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Towards the liberalisation of product placement on UK television?

I From prohibition to liberalisation

Until February 28, 2011, product placement, which consists of the inclusion of a product or a service within a programme in return for consideration, was prohibited in TV and radio programmes imported and in films originally made for the cinema. The prohibition did not extend to prop placement, which does not require payment and is therefore allowed to the television service provider or the programme maker.

As product placement is a potential source of revenue for broadcasters, the question arose at both national and EU level whether it should not be liberalised to support the competitiveness of the UK and the EU broadcasting industry. Thus, in December 2005, Ofcom launched a public consultation to gather the views of stakeholders on the issue. It received 67 responses which highlighted the absence of consensus on both the benefits and the risks such liberalisation would entail. As Ofcom found that the economic benefits of product placement were likely to be rather modest, and that further work was required to determine the precise benefits from allowing product placement, it decided to postpone any changes to the UK regulatory framework to after the revision process to the Television Without Frontiers (TVWF) Directive was completed.1

Even though there were controversies regarding whether the AVMS Directive should be interpreted as prohibiting prop placement in television programmes produced in the EU, the general view was that product placement was banned as a result of the separation principle enshrined in the Directive that ‘television advertising shall be readily recognisable as such and kept quite separate from other parts of the programme service by optical and/or acoustic means’.2

During the consultation phase of the revision process of the TVWF Directive, the Commission argued that product placement should be allowed on two main grounds. Firstly, it claimed that the liberalisation of product placement would allow European audiovisual media services providers to obtain an additional source of revenue by which to bolster diminishing revenue streams and which would facilitate production of better quality programmes. Secondly, the Commission argued that liberalising product placement would render European audiovisual media services more competitive in that it would remove the problems associated with dual regimes in which product placement would be allowed in programmes originating from outside the EU but not in programmes originating from within the EU. Nevertheless, the liberalisation of product placement was not viewed favourably by all parties: several stakeholder organisations opposed liberalisation, including not only public broadcasters and consumer associations, but also some Member States (not least northern countries and Germany). One argument against liberalisation is that product placement is unfair to consumers: firstly, because it has a more insidious influence than traditional forms of advertising insofar as viewers are not always aware of brand presence in the programmes they watch, and secondly, because it relates the product to the situation in which it is used and arguably constitutes a more aggressive marketing technique as a result.3

In December 2007, the Audiovisual Media Services (AVMS) Directive was finally adopted.4 The AVMS Directive extends the scope of the TVWF Directive to all audiovisual media services, including the internet and on-demand services.5 Article 11 deals exclusively with product placement. Nevertheless, it must be read in light of article 9 which contains the rules applying to all forms of audiovisual commercial communications.

Article 11 starts with a statement of principle prohibiting product placement.6 Immediately afterwards, however, it provides for derogations: product placement is allowed in a range of programmes, on the conditions that certain requirements are respected and unless Member States decide otherwise.7 The AVMS Directive therefore liberalises product placement in certain programmes, while offering an option to Member States to opt-out and maintain the prohibition of product placement in all programmes. Nevertheless, the AVMS Directive contains exceptions: irrespective of the programme genres concerned, no product placement is allowed either in children’s programmes or in programmes for products and medicines or medical treatments available only on prescription. Article 11 thus lays down a prohibition on product placement, followed by an exception to the prohibition, followed by an exception to the exception to the prohibition.8 The complexity of the mechanism established by the AVMS Directive, which is based on a clause of optional harmonisation, allowed the Commission to decide that the AVMS Directive is also a measure of minimum harmonisation, which allows Member States to adopt more protective measures, subject to compliance with the general provisions of the EU Treaties, and in particular articles 34 and 56 of the Treaty on the Functioning of the European Union dealing respectively with the free movement of goods and the freedom to provide services in the EU.

In July 2008, the Department for Culture, Media and Sport launched a public consultation, seeking views on how the UK should implement the AVMS Directive. The Government received 59 responses, with 41 focussing specifically on product placement.9 On this basis, Andrew Burnham (the then responsible minister) issued a statement in favour of maintaining the existing prohibition, noting in particular that the consultation had failed to produce a convincing case for product placement. He pointed to the lack of evidence of economic benefits, along with very serious concerns about blurring the boundaries between advertising and content.10 Nevertheless, some months later, his successor Ben Bradshaw effected a U-turn: ‘It is not: we are now reconsidering the position. The Government is currently minded to permit product placement on UK television, subject to certain conditions. The Department for Culture, Media and Sport has thus launched another consultation on November 26, 2009, three weeks before the deadline for the implementation of the AVMS Directive was due to expire.11 The Government received as many as 178 responses from a range of stakeholders,12 and it is arguable that the significant mobilisation from the public and from the non-profit sector has allowed for the adoption of tighter restrictions than the Government seemed to have envisaged.


II The regime for product placement on UK television

The second part of this article focuses on the rules which have been adopted in the UK as part of the implementation process of the AVMS Directive. In this respect, it compares the rules laid down by the AVMS Directive, a measure of minimum harmonisation which, as such, allows Member States to adopt stricter provisions than those agreed by the European Community, with the rules established on their territories.15 The Directive sets conditions relating to the programmes genres (ii), the manner in which product placement can take place (iii) and the products placed (iv). Before discussing these three sets of rules, it is first necessary to consider the definition of product placement (i).

(i) What is product placement?

The AVMS Directive identifies product placement as one form among others of audiovisual commercial communications. It consists in ‘the inclusion of or reference to a product, a service or the trademark thereof so that it is featured within a programme, in return for payment or for similar consideration’.16 Product placement therefore has two defining features: the product, service or trade mark must feature within a programme, and the reference must be in return for payment or for similar consideration.

This second requirement distinguishes product placement, which must consist of the rule laid down by the AVMS Directive, from the liberalisation implemented in Member States, from prop placement, which is not required to comply with product placement rules. It is therefore necessary to determine what constitutes ‘payment or similar consideration’. Recital 91 of the AVMS Directive states that ‘the provision of goods or services free of charge, such as production props or prises, should only be considered to be product placement if the goods or services involved are of significant value’.17 Thus, prop placement involving the supply of goods or services which are of ‘significant value’ should be treated as product placement and must therefore comply with product placement rules. The question of determining whether value is ‘significant’ therefore entails important practical consequences.18

According to Ofcom, ‘significant value’ is when the value of a prop to the broadcaster, producer or a connected person is more than the estimated value of the prop. It is arguable that a value that is greater than the cost saving a broadcaster, producer or connected person has made as a result of acquiring the prop for use in the programme would be kept by a producer for personal use or re-sale it would have a residual value that was more than trivial. If a consumable low-value prop, like a food product, was returned, for instance, its ‘residual value’ would be likely to be trivial.19 The wording employed by Ofcom is somehow more restrictive than the wording employed in the AVMS Directive in the UK, where ‘significant’ is defined as ‘more than trivial’. Product placement could potentially cover a luxury watch or designer clothes. The decisions Ofcom has handed down on the meaning of ‘truncation’ or the broad scope of product placement rules. For example, in December 2009, the ‘CNN YouTube Debate on Climate Change’ was broadcast from Copenhagen. During the debate, United Nations Copenhagen Climate Change Summit was being held. The programme consisted of videos which members of the public had uploaded via YouTube, to which various references were made throughout the programme as a result of a contractual arrangement requiring that CNN would display and integrate prominently ‘a range of visual references to YouTube within the programme, including its branding and logo. In return, Google undertook to promote the programme on the Google and YouTube websites, and provide the YouTube platform for viewers to submit their questions by video. The question arose as to whether this arrangement amounted to product placement. In May 2010, Ofcom found that it did: in exchange for the promotion of the programme, and the promotion of ‘Copenhagen climate change’, Google had agreed to provide Google and YouTube with extensive visual branding references during the programme. Ofcom ruled that this constituted valuable consideration to the broadcaster, even though no money had changed hands.20

Once the two defining conditions for product placement are fulfilled, the relevant rules apply. Neither the AVMS Directive

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Since February 28, 2011, product placement has been allowed in certain programmes on UK television. The liberalisation of product placement has given rise to vivid debates at both EU and national levels: if product placement may be an additional source of revenue for broadcasters, it may also be an insidious advertising technique, and this is reflected in (I) of this article. The rules which have finally been adopted, and on which this article focuses, reflect the tensions and compromises that have been made (ii), as well as the attempt to balance the free movement of services within the European Union and the need to ensure a high level of public health, consumer and child protection (iii).

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nor UK implementing rules specify who the beneficiary of the payment should be. In practice, therefore, the key question is not ‘to whom?’ but ‘how much?’.

(ii) Conditions relating to programme genres

Article 11(2) of the AVMS Directive grants an option to Member States to allow product placement in cinematographic works, films and series, audiovisual media services, sports programmes and light entertainment programmes.58 By disting-

guishing programmes, the AVMS Directive implicitly recognises that independent production is more important in some programmes than in others. Thus, news and current affairs programmes, which are not listed in article 11 of the AVMS Directive and which do not purposefully inform rather than entertain, may not contain product placement.59

In implementing the AVMS Directive, the UK has exercised the option to liberalise product placement,60 though it has extended the list of programmes which may not contain such placement to include current affairs, consumer and religious programmes. This is true, even though such programmes may qualify as forms of ‘series’.61 The UK decision to extend the list arguably supports the rationale that product placement’s purpose is not primarily to entertain but to contain embedded commercial references. As discussed in the third part of this article, however, one should note that the extension of the prohibition only applies to programmes produced under UK jurisdiction, not to programmes imported from other jurisdictions.62

Furthermore, rule 9.7 of the Code explicitly bans product placement in news programmes and in children’s programmes, even though these programmes may fall within the permitted genres. As regards news and current affairs programmes, it is an allowable exception to the prohibition on product placement listed in the AVMS Directive. It therefore seems that rule 9.7 simply clarifies, rather than extends, the prohibition in an analogous manner. As regards children’s programmes, the AVMS Directive explicitly bans product placement in such programmes, notwithstanding the programme genre concerned.63 If it is most welcome that the AVMS Directive recognises the particular vulnerability of children to commercial communications, it remains that the Directive does not define the key notions of ‘children’ and ‘children’s programmes’, leaving these definitions to each Member State. For the purposes of the product placement prohibition, ‘a children’s programme’ in the UK is a ‘programme for a UK television broadcaster, the reference may well have been considered ‘unduly prominent’.69

These three conditions overlap. However, as product placement is a form of audiovisual commercial communication, they cannot logically be interpreted as prohibiting the viewers’ exposure to, and therefore their awareness of, the products, services or trade marks. Rather, they are intended to avoid the risk of abuse and draw the line between legitimate and illegitimate product placement by ensuring that ‘editorial content must not be created or distorted so that it becomes a vehicle for the purpose of featuring placed products, services or trade marks’.70 Together, they set the limits and attempt to protect European programmes from excessive brand presence and therefore ensure a higher quality of audiovisual media services, whilst allowing audiovisual media services providers to benefit from a new stream of revenue.

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According to Ofcom, examples of format or storyline construction that could fall foul of the rules are likely to include:

(a) The integrity of the programmes broadcasted

Article 11(3) of the AVMS Directive and UK implementing rules lay down three conditions which programmes containing product placement must fulfil and which are intended to uphold their integrity. First, the AVMS Directive, or the commercial integrity and the editorial independence of the media service provider shall remain unaffected. This is implemented in the UK by rule 9.8 of the Code which provides that the Code’s general principles and, as noted above, neither the AVMS Directive nor the UK implementing rules prohibit prop placement. The determining factor to assessing the effect of a reference to a product, service or trade mark is whether its presence is likely to influence the consumer’s perception of, or exposure to, the programme. If so, then the programme is not driven by commercial interests. In particular, this presence is likely to influence negatively children’s consumption of programmes, the AVMS Directive implicitly recognises that independent production is more important in some programmes than in others. Thus, news and current affairs programmes, which are not listed in article 11 of the AVMS Directive and which do not purposefully inform rather than entertain, may not contain product placement.61 This would extend the prohibition to a programme’s editorial needs and the references to placed products, services or trade marks must be justified and the content is not distorted for the purpose of featuring them.62

Secondly, the AVMS Directive requires that programmes containing product placement shall not directly encourage the purchase or the rental of the goods or services placed, in particular by making special promotional references to those goods or services. This rule is not particularly clear in that it does not define what ‘directly encourage’ and ‘special promotional reference’ mean. Its wording seems to suggest, however, that the inclusion or referencing of brands and products for their own sake, or even encouraging the kind of encouragement or endorsement in order to reach the point of ‘directly’ encouraging the purchase or rental of goods or services.63 UK implementing rules are arguably broader in scope: rule 9.9 of the Code provides that ‘references to placed products, services and trade marks must not be promotional’, without limiting the prohibition to ‘direct’ promotions.64 This is confirmed by the Guidance which Ofcom has provided and which sets out a list of relevant factors to determine whether a reference is promotional, including: encouragement to purchase (whether direct or indirect); advertising claims; price or availability information, references (whether explicit or implicit) to the product attributes or benefits of the placed product; slogans associated with the product or the product’s image; and, indirectly, any promotional content.65

Thirdly, the AVMS Directive requires that programmes containing product placement shall not unduly prominence to placed products, services or trade marks. This is implemented by rules 9.10 and 9.5 of the Broadcasting Code, which further specify that two factors may be indicative of undue prominence:

(i) the presence of, or reference to, a product, service or trade mark in programming where there is no editorial justification, or (ii) the manner in which a product, service or trade mark appears or is referred to in programming.

According to Ofcom, examples of format or storyline construction that could fall foul of the rules are likely to include:

(a) A reality format in which participants are required to perform tasks or challenges that feature strongly or frequently a placed product or service.66

(b) The information of viewers

Another safeguard enshrined in the AVMS Directive is the require-ment that ‘viewers shall be clearly informed of the existence of product placement’ and that ‘programmes containing product placement should be appropriately identified at the start and the end of the programme, and when a programme resumes after an advertising break, in order to avoid any confusion on the part of the viewer.’67 The Code provides that ‘the presence of product placement gave rise to a lot of debates: as it lacks precision, it has been criticised both by consumer associations for its ineffectiveness and by industry operators for its lack of flexibility. In the UK, the Regulations led to Ofcom
the two versions of the universal neutral logo which is now used and it must be neutral, without any references to the products, of its effectiveness, ‘given the difficulty, or even the impossibility, made does not mean that there can be no surreptitious adver-

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Whilst television advertising is still subject to the separation requirement.61 The identification requirement is one element of minimum harmonisation, which allows Member States to

national implementing rules, from surreptitious advertising, which it fulfils the conditions laid down in the AVMS Directive and

The AVMS Directive bans the placement of two categories of products, due to the specific risks their consumption entails for public health: firstly, tobacco products or cigarettes or product placement from undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products;62 and secondly, specific medicinal products or medical treat-

requirements any programme containing product placement shall meet. For a discussion of the programmes in which product placement may be between competing interests: on the one hand, the liberali-

towards a high level of public health and consumer protection.75 One

III Conclusion: a satisfactory compromise?

The scheme set up by the AVMS Directive combines a clause of minimum harmonisation, which allows Member States to exercise their national competence within a given framework: the state of the establishment principle,76 which prevents Member States from imposing their national implementing rules on audiovisual media services originating from other Member States.77 This regulatory mechanism reflects the fact that the AVMS Directive is an internal market measure intended, in the interest of freedom, to ensure the free movement of services within the European Union.78 Nevertheless, the AVMS Directive also acknowledges that free movement should not be detrimental to competing public interests, such as consumer, public health or child protection. The compromise therefore is that Member States may decide to impose stricter standards than the ones laid down in the Directive on the audiovisual media service providers established on their territories, without imposing these standards on providers established in other Member States.79 There is little doubt that audiovisual media service providers will take advantage of this freedom of movement to transmit their programmes in the European Union without having to comply with more than one set of rules (ie, the rules in the country of their establishment and the ones imposed by the country of their audience) thus offering the opportunity to make significant savings in terms of compliance costs. Nevertheless, the proper working of this scheme requires that Member States, which have implemented the AVMS Directive and that audiovisual media service providers comply with the rules in force on its territory.80 It also pre-supposes that the minimum standards established at EU level are sufficiently protective of the public interest.

In relation to product placement, it has been argued that the AVMS Directive should contain a much stronger ban on product placement, in particular to maintain a general prohibition on product placement. The AVMS Directive may lay down a prohibition of principle on product placement, the reality is that this form of audiovisual commercial communication has been largely liberalised in 26 of the 27 EU Member States.81 The first review of the AVMS Directive is due for the end of 2011. It will be followed in 2012 by another review of its conformity with the principles of the European Union.82 It is however unrealistic to expect a tightening of existing rules.

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Notes

1 The definition of product placement is discussed below. Programme placement is understood to mean that the presence of brands was edited editorially and not unduly prominent. The distinction between programme placement and product placement may still be relevant following the entry into force of the new rules, as discussed below. See the Commission’s impact assessment <ec.europa.eu/avpolicy/reg/history/codecision/index_en.htm>.


4 Even though at 11 applies equally to on-demand and scheduled audiovisual content, the former applies only to on-demand content.

5 For a discussion of the programmes in which product placement may be


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8 Communications Law Vol. 16, No. 3, 2011
different methods have been proposed to determine whether value is significant. As discussed in s 3 below, this possibility is subject to the 'State of establishment' term (European Audiovisual Observatory, 2010), defined in terms of consumer protection, as the products listed in r 9.13 are unlikely to be comprehensible as such. Surreptitious audiovisual commercial communication should not cover legitimate product placement for these two categories of products.

35 Children’s programmes could indeed fall within the broad definition of the notion of ‘series’. For example by means of a neutral logo.’

36 See also rule 9.4: ‘Products, services and trade marks must not be promoted in a programme thatchildren’s viewing in 2009. For 4-9 year olds, the figure was lower at 54.4% and 76% in 2010. In terms of consumer protection, as the products listed in r 9.13 are unlikely to be comprehensible as such. Surreptitious audiovisual commercial communication should not cover legitimate product placement for these two categories of products.

37 Article 11(4). This prohibition applies to all programmes, notwithstanding whether they have been produced by the broadcaster. Article 11(4) is a specific application of the requirements laid down in art 9(13) and (d) banning all forms of audiovisual commercial communications for cigarettes and other tobacco products shall be prohibited.

38 Article 11(4). This prohibition applies to all programmes, notwithstanding whether they have been produced by the broadcaster. Article 11(4) is a specific application of the requirements laid down in art 9(13) and (d) banning all forms of audiovisual commercial communications for cigarettes and other tobacco products shall be prohibited.


40 The AVMS Directive is based on arts 53(1) and 62 of the Treaty on the Functioning of the European Union.

41 C 344/97 (De Agostini), para 134, which states that the provisions of Directive 2007/60/EC (the TVWF Directive) of the Swedish ban on advertising designed to attract the attention of children of less than 12 years old, the EC explicitly confirmed that the State of establishment principle required that Member States were bound to accept broadcasts from other Member States, without having the possibility to apply the strict national standards which they may impose on their broadcasters established on their territory.

42 EU Directive 2010/83/EU: Each Member State shall ensure that all audiovisual media services transmitted by media service providers under its jurisdiction comply with the rules of the system of law applicable to audiovisual media services intended for the public in that Member State. In particular, the Government noted:

43 Under the new AVMS rules, a majority of Member States will allow product placement in the permitted genres of programmes (e.g., sportscasts, films and series made for audiovisual media services, sport programmes and light entertainment programmes). Others will permit product placement in specific genres of programmes. For these two categories of products.

44 This rule is a specific implementation of the more general rule laid down in art 1 of the AVMS Directive: ‘all forms of audiovisual commercial communications for cigarettes and other tobacco products shall be prohibited.’


46 One possible reason is that art 11(4) of the AVMS Directive mandates a breach of the radio’s willingness to consider a clear commercial statement about a placed product to make or where repeated implicit promotional content is broad. Implicit promotions are also targeted, for example when a character is, or a range of characters, are shown repeatedly using the same placed product.

47 Article 11(4) of the AVMS Directive provides that ‘Member States shall remain free to require media service providers under their jurisdiction to comply with more detailed or stricter rules in the fields covered by the Directive provided that such rules are in compliance with Union law.’

48 The State of establishment principle is also sometimes referred to as the ‘transmitting State principle or the country of origin principle.


50 The AVMS Directive is based on arts 33 and 62 of the Treaty on the Functioning of the European Union.

51 C 344/97 (De Agostini), para 134, which states that the provisions of Directive 2007/60/EC (the TVWF Directive) of the Swedish ban on advertising designed to attract the attention of children of less than 12 years old, the EC explicitly confirmed that the State of establishment principle required that Member States were bound to accept broadcasts from other Member States, without having the possibility to apply the strict national standards which they may impose on their broadcasters established on their territory.

52 For a discussion relating to the geographical scope of art 11 of the AVMS Directive, see C Angelopoulos, Product Placement in European Audiovisual Law (European Audiovisual Observatory, 2010), at p 19.

53 See also rule 9.4: ‘Products, services and trade marks must not be promoted in a programme that contains explanation and/or analysis of current events and issues, including material dealing with political or industrial controversy or with current public policy.

54 The definition of the directive suggests that the option granted to Member States is limited to the last three months of the exhibition must be maintained. The fact that art 10 explicitly bars the sponsorship of news and current affairs programmes seems to reinforce this interpretation. However, the principle of separation should be limited to television advertising and teleshopping unless a Member State decides otherwise. However, where product placement is surreptitious, it should be prohibited. The principle of separation should not prevent the use of new advertising techniques. On the move from the separation to the identification principle, see C Angelopoulos, ‘Product Placement in European Audiovisual Law’ (European Audiovisual Observatory, 2010), at p 50.

55 Article 13(4). This prohibition applies to all programmes, notwithstanding whether they have been produced by the broadcaster. Article 11(4) is a specific application of the requirements laid down in art 9(13) and (d) banning all forms of audiovisual commercial communications for cigarettes and other tobacco products shall be prohibited.

56 Article 13(4). This prohibition applies to all programmes, notwithstanding whether they have been produced by the broadcaster. Article 11(4) is a specific application of the requirements laid down in art 9(13) and (d) banning all forms of audiovisual commercial communications for cigarettes and other tobacco products shall be prohibited.

57 For a discussion relating to the geographical scope of art 11 of the AVMS Directive, see C Angelopoulos, Product Placement in European Audiovisual Law (European Audiovisual Observatory, 2010), at p 19.

58 Article 13(4). This prohibition applies to all programmes, notwithstanding whether they have been produced by the broadcaster. Article 11(4) is a specific application of the requirements laid down in art 9(13) and (d) banning all forms of audiovisual commercial communications for cigarettes and other tobacco products shall be prohibited.

59 See Commission’s Guidance, at para 1.16. This decision remains relevant to the liberalisation of product placement, as already mentioned in all 11 the AVMS Directive.

60 Article 13(4). This prohibition applies to all programmes, notwithstanding whether they have been produced by the broadcaster. Article 11(4) is a specific application of the requirements laid down in art 9(13) and (d) banning all forms of audiovisual commercial communications for cigarettes and other tobacco products shall be prohibited.

61 See Commission’s Guidance, at para 1.16. This decision remains relevant to the liberalisation of product placement, as already mentioned in all 11 the AVMS Directive.

62 Article 13(4). This prohibition applies to all programmes, notwithstanding whether they have been produced by the broadcaster. Article 11(4) is a specific application of the requirements laid down in art 9(13) and (d) banning all forms of audiovisual commercial communications for cigarettes and other tobacco products shall be prohibited.

63 Article 13(4). This prohibition applies to all programmes, notwithstanding whether they have been produced by the broadcaster. Article 11(4) is a specific application of the requirements laid down in art 9(13) and (d) banning all forms of audiovisual commercial communications for cigarettes and other tobacco products shall be prohibited.

64 See Ex ante Consultation, Commission’s Guidance, at para 1.178 to 1.181.

65 The test of the consultation and the consultations Oxicom has received are available at <stakeholders.ofcom.org.uk/consultations/summar.html#189>, at para 20.

66 See Articles 15(1) and 18 of the AVMS Directive.

67 At para 32.

68 At para 33.

69 It is explicitly confirmed by Oxicom’s Guidance, at para 1.12.

70 The requirement is a specific application of the requirement laid down in art 9(13) that ‘all forms of audiovisual commercial communications for cigarettes and other tobacco products shall be prohibited.’

71 Article 11(4). This prohibition applies to all programmes, notwithstanding whether they have been produced by the broadcaster. Article 11(4) is a specific application of the requirements laid down in art 9(13) and (d) banning all forms of audiovisual commercial communications (including product placement) for these two categories of products.

72 Article 9(3).1.


74 This is confirmed by the Guidance at para 1.16 and is all the more relevant in terms of consumer protection, as the products listed in r 9.13 are unlikely to be comprehensible as such. Surreptitious audiovisual commercial communication should not cover legitimate product placement for these two categories of products.

75 This is confirmed by the Guidance at para 1.16 and is all the more relevant in terms of consumer protection, as the products listed in r 9.13 are unlikely to be comprehensible as such.

76 The requirements are intended to reflect the principle of separation, as discussed above.

77 Article 11(4). This prohibition applies to all programmes, notwithstanding whether they have been produced by the broadcaster. Article 11(4) is a specific application of the requirements laid down in art 9(13) and (d) banning all forms of audiovisual commercial communications (including product placement) for these two categories of products.

78 This is confirmed by the Guidance at para 1.12.

79 Article 13(4). This prohibition applies to all programmes, notwithstanding whether they have been produced by the broadcaster. Article 11(4) is a specific application of the requirements laid down in art 9(13) and (d) banning all forms of audiovisual commercial communications for cigarettes and other tobacco products shall be prohibited.

80 The AVMS Directive is based on arts 53(1) and 62 of the Treaty on the Functioning of the European Union.

81 On the need for a neutral logo, see C Angelopoulos, ‘Product Placement in European Audiovisual Law’ (European Audiovisual Observatory, 2010), at p 19.

82 The term ‘light entertainment programme’ is defined in terms of consumer protection, as the products listed in r 9.13 are unlikely to be comprehensible as such. Surreptitious audiovisual commercial communication should not cover legitimate product placement for these two categories of products.

83 On the need for a neutral logo, see C Angelopoulos, ‘Product Placement in European Audiovisual Law’ (European Audiovisual Observatory, 2010), at p 19.

84 For an overview of how art 11 of the AVMS Directive has been implemented in other EU Member States, see Product Placement (European Audiovisual Observatory, 2010).