

35th EPRA meeting
Portorož, 31 May – 1 June 2012

Plenary Session 2 >

The Future of Commercial Communications: Market & Regulatory Developments *The Future of Commercial Communications in a Connected Environment*

Background Paper

Maria Donde, Ofcom (UK) session Coordinator, EPRA Secretariat

The Future of Commercial Communications has been identified as a main theme for EPRA's 2012 work programme. This paper provides context for the second Plenary session, in light of the work done to date by EPRA on this subject, outlines the session structure and identifies possible questions for debate.

1. Context

Market developments, in particular the development of over-the-top services and the advent of Connected TVs, are putting pressure in traditional broadcasters to adapt their business models, protect existing sources of revenue and seek new ones.

Technological developments (e.g., increased IP based delivery of content and innovation on software and platforms) allow advertisers and audiovisual media service providers to be more creative in the way they produce, sell and place advertising and other commercial communications in audiovisual media services. For example, advertising can now be more targeted to the specific profile of a particular audience group or indeed individuals.

This brings both **opportunities and risks**. On the one hand, it is to be welcomed, as a way to support the European audiovisual industry, increase choice and overall enhance consumer welfare. However, there are also risks, in particular if consumers are unaware of the fact they are being "sold to" and/or if the overall viewing experience suffers.

The regulatory framework for Audiovisual Commercial Communication (ACC) in Europe is set out in the Audiovisual Media Services Directive (now almost fully implemented) and supported by the Interpretative Communication on TV Advertising¹ (2004). The Communication sought to increase legal certainty for economic operators, clarifying existing rules and providing guidance on new forms of advertising emerging at the time (e.g., 'Mini-spots'; 'Telepromotions'; 'Split-screen advertising'; 'Interactive advertising' and 'Virtual advertising'). Since then, the introduction of product placement has broken the traditional separation between advertising and editorial content. This has had a knock on effect on the market for sponsorship, whereas virtual and interactive advertising have never expanded. Following the adoption of the AVMS, the Communication has become outdated. The Commission has announced a review of the Communication in 2013, with work to start in 2012.

2. EPRA debates on Audiovisual Commercial Communication

EPRA members have already devoted a significant amount of time over the past couple of years to consider the implications of the AVMS for the regulation of ACC (in both plenary sessions and

¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52004XC0428%2801%29:EN:NOT>

working groups). In recent meetings, EPRA has discussed a number of specific advertising issues, such as:

- the blurring boundaries between programmes and advertising (WG: Prague, May 2007),
- the changing nature of advertising (WG: Barcelona, May 2010),
- prohibited forms of advertising (WG: Riga, May 2008),
- self and cross promotion (WG: Dresden, October 2009), sponsorship (Plenary: Tallinn, May 2009), political advertising (WG: Dresden, October 2009),
- participation/call TV (WG: Riga, May 2008),
- last but not least: product placement (Plenary: Barcelona, May 2010). The Barcelona meeting also saw the launch of a dedicated Working Group on product placement still operational to this date.

The discussion, taking the form of debates around definitions and regulatory remit, has evolved to the point where EPRA wanted to expand its analysis to look at broader issues in the regulation of advertising. The latest plenary discussion (Belgrade: *Advertising Regulation: What Next?*) pointed to a change of paradigm in advertising regulation and the need for redefining the limits in the post-AVMS environment.

3. Aims and Structure of session:

The objectives of this plenary session will be to consider market developments and the future evolution of audiovisual commercial communications, in order to identify issues that might merit regulatory attention in the future and inform any potential EPRA input into the Commission's proposed review of the Interpretative Communication on TV Advertising (2004).

First, a panel of key experts from the industry will share their complementary areas of expertise with EPRA members to shed a light on market developments and the future evolution of audiovisual commercial communications in a Connected Environment.

- **Adam Smith**, Futures Director at [GroupM](#), the leading global media investment management operation, will talk about new advertising techniques and future developments in this market, with particular emphasis on new media, new platforms and the relationship between "content" and "advertising";

- **Ross Biggam**, Director General of the Association of Commercial Television in Europe - [ACT](#), will focus on the development of product placement, sponsorship and self-promotion and broadcasters' funding models in the context of media convergence; and

- **Alain Heureux**, President and CEO of the European Interactive Advertising Trade Association - [IAB Europe](#), will speak about internet advertising developments and specifically the types of techniques and developments in internet advertising that might have an application in converged media.

The focus will then shift to regulatory aspects:

- **Tony Close**, Director of Standards at Ofcom (UK) will discuss what might be the challenges and future role for regulation – traditionally focused on audience protection – in this changing landscape.

A debate with the floor will seek to identify issues that merit regulatory attention in the future, both within the context of future EPRA work and/or as part of a review of the Commission's Interpretative Communication.

4. Possible questions for debate:

- What new advertising techniques are emerging/might emerge in the coming years?
- What are the new funding models for audiovisual media services?
- Will commercial communications be a central part of the business models for Smart/Connected TV offerings?
- What kind of new forms of advertising have we seen/might we see on Smart/Connected TVs?
- Will the convergence of the online and traditional broadcasting spheres bring internet advertising techniques into the sphere of content consumption?
- What are the policy and regulatory implications for regulation?
- What regulatory challenges (specifically in terms of the regulation of commercial communications) do regulators envisage as smart web-connected televisions become widely available in their countries?

5. First insights from the EPRA questionnaire

Some of these questions have already inspired interesting reactions from EPRA members in response to the EPRA questionnaire on the Future of Commercial Communications. Some overarching themes that emerged provide interesting insights for the debate.

Firstly, in the context of the **Interpretative Communication**, members expressed a desire for greater clarity in the concept and definition of self-promotion and cross-promotion and for guidance on terms relevant to the regulation of product and prop placement – such as “undue prominence”, “significant value of a good or service provided free of charge”, the concept and definition of “directly derived from programmes” and “ancillary to programmes”. An interesting question was also raised about the notion of “in return for payment or for similar consideration”: must this be explicitly proven or can a regulator act based on obvious observation – i.e. when there is no other logical purpose for the inclusion of a given reference?

Further detail on split screen advertising and what is meant by “isolated advertising spots shall remain the exception” would be useful, as would clarity on the distinction between sponsor credits and advertising and on the relationship between product placement and sponsorship.

Additionally, several members called for definitions or clarifications about new media formats and new (non-linear) forms of advertising in the Communication.

On **product placement**, most members noted little development in a nascent market. No one seemed to think this was because of regulatory constraints. The effect of product placement on the traditional advertising spot market was not, therefore, felt by any members.

Members enthusiastically speculated on **new advertising techniques and new funding models**, remarking that industry players were testing the limits of legislation with techniques such

as scrolling ads or split screen advertising. Some made predictions for virtual placement of audiovisual ads in sports events, tailored advertising drawing on user profiles, personalised, commercial communications in news e.g., "infotainment", ads and purchase options embedded into/accessible from editorial content and a general blurring of the boundaries between editorial and commercial content.

The possibility that there could be synergies between e-papers and connected TV was raised, as was co-operation between commercial advertisers and commercial or social media activities of broadcasters (including via their website). Some members predicted closer financial relationships between the audiovisual sector and the written press (including cross ownership – possibly resulting in an increase in cross-promotion), and envisaged more complex subscription models.

Connected TV specifically has not yet seen the development of clear new funding models or advertising techniques, but the expectation is that the non-linear nature of delivery will encourage the same kind of advertising currently seen in the internet environment, with specific reference to interactivity, targeting, and data gathering.

With respect of the **regulatory challenges** that these developments pose, members mentioned several areas for discussion, including the need to determine who has overall responsibility for advertising compliance (e.g. the broadcaster? The device manufacturer? The advertiser themselves?), the need to ensure the continued provision of high quality content and equal access to that content, as well as the importance of ensuring the integrity of editorial content. Issues around protection (of minors, around "buy now" options, and data) were also mentioned.

Finally, members pointed to the differences in the regulatory treatment of advertising in linear and non-linear services, and the discrepancy between the level of regulation of commercial communications in services that meet the definition of AVMS, and those that fall outside. This raises critical questions on the long term sustainability of this model.