sub-titles in French and Italian might be transmitted at the same time to home receivers.

16. When it appeared that the Swiss authorities would not grant the licence it had asked for, Tel-Sat declared that it was prepared to join the Federal Post and Telecommunications Agency (PTT) and the Swiss State Broadcasting Company (SSR) in a new consortium to be called Sat-Tel-Tec. The Federal Post and Telecommunications Agency were to be a majority shareholder in this new company.

17. Although the original plans of Tel-Sat have therefore been shelved they were a good example of what direct satellite broadcasting on a purely commercial basis might bring. It is likely that other commercial broadcasting companies in other member states may act on similar lines. For the moment, the plans of Radio-Télé-Luxembourg to start direct satellite broadcasts on a commercial basis seem to be those which are nearest to implementation followed, possibly, by a French consortium in which Matra-Hachette plays an important part. It may be added that these projects show that there is an important market for commercial advertising on television in Europe.

18. It is, of course, very difficult to predict the future. I consulted however a great number of experts from organisations such as the ESA (European Space Agency), the EBU (European Broadcasting Union) and others who indicated and subsequently confirmed the following scenario which seems to be most realistic:

grammes quotidiens de télévision commerciale qui seraient diffusés par le satellite suisse. Les émissions auraient lieu en français, allemand et italien, langues officielles de la Suisse et, du fait des dépassements, elles pourraient toucher au moins 5 millions de familles d'Europe centrale. Au cours de l'année dernière, M. Jim Shaw, directeur à la société anglaise Thames Television et en même temps l'une des personnes à avoir lancé ce projet, a déclaré au cours d'une émission de la télévision néerlandaise que Tel-Sat avait l'intention de diffuser toute une gamme de programmes: émissions de variétés, pièces de théâtre, films, feuilletons, et beaucoup d'actualités internationales. Les recettes publicitaires pourraient atteindre jusqu'à 500 millions de francs suisses deux ou trois ans après le début des émissions.

Dans sa demande de licence, Tel-Sat a demandé trois canaux de télévision du satellite suisse, qui disposera peut-être de cinq canaux en tout. Toutefois, chaque canal de télévision possèdera deux canaux son. Ceux-ci pourront servir à la diffusion de concerts en stéréophonie, mais aussi d'émissions en deux langues. C'est ainsi que Tel-Sat pourra, par exemple, transmettre un film américain en anglais sur le premier canal son et en allemand sur le second. En outre, grâce au système du télétexte, des sous-titres en français et en italien pourront être transmis respectivement aux téléspectateurs des deux pays intéressés.

16. Lorsqu'il s'est avéré que les autorités suisses n'accorderaient pas la licence qu'elle avait demandée, Tel-Sat a déclaré qu'elle était disposée à s'associer avec le Service fédéral des postes et télécommunications et avec la Société nationale suisse de radiodiffusion et télévision (SSR) pour constituer un nouveau consortium du nom de Sat-Tel-Tec dans lequel les postes et télécommunications devaient être le principal actionnaire.

17. Bien que les plans initiaux de Tel-Sat aient été abandonnés, ils offrent un bon exemple de ce que la radiodiffusion directe par satellites, sur une base purement commerciale, pourrait apporter. Il est probable que des sociétés de télévision commerciales d'autres Etats membres prendront des initiatives analogues. Pour le moment, ce sont les projets de Radio-Télé-Luxembourg dans ce domaine qui semblent être le plus près du stade de la réalisation. Puis viennent ceux d'un consortium français dans lequel Matra-Hachette joue un rôle important. On peut ajouter qu'il ressort de ces projets qu'il existe un important marché en Europe pour la publicité commerciale à la télévision.

18. Il est naturellement très difficile de prévoir ce que sera l'avenir. J'ai toutefois consulté de nombreux experts d'organisations telles que l'ASE (Agence spatiale européenne), l'UER (Union européenne de radiodiffusion). Elles ont indiqué et confirmé ultérieurement le scénario suivant qui semble très réaliste:

1. One of our member states decides to operate (one of) its satellite channels on a commercial basis or to let a channel to a commercial company;

2. Subsequently the commercial company starts broadcasting its programmes to an audience as large as possible. It is assumed that viewers will quite often watch foreign programmes even if they are not in their mother tongue. The programmes may therefore be intended not only for a national public but also for viewers in neighbouring countries where their reception may well be as perfect as it is at home;

3. Essential for the company is that a maximum numbers of viewers watch its programmes which must therefore be as attractive as possible to a majority of the population. As a consequence programmes of the light entertainment type will usually be chosen;

4. Given this fact and also because of the nature of the programmes, they are being watched in a considerable number of homes both in and outside the member state in question;

5. Consequently, the advertising receipts are high which enables the company to buy the best films, plays and documentary programmes and hire the best actors, sometimes by obtaining exclusive rights and thus improving its programmes (always of the light entertainment type) and at the same time increasing the number of viewers;

6. There will be less advertising on the conventional television channels and one of the main sources of revenue for many existing broadcasting organisations, that is advertising receipts, will therefore partly dry up.

7. Actually there is much more demand for broadcasting time for commercial advertising than can be satisfied. In a relatively small country like the Netherlands—which allows for some advertising on television—it is estimated that 200 to 300 million guilders more would be spent if there were no restrictions. It is assumed that similar situations must exist in other member states. The effect of commercial broadcasting by satellites in neighbouring countries may well be that these considerable amounts of money are spent on advertising abroad. This source of revenue will therefore no longer be available to national broadcasting organisations;

8. Similarly advertising revenues for newspapers and the periodical press (including the television magazines themselves) will decrease;

9. The cost of broadcasting will increase. Actually it is much more expensive for a broad-

1. l'un de nos Etats membres décide d'exploiter (l'un de) ses canaux de satellite sur une base commerciale ou de louer un canal à une société commerciale;

2. par la suite, la société commerciale commence à diffuser ses programmes à un auditoire aussi large que possible. Il est admis que les téléspectateurs regarderont souvent des programmes étrangers, même s'ils ne sont pas réalisés dans leur langue maternelle. Les programmes peuvent être conçus non seulement à l'intention d'un public national, mais aussi à l'intention de téléspectateurs de pays voisins où leur réception peut fort bien être aussi parfaite que dans le pays visé;

3. ce qui est essentiel pour la société, c'est qu'un nombre maximal de téléspectateurs regardent ses programmes, qui doivent donc être aussi attrayants que possible pour la majorité de la population. En conséquence, ce sont habituellement les programmes de caractère léger qui sont choisis;

4. pour cette raison et en raison de leur nature, les programmes sont suivis dans un nombre considérable de foyers tant à l'intérieur qu'à l'extérieur de l'Etat membre en question;

5. en conséquence, les recettes de publicité sont élevées, ce qui permet à la société d'acheter les meilleurs films, les meilleures pièces, les meilleurs documentaires et d'engager les meilleurs acteurs, parfois en obtenant des droits d'exclusivité, et d'améliorer ainsi ses programmes (toujours de caractère léger) tout en augmentant en même temps le nombre de téléspectateurs;

6. il y aura moins de publicité sur les canaux de la télévision classique et l'une des principales sources de revenus de nombreux organismes de radiodiffusion, à savoir les recettes publicitaires, sera donc partiellement tarie;

7. actuellement, la demande de temps d'antenne pour la publicité commerciale est bien supérieure à l'offre. Dans un pays relativement petit comme les Pays-Bas — où la publicité télévisée est autorisée à l'intérieur de certaines limites — on estime que 200 à 300 millions de florins de plus y seraient consacrés s'il n'y avait pas de restrictions. Il est à présumer que des situations analogues existent dans d'autres Etats membres. La radiodiffusion commerciale par satellites pourrait fort bien avoir pour effet que, dans les pays voisins, ces sommes considérables soient consacrées à la publicité à l'étranger. Les organismes nationaux de radiodiffusion ne disposeraient donc plus de cette source de revenus;

8. de même, les recettes publicitaires des quotidiens et des périodiques (y compris les revues de télévision elles-mêmes) diminueront;

9. le coût de la radiodiffusion augmentera. Actuellement il revient beaucoup plus cher à

casting company to produce its own programmes than to buy existing (foreign) material. For instance, in the Netherlands the average cost of making a production of its own is about 100 000 guilders per hour whereas the purchase of a foreign programme amounts to some 10 000 guilders. As Dutch broadcasting companies can spend about 30 000 guilders per hour they must, roughly speaking, buy foreign programmes for four hours against one hour production of their own. Foreign programmes and films will, no doubt, sharply increase in price once direct satellite broadcasts on a commercial basis have started. They may well no longer be available at all if exclusive rights are obtained;

10. Competition for viewers will increase. Broadcasting organisations, in fear of losing viewers (and members in the case of the Dutch broadcasting associations) will drop the more "serious" programmes;

11. As broadcasting organisations will drop the more "serious" programmes such as classical music, classical ballet, opera, discussions on art, intellectual debates, etc., there will be a cultural and intellectual impoverishment and greatly reduced pluriformity.

12. Finally, the situation of television in our member states would have the following characteristics:

i. no or insufficient separation between capital suppliers and sponsors on the one hand and those who make the programmes on the other hand;

ii. insufficient separation between advertising and programmes. In this respect one may also think of hidden advertising (subliminal messages) or quasi unintentional or casual advertising;¹

iii. great increase of hidden influence of commercial interests on the choice of programmes, in view of the need to reach a maximum number of viewers.

19. It is, of course, hard to predict the future, but there may well be a vicious circle similar to the one which was so disastrous for our regional press, that is diminishing revenues which lead to a deterioration of quality, which in its turn, leads to decreasing receipts from advertisers and subscribers. Consequently there will be the danger of the disappearance of the diversity of our television

1. The already classical example of this is the television camera which films a football (or other) match and, while doing so, frequently stops at a certain advertisement in the stadium.

une société de radiodiffusion de produire elle-même ses programmes que d'acheter des émissions (étrangères) existantes. Aux Pays-Bas, par exemple, le coût moyen de production d'une émission est d'environ 100 000 florins l'heure, alors que l'achat d'un programme étranger revient à 10 000 florins environ. Etant donné que les sociétés néerlandaises de radiodiffusion peuvent dépenser quelque 30 000 florins par heure d'émission, elles doivent grosso modo acheter quatre heures de programmes étrangers pour une heure de leur propre production. Il ne fait pas de doute que le prix des programmes et des films étrangers subira une forte augmentation une fois que la radiodiffusion directe par satellites sur une base commerciale aura commencé. Il se peut fort bien qu'ils cessent d'être disponibles si des droits d'exclusivité sont acquis;

10. La concurrence pour attirer les téléspectateurs augmentera. Les organismes de radiodiffusion, de peur de perdre des téléspectateurs (et des abonnés, dans le cas des associations de radiodiffusion néerlandaises) cesseront de diffuser les programmes les plus «sérieux»;

11. L'abandon par les organismes de radiodiffusion des programmes, plus «sérieux», par exemple de musique classique, de ballets classiques, d'opéras, de discussions sur l'art, de débats intellectuels, etc., entraînera un appauvrissement culturel et intellectuel et la diversité sera considérablement réduite;

12. Enfin, la situation de la télévision dans nos Etats membres aurait les caractéristiques suivantes:

i. aucune séparation ou une séparation insuffisante entre les fournisseurs de capitaux et les commanditaires d'une part et les réalisateurs des programmes d'autre part;

ii. une séparation insuffisante entre la publicité et les programmes. A ce propos, on peut aussi songer à la publicité clandestine (messages subliminaux) ou à la publicité inconsciente ou fortuite¹;

iii. une forte augmentation de l'influence clandestine des intérêts commerciaux sur le choix des programmes, due à la nécessité d'atteindre un nombre maximal de téléspectateurs.

19. Il est naturellement difficile de prédire l'avenir, mais il se pourrait fort bien qu'apparaisse un cercle vicieux, analogue à celui qui a été si désastreux pour notre presse régionale, c'est-à-dire que la diminution des recettes risque d'entraîner une dégradation de la qualité qui, à son tour, risque de provoquer une diminution des recettes provenant des annonceurs et des abonnés. Cela

1. L'exemple déjà classique de ce genre de publicité est celui de la caméra de télévision qui filme un match de football (ou autre) et qui, ce faisant, s'attarde fréquemment sur une certaine publicité affichée dans le stade.

programmes which will be reduced to a kind of common European "catch-all" standard.

20. A number of the existing broadcasting organisations may disappear in the struggle for the maximum number of viewers. Those which remain will broadcast a minimum of serious and cultural programmes in order to lose no viewers. The cultural and intellectual standard of programmes will subsequently be lowered to a kind of general European "catch-all" standard. Some measures might however be feasible against these dangers of "levelling down" and of impoverishment of our cultural values. One may think of the following:

- our governments should pursue an active policy to maintain their national cultural heritage and that of their regions;

- our governments should envisage the exchange of television programmes whenever they conclude cultural agreements with other countries;

- the production of common European programmes as well as the distribution of national quality programmes by foreign broadcasting organisations should be stimulated;

- programmes, as planned for the EBU-beam of *L-Sat*, should be generalised (see Chapter 4, paragraph 3) in which the national broadcasting organisation of country A should be made responsible for the programmes at a certain time every week, that of country B for another time, etc., in accordance with a schedule fixed in advance;

- governments should envisage selective financial aid to those national broadcasting organisations which produce "serious" programmes.¹

21. Another practical problem could arise through the difference in hours during which radio and television programmes are broadcast. It is quite probable that satellite broadcasts, especially those on a commercial basis, will take place the whole day or at least during the morning, afternoon and evening until midnight or even 1 a.m. At present, broadcasting time in most of our member states is limited to certain hours of the day. For instance, television programmes in the Federal Republic of Germany are normally broadcast as from 10 in the morning, French programmes from midday; Swiss television programmes usually start in the course of the afternoon and Dutch programmes, as a rule, in the early evening. This aspect deserves adequate attention.

1. See Recommendation 834 (1978), paragraph 13, in which the Assembly supports public economic aid to the press.

implique le danger de la disparition de la diversité de nos programmes de télévision, qui seront réduits à une espèce de norme commune européenne pour tout public.

20. Plusieurs organismes de radiodiffusion risquent de disparaître dans la lutte pour l'indice d'écoute. Ceux qui resteront en lice diffuseront un minimum d'émissions sérieuses et culturelles afin de ne pas perdre de téléspectateurs. Le niveau culturel et intellectuel des programmes va donc se mettre à baisser jusqu'à ne plus convenir qu'au très grand public européen. Il est cependant possible de se prémunir contre les dangers du nivellement par la base et de l'appauvrissement de nos valeurs culturelles. A cet égard, on peut songer aux mesures suivantes:

- chaque gouvernement doit poursuivre une politique active afin de maintenir le patrimoine culturel national et celui des régions;

- chaque gouvernement doit envisager l'échange de programmes de télévision lorsqu'il conclut un accord culturel avec un autre pays;

- il convient de stimuler la production de programmes européens communs ainsi que la distribution de programmes nationaux de qualité par des organismes étrangers de radiodiffusion;

- il convient de généraliser les programmes envisagés pour le faisceau UER du *L-Sat* (voir paragraphe 3 du titre 4) et aux fins desquels l'organisme national de radiodiffusion du pays A serait responsable des émissions à un moment donné de la semaine, celui du pays B à un autre moment, etc., conformément à un calendrier établi d'avance;

- les gouvernements doivent envisager d'octroyer une aide financière sélective aux organismes nationaux de radiodiffusion qui produisent des programmes «sérieux»¹.

21. Une autre difficulté d'ordre pratique pourrait surgir du fait que les programmes de radio et de télévision ne sont pas diffusés aux mêmes heures. Il est très probable que les émissions radiodiffusées par satellites, notamment celles qui ont un caractère social, se poursuivront vingt-quatre heures sur vingt-quatre, ou du moins pendant la matinée, l'après-midi et le soir jusqu'à minuit ou 1 h du matin. Actuellement, dans la plupart de nos Etats membres, la période d'émission se limite à certaines heures de la journée. C'est ainsi qu'en République Fédérale d'Allemagne les programmes de télévision sont diffusés en règle générale à partir de 10 h du matin et en France à partir de 12 h; en Suisse, la diffusion des programmes de télévision commence d'ordinaire dans l'après-midi et aux Pays-Bas elle commence au début de la soirée. C'est là un aspect qu'on ne doit pas négliger.

1. Voir Recommandation 834 (1978), paragraphe 13, dans laquelle l'Assemblée appuie le principe d'une aide économique de l'Etat à la presse.

ANNEX 6

IT/07

ADVERTISING ISSUES IN NEW
COMMUNICATIONS TECHNOLOGIES

by

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New communications technologies (e.g., videotex systems providing access from home terminals to richly laden data banks, cable television systems with many channels of programming, and satellites broadcasting across international borders) promise to change the content, form and regulation of advertising in the years to come. Videotex could produce more informative and detailed advertising available instantly and conveniently to consumers as they make their purchasing decisions. The plethora of channels on cable television has already fostered the development in the United States of advertising in formats formerly associated with entertainment or objective documentaries. Satellite broadcasting across international boundaries may raise sticky regulatory issues both for countries that seek to restrict certain types of advertising and for media firms that seek an international audience for advertiser supported satellite - fed programs.

Too much regulation or too many different regulations of advertising could stymie the development of modern, international information services. Yet the irresponsible proliferation of new media services could result in abuses that would lead some countries to erect barriers to the free flow of information, a development that would also hinder the growth of these potentially beneficial ways of communicating. This paper will explore the changes in advertising that may spring from new media forms, and discuss the implications for regulation in the consumer interest. International consumer organizations need to think about, participate in and influence the nature of these changes if they are to represent effectively their constituents in this dawning era of the information society.

1. Videotex

Videotex may seem an unlikely medium for advertising because the viewer is in complete control, and "calls up" only the information desired. Unlike commercial television, where one must leave the room or turn off the set to avoid commercial messages, the advertiser on videotex must offer something that will make the person at the other end of the terminal want to see the message. Rather than using colorful imagery to catch the eye of the magazine reader as he or she tries to focus on the article of interest, the videotex advertiser will have to offer something that is both useful and attractive in order to encourage the viewer to actively press the button that will result in a screen full of advertising.

These technical qualities of videotex may lead to more detailed and informative advertisements in this medium. This development should be applauded by consumers who are more interested in facts about goods and services than they are in images. Information that goes beyond the qualities of the actual market offering may also spring up. For instance, if there is a demand for "how-to" features on videotex, a manufacturer of home repair tools might offer "free" pages of advice and information on home remodeling, featuring, of course, the manufacturer's brand of tools. Tests and surveys of competing products might also be offered free of charge (but on request) to the videotex viewer.

In addition to offering information that consumers want, another way that videotex advertisers might persuade viewers to take the time and effort to call up their advertising screens is by not looking like advertising. Most people realize that an advertiser is trying to sell something, and therefore the facts offered by an advertiser will present the object to be sold in the most favorable light. Non-commercial organizations such as Consumers Union, or government agencies such as the US Commerce Department, have no interest in selling any particular product, and thus their information might be more valued by consumer.^{1/} Videotex advertisers who desire the credibility

3.

and drawing power of such neutral information sources may be tempted to blur the distinction between information and advertising.

One straightforward solution to this potential problem has already been adopted by Britain's Prestel system -- i.e. the provider of the information must be clearly identified on each screen of text. So long as the viewer knows the source of the message, he or she should be able to evaluate the potential bias of the speaker, and not be taken in by an interested seller masquerading as a disinterested authority.

But is the answer really so simple? Would the average videotex viewer surmise, for instance, that the National Commission on Egg Nutrition is not a government agency but in fact a trade association bent on promoting a taste for eggs? And does everyone know that a beautician and vice-president of the Gillette Corporation has a vested interest in the sale of Toni Home Permanent Waves because "Toni" is produced by Gillette? Thus, a videotex menu or recipe from the National Commission on Egg Nutrition could encourage viewers to eat more eggs without giving credence to the counter-argument that eating too many eggs could increase the risk of heart attack. The beautician's recommendation of Toni hair care products may achieve more credibility in the eyes of those not schooled in the corporate holdings of the Gillette Company. What these hypothetical cases illustrate is that simply identifying the source of the information may not in itself allow the viewer to discriminate between commercial messages and more objective facts.

The videotex medium seems to spew out text in a uniform, almost magical manner that makes it seem like all the printed matter comes from some authoritative box remote from the user. The medium makes all information appear equal.^{2/} Distinctive formats for commercials, such as we see in magazines or on television, have not yet evolved. The practice of advertisements aping articles or editorials was banned by statute in

magazines or newspapers delivered by mail in the United States. By law, all advertisements in such publications must be identified.^{3/} The statute is tied to mail delivery, however, necessitating a new law or an amendment to make it applicable to electronic publishing via videotex systems.

Videotex holds the promise of providing consumers with more detailed and informative messages from the market-place than is possible on other media. Advertisers, who hope to make a profit by persuading consumers to buy from them, appear to be in the best position to offer such consumer information at the least cost to the videotex user. Videotex may improve the content of advertising by forcing advertisers to attract their audience with facts rather than fluff. Yet the market could be skewed toward advertisers who present their sales pitches as non-biased lessons in home economics. Therefore, some method for unmistakably distinguishing the advertisement from other information should be devised and implemented.

2. Cable Television

By delivering the video signal via coaxial cables rather than over-the-air, today's cable television systems are able to offer a hundred or more different channels of programming to their subscribers. This glut of available outlets has in turn spawned the development of advertiser-produced shows that look like traditional entertainment programs or even documentaries, yet are actually commercial advertising appearing in new forms. The issue of sponsorship identification is similar to that previously discussed in the context of videotex, but the causes for new forms of advertising on cable television and the regulatory implications are somewhat different.

The appearance on cable television of the Home Shopping Show, a half-hour talk show in which each of the "guests" is really a sponsor who has paid for a nine-minute commercial, occurred not only because the cable medium has a lot of empty channels to fill, but also because cable television, at least in the United States, is developing in a regulatory vacuum. In the

broadcast medium, such a show would be prohibited by limits on the amount of commercial time allowed per hour 4/ and by strict sponsor identification laws.5/ While such experimentation in commercial formats should not necessarily be suppressed, the consumer interest in non-biased, non-commercialized programs should be maintained.

In order to appreciate the problems and issues that may be in store for these new forms of television advertising, it is instructive to look at developments that occurred in the infancy of broadcast television. In the 1950's, advertiser-produced programs were not uncommon in the United States -- witness the General Electric Playhouse. The issue arose whether such advertiser - involvement might skew editorial judgments or even bias the presentation of the news. Would a news show produced by an oil company tell the whole truth about air pollution, to use a hypothetical example. Paid "plugs" for products used by characters in situation comedies or other shows were considered in bad taste and possibly exploitative of the trust that viewers build up in popular television characters.

Ultimately, the broadcast networks decided that their editorial integrity (as well as their economic interest in selling commercial time in small segments to the highest bidder) dictated that the networks themselves and not the sponsors would control the programming.6/ And, after a great deal of public pressure, Congress amended the Communications Act to require that all sponsored material be clearly identified.7/ Opposition to the commercialization of the public airwaves and the threat of government regulation led the industry to enforce its own limits on the amount of advertising allowed per hour of programming.

Broadcasters in the United States must obtain licenses to operate and have a statutory duty to act "in the public interest."8/ This duty has been interpreted to include a responsibility to screen out false or deceptive advertisements. The self-regulators, including the broadcast networks, have

been more active in enforcing this principle than the federal government. As a result, most blatantly fraudulent advertising has been eliminated from national broadcast television in the U.S.

Unlike broadcasting, cable television is not viewed as a scarce public commodity which must be regulated to ensure that it operates in the public interest. On the contrary, cable has the potential for providing a great diversity of television offerings, ranging from specialized all-sports or all-news channels to interactive videotex services. The Federal Communications Commission does not license cable systems, and has not sought to impose on the cable medium the same levels of public responsibility regarding commercialization that have been present historically in broadcasting. Cable systems are "franchised" by municipal governments, but they too have not been active on the issue of false or deceptive advertising on cable television.^{9/}

If cable develops in other countries in the same way that it has in the US, then consumers will not be able to count on the traditional governmental communications agencies to protect their interests regarding the use of this medium for advertising. It may be difficult for consumer protection agencies, such as the US Federal Trade Commission, to take any action against a potentially deceptive format, such as the commercial disguised as a talk show, because such agencies have authority over the individual advertiser, and not the network or publisher who makes the deceptive format possible. In this instance, some form of disclosure that the show is really an advertisement is all that would be necessary, yet without either the threat of government regulation or some form of public protest, it is likely that advertisers will want to retain the extra credibility they gain from using a non-advertising format.^{10/} International consumer organizations could play an important role in demanding that new formats for televised commercial messages be clearly labeled to avoid the exploitation of consumers' trust.

3. Satellites

The development of communications satellites was in large part responsible for the explosive growth of multi-channel cable television systems in the United States. Satellites provide a relatively cheap method to beam down a wide variety of program offerings to earth stations, which then distribute the signal locally to paying subscribers via coaxial cables. Advances in satellite technology also promise to make the "global village" a reality by beaming video and other information services across national borders. Some European countries already freely allow the importation of television signals from other countries. Others are concerned that foreign programs could undercut certain public policies against the promotion of unhealthy products such as tobacco or alcohol.

To achieve some understanding of the regulatory headaches involved, let us examine the case of cigarette advertising. In Norway, such advertising is completely banned. In Switzerland, it is completely unregulated. In some countries, only the package is allowed to be shown in advertisements, with no action or scenery allowed. In other countries such as the United States, cigarette advertising is banned in the broadcast media but allowed in print, so long as the advertisement is accompanied by health warnings. Since the law banning cigarette commercials from television was written in terms of media regulated by the Federal Communications Commission,^{11/} however, it is now somewhat uncertain whether cable television would be within the law if it were to offer cigarette advertisements.

The case for restricting the advertising of harmful products as a means of minimizing their use has yet to be proven. Given that the residents of Norway are not exposed to cigarette advertising from Switzerland, for instance, it is possible for researchers to compare the effects of different regulatory policies on the actual consumption rates of these products. Thus, international broadcasting could not only undercut the

regulatory policies of the more restrictive countries, it would also destroy the purity of the sample for researchers on the comparative effects of advertising regulations.

The benefits of increased media offerings, with the inevitable competition for audiences, should not be overlooked, however. International advertising could provide consumers with greater choices by making it easier for manufacturers to market on an international scale, assuming they could overcome the language barrier. Information services and marketing services could allow a more cosmopolitan and competitive market-place to develop. Yet this development of an international market for media services could be hindered if the advertising had to be altered to suit the differing regulatory policies of different countries.

4. Conclusion

Consumers have an interest in increasing the availability of media services, but they also have an interest in avoiding their own exploitation through false or misleading commercial messages. Rather than passively observing the development of these new technologies, consumer organizations should seek to influence the multinational corporations and the international governmental bodies that may be pushing for extremes of the free market philosophy on the one hand, and overly restrictive controls on the other.

With no limits on advertising, the market could return to a caveat emptor mode but with much more subtle and sophisticated forms of commercial persuasion (such as advertising disguised as information). As a starting point, consumers should use public pressure to achieve self-regulation of new advertising media. An advertising code for the new media technologies (calling for clear sponsorship identification, for instance) could probably be implemented much more expeditiously by a private group of multinational companies than by any attempt at formal governmental regulation across national boundaries.

British consumers, as represented by the National Consumer Council, were instrumental in negotiating a code of practice for information providers on the Prestel videotex system. This idea could be expanded to multinational groups, such as the International Chamber of Commerce. Its International Code of Advertising Practice could be modernized to deal with the new forms of advertising that are appearing on videotex and cable television.

But without some consumer demand, and perhaps even a credible threat of government regulation, private companies would have no reason to implement such a code. Consumer awareness of both the benefits and hazards of new media forms at this early state of development is the key to influencing future policy before anti-consumer practices become entrenched.

Footnotes

- 1/ Hartley & Moore, "New Video Technology Poses Perils for some Advertisers", Harv. Bus. Rev. 25 (Sept - Oct 1981).
- 2/ Wicklein, The Electronic Nightmare : The New Communications and Freedom 68 (1980).
- 3/ 39 US Code § 4367; 18 US Code § 1734.
- 4/ The limits on commercial time are imposed by the National Association of Broadcasters (NAB) Code, with the implicit blessing of the Federal Communications Commission (FCC). Another branch of the government, the US Justice Department recently challenged such limits as an unlawful attempt by broadcasters to increase the price of commercial time by restricting the available supply. In response, the NAB has suspended the operation of their entire body, including those portions that demand honesty and good taste in broadcast advertising.
- 5/ 47 US Code § 317 (A) (1) (1976). In fact, this law applies to cable as well as broadcast, but is apparently not being enforced by the FCC.
- 6/ E Barnoz, The Sponsor : Notes on a Modern Potentate, 47 (1978).
- 7/ See note 5, supra.
- 8/ 47 US Code § 307.
- 9/ See Pridgen, with Engel, "Advertising and Marketing on Cable Television : Whither the Public Interest?" in 31 Cath U L Rev 227 (1982).
- 10/ See Hartley & Moore, supra n.1.
- 11/ 15 US Code § 1331.

D'ACCORD - PAS D'ACCORD

LE BEURRE : UNE PUBLICITE DIFFICILE
A DIGERER

Diffusion : Samedi 18 Octobre 1980

Texte : Laurène L'ALLINEC

Bonsoir.

Il y a en ce moment une publicité qui passe à la télévision et cette publicité doit inquiéter bien des médecins.

Par ailleurs, elle doit surprendre tous ceux qui ont compris l'intérêt d'un bon équilibre alimentaire.

Cette publicité, elle vous dit notamment, je cite : "le beurre est source de vitamines : vitamine A et vitamine D, pour rester solide, et d'autres encore, nécessaires à votre équilibre".

Eh bien, cette publicité nous paraît malvenue. Pourquoi? Parce que son argument essentiel est que le beurre, c'est bon pour la santé. Eh bien vous devez savoir que les maladies cardio-vasculaires dues à un excès de consommation de matières grasses d'origine animale; dont le beurre, arrivent au premier rang. Des chiffres : 200 à 250.000 morts par an, soit 3 à 4 fois plus que le cancer.

Alors que le beurre frais ait des qualités sur le plan gastronomique, personne ne songe à le contester, mais il n'est pas vrai que les français vont améliorer leur santé en consommant plus de beurre et c'est plutôt l'inverse qui est à craindre.

Nous consommons en moyenne trop de matières grasses. Nous regrettons donc cette campagne de publicité qui va totalement à l'encontre des efforts poursuivis par tant de responsables pour améliorer nos habitudes alimentaires.

TELEVISION TODAY AND
**TELEVISION
TOMORROW**

A guide to new electronic media and trends in
commercial television in Western Europe



EUROPE
FEBRUARY 1983

Country	Station	Penetration ⁽ⁱ⁾ %	Max. Ad. Min Allowed per day	Advertising times
Austria	ORF1	89	20	Six blocks between 6.55 pm and 10.55 pm
	ORF2	89	0	
Belgium/ Luxembourg	RTL ⁽ⁱⁱ⁾	79	68	Throughout the day at specified times
	RTB1 ⁽ⁱⁱⁱ⁾	95	0	
	RTB2 ⁽ⁱⁱⁱ⁾	95	0	
	BRT1 ⁽ⁱⁱⁱ⁾	95	0	
	BRT2 ⁽ⁱⁱⁱ⁾	95	0	
Denmark	Radio Denmark	90	0	
Finland	YLE1/MTV1	99	16 (MTV1) ^(iv)	Mostly evening breaks depending on MTV's allotted transmission times
	YLE2/MTV2	95	9 (MTV2) ^(iv)	
France	TF1	93	18	A few afternoon breaks; otherwise heavily concentrated in blocks between 6.30 pm & 8.30 pm
	A2	93	18	
	FR3	91	18 from 1 Jan '83	
Greece	ERT	93	35	Throughout transmissions, time limits per hour depending on programme lengths
	YENED	93	75	
Ireland	RTE1	92	58	Throughout transmissions, limit of av. 6 min per hr over days advertising, max 7½ min per hr
	RTE2	85	25	
Italy	RAI1	98	28	Throughout the day at specified times on RAI; any time on private stations, for which supply of commercial airtime will be reduced to 14% per hour in July 1983
	RAI2	94	28	
	RAI3	70	0	
	All private	87	15% per hour	

(i) Penetration here denotes % of households which both lie within reception area of station *and* own one or more TV sets.
 (ii) Penetration for Brussels and South only.
 (iii) Penetration for Brussels and North only.
 (iv) MTV is a commercial programming company with access to the network of land transmitters.

<i>Country</i>	<i>Station</i>	<i>Penetration %</i>	<i>Allowed per day</i>	<i>Advertising times</i>
Netherlands	Netherlands 1	97	15	Three blocks next to the evening news programme
	Netherlands 2	97	15	
Norway	NRK	98	0	
Portugal	RTP1	90	90	Throughout the day
	RTP2	40	45	
Spain	TVE1	95	57	At regular half-hour or hour intervals; mainly in evenings from 7.00 pm onwards.
	TVE2	65	42	
Sweden	STV1	97	0	
	STV2	97	0	
Switzerland	SRG (German)	85 German region	20	Five blocks between 6.30 pm and 10.00 pm
	SRG (French)	83 French region	20	
	SRG (Italian)	95 Italian region	20	
United Kingdom	ITV	97	90	Throughout transmissions. Limit of 6 mins per hr averaged over days advertising; and max. of 7 mins in any one clock hour
	Channel 4	87	50	
	BBC1	98	0	
	BBC2	96	0	
West Germany	ZDF	98	20	Four blocks between 5.30 pm and 7.30 pm on ZDF, and 6.00 pm and 8.00 pm on ARD
	ARD	98	20	
	ARD regional outlets	98	0	

Penetration here denotes % of households which both lie within reception area of station and own one or more TV sets.

**Advance
Purchasing
Requirements**

Major advertising prohibitions

137

Mid-September
of previous year

Tobacco and spirits, and through station regulation: political parties, religious groups, pharmaceutical products, "intimate" products, private loan services, or advertising aimed at children

Ideally, four
months in advance

Tobacco products

Three times a year,
spring, summer,
autumn

Cigarettes, alcohol, medicines, political parties or religious groups

October of
previous year

Alcohol, jewellery, tobacco, tourism, retail stores, building societies, publishing and computers. Other products such as toys and pharmaceutical products require special authorisation

At least three days
in advance

Cigarettes

Subject to demand

Tobacco, political organisations, religious bodies, matrimonial agencies and betting shops. Spirits through advertiser self-regulation and beer or wine before 7.00 pm

September of
previous year

Tobacco products, guns, slimming products, cars, motorcycles, boats, jewellery, furs, newspapers and magazines.
Additional restrictions on alcohol

**Purchasing
Requirements****Major advertising prohibitions****August of
previous year****Tobacco products. Special authorisation required for
pharmaceutical products; and a warning signal for sweets****Up to 15 days before
transmission****Tobacco and pharmaceutical products.
Alcohol only allowed after 9.30 pm****Six months in
advance****Pharmaceutical products, strong (23° +) alcoholic drinks.
Light alcoholic drinks and cigarettes only allowed after 9.30 pm
(at 100% surcharge rates)****At any time
subject to availability
(usually to within one
or two weeks prior to
transmission)****Tobacco products, alcohol, pharmaceutical products and
political propaganda****Subject to demand
any time up to the
day of transmission
(usually to within at
least a few days
beforehand)****Cigarettes and cigarette tobacco, political organisations,
religious bodies, matrimonial agencies and betting shops. Spirits
other than liqueurs through self-regulation by the advertisers****End of September
of previous year****Cigarettes**

