

**Question 1: Do you have any comments on the drafting of the proposed amendments to the Broadcasting Code set out in Section 4? Please provide drafting suggestions where appropriate.:**

The question is directed at the drafting of the proposed amendment. However, one would submit that the conclusion reached in Section 4.1 is fundamentally flawed in that it is based on a mis-interpretation of the ECJ judgement to which it refers. Whatever the ECJ judgement may have to say about teleshopping, it was clearly not intended to lay down a direction that Ofcom must introduce rule changes which have the effect of compelling the closure of certain genres of popular TV eg: Adult Chat TV and Psychic TV

**Question 2: Do you have any comments on the draft explanatory guidance set out in Section 4? Please provide drafting suggestions where appropriate.:**

The guidance is based on the premise that Ofcom have correctly interpreted the ECJ judgement and therefore since one would argue that this is not the case, it follows that one would maintain that the guidance is in itself flawed. The draconian nature of the proposed rule changes would appear to have been ill thought through. As proposed, the rule changes stand to destroy many legitimate businesses and remove from consumers the rights they presently enjoy. There is no obvious empirical evidence to support this radical - indeed deeply troubling - approach by Ofcom

**Question 3: Do you agree that the proposed rules should apply to radio as well as to television?:**

Any rule changes should be designed to create a "level playing field" between competing media platforms. It would seem reasonable that once any rule changes have been properly assessed for their impact and therefore re-formulated, that they should be applied equally.

Additional comments:

There has been a seismic shift in Ofcom's stance, particularly as regards Adult chat TV and Psychic TV between July 2007 when Ofcom's current view was in favour of Option 2 (still editorial but subject to new, tighter rules to ensure appropriate separation). The April consultation is not, as such, a consultation ? it is a decision or ?fait accompli? ? that new rules are to happen, rules which however one seeks to amend them, cannot reasonably be seen as fair. Not only do they demonstrate a major ?U-turn? by Ofcom on its previously stated preference for Option 2, but the consultation, such as it is, is a denial of the right of business and of consumers to debate the true effect and implications of the ECJ decision. In the circumstances, one is drawn to question the transparency with which the debate has been carried on. It would indeed be deeply troubling were sectional interest groups within and without Ofcom to have held sway in preference to an informed and truly democratic debate.