



Product Placement

Summary of responses to consultation on issues
relating to product placement

Statement

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Section 1

Summary

- 1.1 Ofcom consulted on issues related to product placement in December 2005 primarily in response to concerns raised by some respondents to our earlier Broadcasting Code consultation that increasing pressures on traditional broadcast advertising risked affecting the main sources of funding for commercial broadcasting. Ofcom committed to taking a closer look at potential new funding sources – of which product placement was one – and to reviewing any regulatory barriers that might prevent their use (in accordance with Ofcom’s statutory duty to review regulatory burdens¹).
- 1.2 In issuing the consultation document Ofcom made it clear that the concept of product placement (the inclusion of, or reference to, a product or service within a programme in return for payment or other valuable consideration) was implicitly prohibited by the prevailing EU legal framework². As such, whilst Ofcom was at liberty to consult on the potential for deregulation of product placement, its ability to act on the outcome of the consultation would be influenced and constrained by developments at European level.
- 1.3 At this time the European legislative position remains unchanged, although there continues to be discussion about removing the total prohibition on product placement and the sorts of controls to govern its use that might need to accompany its introduction.
- 1.4 Ofcom has now considered all of the responses received to its consultation and it is clear that the introduction of product placement remains an issue on which there is no consensus - in general broadcasters favour a controlled introduction of product placement whilst consumer and viewer groups are opposed to the concept. It is also clear that before any even limited and controlled introduction could be contemplated there remain a significant number of issues on which further detailed work would need to be undertaken. Predicted economic benefits also appear to remain modest.
- 1.5 In light of this, and the position under European law remaining unchanged so far, Ofcom does not intend to make any proposals for regulatory change in relation to product placement and television at this time and this document seeks only to set out a summary of the key points made in response to the consultation.

¹ Section 6, Communications Act 2003

² EC Directive 89/552/EEC, as amended by EC Directive 97/36/EC (“The Television Without Frontiers Directive”)

Section 2

Introduction

Background to the consultation

- 2.1 The Communications Act 2003, which defines Ofcom's statutory duties, includes a requirement for Ofcom to set, review and revise (as appropriate) standards for the content included in television and radio services. In setting these standards Ofcom is obliged to take into account the international obligations of the United Kingdom and specifically the requirements of European legislation as described by EC Directive 89/552/EEC, as amended by EC Directive 97/36/EC ("The Television Without Frontiers Directive").
- 2.2 The Ofcom Broadcasting Code, published in May 2005, lays out in detail the standards that television and radio broadcasters must adhere to. The Code includes a specific requirement to maintain appropriate separation between programmes and advertising content giving effect to one of the key principles of the European framework, the 'separation principle'³. The Code also pays due regard to the need to maintain independent editorial control of programme content⁴.
- 2.3 The separation principle has been a key feature of broadcast regulation since the inception of commercial television in 1955⁵. As with many aspects of regulation however, the principle of separation in terms of its interpretation and application has evolved steadily to keep pace with developments in commercial television and audience expectations. Audiences are now familiar with a greater variety of revenue generating activities than traditional spot advertising - such as sponsorship, controlled 'prop placement' and interactivity – all of which allow a greater degree of advertiser involvement in broadcasting. All of these activities are however strictly controlled by provisions in the Broadcasting Code which protect editorial integrity and independence and prohibit any undue prominence being given to commercial references.
- 2.4 Paid-for product placement is seen by many in the broadcasting industry to be the logical next step in the evolution of commercial television in the UK – just as it has been in the US. It is however an issue that divides opinion sharply – attracting as many opponents as supporters. Those calling for its introduction cite the need to exploit new potential revenue sources as pressures on traditional broadcast advertising revenues mount. Opponents are critical of broadcasters' likely ability to maintain editorial integrity when faced with the demands for prominence by advertisers.
- 2.5 In the UK, broadcast regulation pays full heed to the requirement of the current TWF Directive to maintain a clear distinction between advertising and programme material and paid-for product placement is explicitly prohibited by Ofcom's Broadcasting Code. Such an approach is consistent with the European Commission's July 2005 Issues Paper which made clear the Commission's view that the requirements of the TWF Directive "*implicitly has the effect of not authorising...recourse to product*

³ This states "Television advertising and teleshopping shall be readily recognisable as such and kept quite separate from other parts of programme services by optical and/or acoustic means."

⁴ As required by S. 319(4) of the Communications Act 2003

⁵ Television Act 1954 Schedule 2 Rule 1

*placement..*⁶. But the TWF Directive is now under review with proposals for a clear legal framework for product placement and associated viewer safeguards under consideration. And in reality of course product placement is already a familiar sight on UK television screens in a variety of high-profile, high-audience US imports and feature films.

- 2.6 Taking all of these factors into account, Ofcom launched a consultation into the possibility for a limited and controlled introduction of paid-for product placement to the UK. The aim of the consultation was to stimulate substantive debate around a number of core issues to help inform discussions at European level and ensure that the views of both UK audiences and industry were well-rehearsed should subsequent changes at European level mean that the legislative barriers to product placement were removed.

What we consulted on

- 2.7 On 19 December 2005, we published “A consultation on issues related to product placement” for public consultation. The document contained a summary of the current legal context, an analysis of the potential economic impact any introduction of product placement might have on the broadcast economy and a summary of a short programme of qualitative research conducted by Ofcom into viewer reactions to a variety of funding techniques for commercial television, including product placement.
- 2.8 The consultation identified a range of substantive issues that need to be addressed before any introduction of product placement could be implemented and asked 13 specific questions which can be found at Annex 1. These divided into six broad themes:
- The general principle of permitting product placement
 - The genres of programmes product placement appropriate for product placement
 - The identification to viewers of product placement
 - The continued applicability of ‘undue prominence’
 - The types of products and service suitable for product placement
 - The commercial arrangements that might be required
- 2.9 The consultation also requested views on the introduction of product placement into radio broadcasting.

The statement

- 2.10 This statement represents a summary of the comments received by Ofcom as a result of the consultation. It does **not** represent any change to the current regulatory regime for television or radio broadcasting in the UK.

⁶ Issues paper for the audiovisual conference in Liverpool: Commercial Communications, European Commission, July 2005

Next steps

- 2.11 Ofcom remains of the view that there is no scope for a change to the regulatory landscape in the UK until the review of the TWF Directive is complete and it is clearly established that product placement is not incompatible with the basic principles of European content regulation.
- 2.12 We are aware that there is some debate about the extent to which the current TWF Directive absolutely prohibits product placement – particularly as some Member State broadcasters appear to incorporate product placement into their programming without infraction. On balance, and after advice from the Commission, our view remains that product placement is not compatible with the TWF Directive and we are not persuaded to pursue a relaxation of the UK specific rules in advance of any permission in the revised Directive.
- 2.13 If it is apparent that the relevant change is forthcoming, and there are appropriate provisions in UK national legislation, we will undertake further work to determine the scope for the introduction of product placement into commercial television in the UK and develop the sort of detailed rules that would be necessary to govern its use.
- 2.14 In the interim, we have made this analysis available to Government in the expectation that it will be a useful contribution to the development of the UK policy during the review of the TWF Directive.

Note on product placement on radio

- 2.15 In the consultation we also asked the question whether any deregulation of product placement on television should also be considered for radio, noting that radio is not subject to the provisions of the TWF Directive. Those radio stakeholders who responded did so very firmly in the affirmative but noted that the differences between the two media meant that the issues surrounding product placement on radio were very different - primarily because products would have to be mentioned in radio programming if they were placed.
- 2.16 Given that both issues and the legal framework are so different, we have not assessed the policy and practical issues in the context of this current project. Instead, we will return to them if we judge it appropriate in the context of more narrowly focussed work on the funding and regulation of radio.

Section 3

Consultation responses

- 3.1 The consultation opened on 19 December 2005 and the closing date for responses was 13 March 2006. The consultation generated a degree of public debate including media attention. In all 67 responses were received from a range of interested parties including individual viewers, consumer groups, broadcasters, trade bodies and product placement agencies. A list of respondents can be found at Annex 2. All non-confidential responses are available in full at http://www.ofcom.org.uk/consult/condocs/product_placement/responses/. All respondents' comments have been taken into consideration when preparing this statement.
- 3.2 Responses were strongly polarised as anticipated by the consultation document itself. In some cases respondents who felt very strongly that product placement should not be permitted under any circumstances engaged only in limited detail with other questions in the consultation. We believe however that there were sufficient substantive responses to the full range of questions posed to draw fully informed conclusions.
- 3.3 Three organisations, National Consumer Council (NCC), Sustain and Weight Concern, objected that Ofcom's pre-consultation process had not extended sufficiently far enough beyond industry interests. In making that point they counselled that particular emphasis must be placed in the analysis phase on the views of consumer and not-for-profit organisations. Whilst we note these concerns, the point of pre-consultation is to ensure that we appropriately frame the consultation document and capture the full range of issues and concerns and we have no evidence to suggest that this was not achieved.

General overview

- 3.4 In general, broadcasters favoured a controlled introduction of product placement. Typical responses suggested that product placement is the subject of many myths and false assessments, for instance, that it would be a panacea for a perceived funding crisis in commercial television or that it would signal the end of editorial integrity. Broadcasters made the point strongly that they believed they could introduce product placement without compromising editorial integrity by ensuring transparency for viewers and maintaining the concept of undue prominence – suggesting a model based on 'brand presence' rather than 'brand promotion'. By doing so, it was claimed, product placement could become a modest revenue source, helping to maintain advertisers and add to the funding mix.
- 3.5 From a viewer perspective, whilst some individual respondents were prepared to accept that audiences were sufficiently sophisticated to cope with product placement, consumer and viewer organisations were opposed to the concept. Voice of the Listener and Viewer (VLV), NCC, Sustain, Public Voice, National Heart Forum (NHF) and Campaign for Press and Broadcasting Freedom (CPBF) all stated strongly that the prohibition on product placement should be retained. In most cases the primary reason was a belief that the blurring of separation between advertising and programming would be to the detriment of viewers, in contravention of Ofcom's primary duty to further the interests of citizens. Some of these respondents were also concerned that product placement would amount to surreptitious advertising and thus risk misleading viewers about the nature of material they were watching.

- 3.6 Amongst those supporting a move to introduce product placement there was however more general consensus about the genres of programmes in which it should be permitted – with few respondents suggesting that either news or children’s programmes would be suitable, in general, for the technique. Equally, in relation to the question of transparency, there was little dissent from a general view that viewers should be made aware of product placement’s use in any programme. There was however a disagreement about the way in which this should happen – with views varying between pre-programme announcements, end credits, use of listings magazines, interactive services and constant on-screen advice.
- 3.7 A greater divergence of views amongst respondents emerged in relation to the types of products that could be placed in particular programmes. Whilst many respondents were content with a suggestion that any products prohibited from advertising at all on television should not be placed e.g. those prohibited by BCAP’s Television Advertising Standards Code, there was a deal of discussion on whether products subject to advertising scheduling restrictions, such as alcohol, should be subject to the same scheduling restrictions for placement purposes.
- 3.8 The final theme of the consultation, the commercial arrangements for product placement, was primarily addressed by industry respondents who generally felt that the market is best placed to determine parameters with no need for Ofcom involvement. There were however some dissenting voices from this view, primarily those who suggested there would be a need for Ofcom to retain either a direct or indirect interest either proposing a broad framework for negotiations or monitoring the way commercial models were developing.

Ofcom’s research

- 3.9 NCC and VLV expressed concerns about our interpretation of the consumer research conducted to support the consultation, “The Future of television Funding”⁷ and suggested that the methodology used may have been misleading, resulting in confusion for participants and ultimately the conclusions reached.
- 3.10 The Ofcom research team has considered submissions but does not believe the concerns regarding confusion over prop placement and product placement are valid. This is because the methodology clearly and deliberately set up the research in two stages⁸.
- Stage 1 evaluated viewers opinions towards *current* funding mechanisms, which included 'prop placement'
 - Stage 2 evaluated viewers opinions towards *future* funding mechanisms including product placement (detailed as background product placement, noticeable product placement and script product placement)
- 3.11 This two stage methodology effectively minimised the confusion over current funding mechanisms (prop placement) versus future mechanisms (product placement) and the use of a moderator to present/define/discuss the differences provided further clarification.

⁷ <http://www.ofcom.org.uk/research/tv/reports/future/>

⁸ Further details of the methodology are contained within page 7 of the report

- 3.12 The fact that confusion exists among some viewers regarding the differences between prop placement and product placement, with the belief that product placement already exists, is actually a valid finding as opposed to a weakness of the research - as the research methodology and use of the moderator made every effort to minimise confusion. There is clearly a lack of understanding of where prop placement ends and where background product placement begins but this does not detract from the reliability or quality of the research.
- 3.13 We therefore dispute the concerns over the quality of the research and stand by the integrity of the methodology and findings. It should also be noted that the report clearly stated that the research was qualitative in nature and should not be extrapolated to represent the views of the wider population. It also stated that the research contributed to the policy considerations and was not in itself conclusive about how the wider public feel about the various funding mechanisms that were considered.

Detailed responses

Question 1: Is the total prohibition on product placement no longer proportionate to the potential detriment it seeks to prevent?

- 3.14 The consultation document described a number of factors which suggested that an examination of a limited and controlled relaxation of the current total prohibition on product placement on commercial television channels was justified. These included:
- our Communications Act 2003 duty to ensure that there is a wide range of television and radio services of high quality and wide appeal available throughout the UK;
 - the need for Ofcom to consider any potential threats to the revenue streams of broadcasters which in turn may threatening funding for programmes of range and quality;
 - the potential contribution product placement may deliver to commercial television both in terms of direct financial contribution⁹ and indirect effect of offering additional flexibility in reaching audiences to advertisers;
 - our commitment to operating with a bias against intervention.
- 3.15 Respondents fell into two camps – industry stakeholders who broadly agreed that the current prohibition was in need of relaxation and consumer/viewer stakeholders who argued strongly that the rationale for the current prohibition remained as strong today as at its inception.
- 3.16 Campaign for Press and Broadcasting Freedom, NCC, National Heart Forum (NHF), VLV, Sustain, Smoke Free Norfolk Alliance, Public Voice and 11 individual viewers all expressed a view that the current prohibition should be retained. The most common themes of these responses were that separation of advertising and programming remains a fundamental viewer protection that prevents viewers from being misled and which safeguards editorial independence. They did not have

⁹ Pre-consultation discussion with stakeholders suggested this to be in the region of £25 – 35m in the early years

confidence in the broadcasting industry's ability to 'self-moderate' the use of product placement. Some respondents, NHF, NCC, Public Voice, Sustain and VLV, questioned the economic justification for any relaxation pointing out that revenue projections appeared minimal.

- 3.17 Industry stakeholders generally concurred with Ofcom's analysis and broadly supported a measured introduction of product placement. A number argued for a 'brand presence' approach – rather than 'brand promotion' - that they asserted would preserve the integrity of UK commercial television and avoid the excesses observed elsewhere in the world. Broadcasters were particularly keen to stress that they face strong business incentives to ensure viewers are not alienated by excessive product placement i.e. that they would be keen to balance revenue potential against intrusive placement that might spoil viewers' enjoyment of programmes. A number pointed out the disparity in the regulatory position across Europe and UK viewers' current exposure to product placement in US-imports.
- 3.18 Advertising industry respondents, Advertising Association (AA), Institute of Practitioners in Advertising (IPA) and Incorporated Society of British Advertisers (ISBA), were also supportive of a measured introduction of product placement. However, the IPA were concerned about any potential impact on the value of sponsorship to advertisers and noted that their members suggested revenue projections for product placement in the early stages should be conservative – approx. £40million. ISBA commented that they did not subscribe to some of the more alarmist views of declining broadcast advertising revenues, commenting that whilst spot advertising was likely to remain one of the most powerful tools available to advertisers, it would be important to find other ways to engage with viewers as they began to avoid advertisements e.g. as a result of PVR use.
- 3.19 Two respondents, Ofcom's Advisory Committee for England (ACE) and ISBA suggested that rules on product placement should be consistent across all broadcasters, including the BBC.
- 3.20 Representing independent producers, PACT, also argued for a relaxation of the rules. From their perspective, the current rules are commercially damaging to the UK production sector's position internationally – alleging that programmes are made overseas to take advantage of the less restrictive rules and the revenue that product placement can generate.
- 3.21 Finally, Equity, representing artists across the arts and entertainment spectrum whilst supporting a relaxation in view of declining advertising revenues, were concerned that there should be clear guidance for artists and writers who would be directly impacted by the introduction of product placement to the creative process. In particular they were keen to stress that writers and performers may need clarity on their rights to refuse to endorse products in programmes that they felt might compromise either exclusivity contracts or personal beliefs.

Question 2: Do stakeholders agree that product placement should not be permitted in:

- a) news;*
- b) current affairs;*
- c) children's programmes?*

Question 3: Do stakeholders consider that if product placement were introduced, a phased approach should be adopted that, in the short-term at least, prohibited product placement from use in:

- a) *factual programmes;*
- b) *drama;*
- c) *any additional genres?*

- 3.22 There was general agreement that product placement should be prohibited in news and current affairs programmes. However there were concerns about the European Commission proposal to extend the prohibition to documentaries, and more generally the concept of a prohibition in 'factual' programmes. Discovery, amongst others, made the point that this definition could be seen as extending to a variety of factual programmes and argued that a number of sub genres – e.g. factual entertainment, consumer lifestyle – should not necessarily be excluded from product placement. A number of broadcasters argued for equivalence with the rules on sponsorship (i.e. just news and current affairs). Many sought clear guidance as to which programmes would and would not be covered.
- 3.23 The NCC, starting from their fundamental position that the current evidence does not support any introduction of product placement noted from Ofcom's research that viewers have concerns about factual, entertainment, religion and arts programmes. They therefore suggested that a prohibition only in news, current affairs and children's would not meet viewer concerns.
- 3.24 Many broadcasters also had concerns about the proposal to exclude product placement from children's programmes. Several pointed out that this is a genre under particular revenue pressure. There is also the undeniable fact that merchandising relationships already bring a high degree of commercialisation to this sector. Others argued that there might be a case for distinguishing between programmes for the youngest audience and those directed at older children/teenagers. Turner expressed concern that, unless the definition of children's programmes also encompassed programmes with a high child audience, protection for children would not be meaningful and would place a disproportionate burden on dedicated children's channels. The NCC and NHF also supported a prohibition on product placement in all programmes watched by significant numbers of children e.g. up to 9pm.
- 3.25 The BBC, whilst recognising the attractiveness of drama, soaps and sitcoms to product placement, cautioned of the potential pressure it may have on editorial content. Conversely, the collective response from ITV, SMG, UTV and Channel TV suggested that product placement would add to the realism of drama, indicating the era of the period portrayed and the demographic of the character, ultimately enhancing the viewer experience. VLV were opposed to product placements use in drama.
- 3.26 There was little support for any phasing in of product placement with a number of respondents suggesting this would be potentially confusing for viewers. The Motion Picture Association also suggested that phasing might risk investment turning its back on entire genres of programmes.

Question 4: If product placement were permitted in these genres at the outset how feasible do stakeholders believe it would be for Ofcom to re-impose restrictions on these genres at a future date?

- 3.27 Whilst the majority of respondents to this question acknowledged that Ofcom could re-impose restrictions at any time – providing it had appropriate statutory remit and sufficient justifying evidence to do so – few believed such a move would be either feasible or practical. The ITV, SMG, UTV, Channel TV response noted the difficulty

of applying rules retrospectively to programmes that had been made under any permissive regime. S4C pointed out the long production gestation of many programmes noting it suggesting it would be unfair if programmes that had been made but not yet broadcast were prevented from airing.

- 3.28 A number of respondents suggested that if there was any possibility of such a move, Ofcom must signal it at the start, and make clear what parameters it would use when considering whether prohibition needed to be reintroduced.

Question 5: Do stakeholders agree with Ofcom's provisional view that the use of product placement in programmes should be:

a) clearly identified; and

b) clearly identified at the start of any programme in which it is contained?

- 3.29 Whilst almost all parties accepted that there was a need for viewers to be made aware of any programme's use of product placement there were strong views as to the best way of doing this. Generally broadcasters and advertiser interests favoured end credit identification. The idea of credits at the start of the programme (advocated by the European Commission) would they claimed risk losing viewers, unnecessarily drawing attention to the placement and, crucially, undermining the exclusivity of existing sponsorship arrangements. There was also a sense that it would overly expose the placement to the detriment of programme integrity e.g. by making viewers more interested in 'spotting the product' than watching the programme. Turner warned that pre-programme credits might also detract attention from pre-programme warnings e.g. about the nature of content.
- 3.30 The Campaign for Press and Broadcasting Freedom, opposed to any introduction of product placement, did not accept that transparency was a sufficient safeguard for commercial speech and did not accept the conversion of transparency from being a consumer protection safeguard to be a mode of disclosure justifying integration of commercial and editorial material.
- 3.31 The NCC and NHF queried how an appropriate level of transparency could be achieved without totally undermining programme integrity. In particular, as pre-programme credits would be inadequate (many people miss the start of programmes) notification would need to be on-screen all of the time – but this would be intrusive and overly promotional in itself. The NCC also queried how viewers would distinguish prop placement from paid-for product placement. Public Voice favoured start and end credit notification. ACE suggested additional pre-transmission notification e.g. on an approved website.

Question 6: Can the current concept of undue prominence be retained in a regulatory environment that permits product placement?

- 3.32 A number of respondents claim that it would be possible to retain a concept of undue prominence in an environment that permitted product placement – indeed some believe it would be essential to the commercial success of product placement and for the UK to avoid the excesses of the US experience. Many broadcasters made the point that safeguarding editorial integrity would be crucial to them, and that it is any event not in advertisers interests to drive viewers away from commercial television. Product placement, they argued, needs to 'fit' with the programme and not be intrusive. The need for such editorial justification would therefore be an ideal check and balance on commercial influence.

- 3.33 Trustar Global Media observed that whilst judgement about whether prominence was 'undue' would inevitably subjective – similar principles to that used in judging 'due impartiality' should be adopted i.e. that context would be an important influencing factor. Broadly those who supported a retention of the principle argue that it is however likely to need a degree of redefinition to be effective and there is general agreement that this aspect of future product placement regulation will involve a fair amount of debate and work.
- 3.34 Consumer and viewer groups dispute the ability of broadcasters to self-regulate and are sceptical about whether it would ever be possible to reconcile undue prominence with the expectations of advertisers. Campaign for Press and Broadcasting Freedom, for instance, felt that the principle would be totally undermined, and stated that the rule should not be changed without a separate full consultation.
- 3.35 There is also a view that there is not a great deal of difference between what is already allowed (prop placement) and a notion of product placement combined with undue prominence (sometimes referred to as "brand presence"). In other words, there may be a clear tension between what broadcasters claim can be achieved in a UK product placement market and what advertisers already feel they can achieve at minimal cost.

Question 7:

a) Is it sufficient to rely on the editorial responsibility of broadcasters to regulate the potential excesses of product placement?

b): Do stakeholders believe that Ofcom should, initially at least, apply regulatory constraints to the way in which product placement appears in programmes e.g. prohibiting scripted references to attributes of products, limiting the length of time products, logos, brand names etc can appear?

- 3.36 As described above, the majority of broadcasters maintained that they would adopt a responsible, 'viewer-centric' approach to product placement, preserving editorial integrity, opting for brand presence rather than brand promotion and applying undue prominence principles. As such, they felt strongly that Ofcom should recognise that broadcasters would take responsibility.
- 3.37 The AA and IPA agreed, but suggested that clear guidance would be needed on what constitutes 'potential excesses' and undue prominence. IPA also noted that advertisers were likely to need some 'comfort' bearing in mind the costs to them of product placement. PACT commented that producers also have a vested interest in preventing excessive placement e.g. to protect the international value of content. They suggested development of a Best Practice Guide.
- 3.38 With regard to prescriptive rules, there were more mixed views amongst industry stakeholders, with some suggesting that the natural limits of product placement would never be established unless a degree of experimentation were allowed. Five commented that Ofcom guidance might be a more sensible approach but that this should wait until product placement had been introduced for a period of time. Others suggested that techniques such as scripted references would be incompatible with undue prominence in certain genres of programme. ISBA however warned against bland numerical measures which would not take account of context.
- 3.39 Consumer/viewer groups opposed to product placement were naturally less supportive of 'self-regulation' in this area. Both NHF and NCC pointed out that

broadcasters effectively had a conflict of interest and argued that a clear regulatory framework – including pre-clearance – was essential. NCC was concerned that Ofcom appeared to be bringing forward proposals for liberalisation without having thought through how it would be regulated.

Question 8: Should 'calls to action' be permitted around placed products or services e.g. 'red button' interactivity, 'buy now' exhortations from presenters?

- 3.40 Whilst a majority of broadcasting and advertising respondents agreed that calls to action would not be appropriate around product placement, there was some support for 'red button' activity providing the context allowed for it without affecting viewer enjoyment. NCC expressed concern that such activity was even under consideration.

Question 9: Do stakeholders agree with Ofcom's provisional view that:
a) products and services prohibited from advertising cannot be placed in programmes?
b) only products and services that would be permitted to advertise in breaks around a particular programme may be placed in that programme?

Question 10: Are there additional products not currently prohibited from advertising that should be excluded from use in product placement e.g. over the counter medicines?

Question 11: Are there other provisions of the Advertising Codes that should be extended to product placement e.g. creative treatments, substantiation of claims?

- 3.41 Whilst there was a broad recognition that the principles of the Television Advertising Standards Code should not be undermined by product placement – a point made strongly by the ASA - there was a degree of concern about the appropriateness of applying the advertising code specifically to product placement. For instance, a broad spectrum of respondents including consumer groups, advertiser and broadcaster interests supported the principle that products and services prohibited from advertising either generally or in or around particular programmes should not be allowed to be placed (generally or in or around those programmes). One notable exception to this was an argument put forward by some broadcasters that betting and gaming products and services should be allowed to be placed.
- 3.42 In addition to currently prohibited products and services, NHF, NCC and Sustain argued that high fat, salt and sugar food and drink products should not be allowed to be placed in programmes shown before 9pm. The Medicines and Healthcare Products Regulatory Agency pointed out that Prescription Only Medicines (POMs) are prohibited from advertising and promotion and should not be allowed to be placed; they also expressed a preference for a prohibition on the placing of Over The Counter (OTC) medicines and suggested that if such placement was allowed then that it should be subject to scheduling restrictions.
- 3.43 The Portman Group acknowledged that this was a difficult issue – whilst they would not want to see placement of alcohol prohibited – they would be concerned if alcohol product placement undermined current safeguards on alcohol promotion.
- 3.44 A significant point made by some commentators, most notably ITV, SMG, UTV, Channel TV, was that it was more appropriate to treat product placement like

sponsorship rather than advertising and that as such, the code to be looked to was the sponsorship code rather than the advertising code. This was a point also made by IPA who pointed out that it would be inappropriate to apply the provisions of the advertising codes to the product placement – which would occur within programming – when the advertising codes were enforced by the advertising industry and which do not apply to editorial content. Others making this point e.g. Hugh Geach, suggested that to talk about application of advertising codes to product placement missed a basic point; product placement should not be advertising, especially if the principle of undue prominence is applied.

- 3.45 Finally the Campaign for Press and Broadcasting Freedom commented that permitting product placement, in their opinion, would seriously undermine regulation of broadcast advertising unless detailed rules were drawn up, as advertisers would desert the controlled advertising environment for an unregulated product placement environment.

Question 12: Is the market best placed to determine the commercial parameters that should govern product placement negotiations?

- 3.46 The majority of industry respondents agreed that the market is best placed to determine the commercial parameters that should govern individual product placement negotiations. Most broadcasters took the opportunity of this question to confirm that they believe that they, as licensees with compliance responsibility, must retain control of product placement negotiations whilst recognising that there may be some cases of revenue sharing with independent producers and/or independent producers being joined to agreements. The IPA believed that Ofcom will have a significant role to play to devise detailed guidelines to ensure that advertisers can be confident when entering into product placement deals. The Advisory Committee for England believed that Ofcom should be informed on a confidential basis about the value of deals so that it can make an informed assessment of the potential value to the production economy.
- 3.47 The consumer organisations and individuals opposed to product placement who answered this question generally felt that Ofcom would be the appropriate determiner of product placement arrangements.

Question 13: Should any deregulation of product placement apply as appropriate to radio broadcasting?

- 3.48 In the consultation we asked the question whether any deregulation of product placement on television should also be considered for radio. Those radio stakeholders who responded did so very firmly in the affirmative but noted that the differences between the two media meant that the issues surrounding product placement on radio were very different - primarily because products would have to be mentioned in radio programming if they were placed.
- 3.49 Given that both issues and the legal framework are so different, we have not assessed the policy and practical issues in the context of this current project. Instead, we will return to them if we judge it appropriate in the context of more narrowly focussed work on the funding and regulation of radio.

Annex 1

Consultation questions

Question 1: Is the total prohibition on product placement no longer proportionate to the potential detriment it seeks to prevent?

Question 2: Do stakeholders agree that product placement should not be permitted in:

- a) news;*
- b) current affairs;*
- c) children's programmes?*

Question 3: Do stakeholders consider that if product placement were introduced, a phased approach should be adopted that, in the short-term at least, prohibited product placement from use in:

- a) factual programmes;*
- b) drama;*
- c) any additional genres?*

Question 4: If product placement were permitted in these genres at the outset how feasible do stakeholders believe it would be for Ofcom to re-impose restrictions on these genres at a future date?

Question 5: Do stakeholders agree with Ofcom's provisional view that the use of product placement in programmes should be:

- a) clearly identified; and*
- b) clearly identified at the start of any programme in which it is contained?*

Question 6: Can the current concept of undue prominence be retained in a regulatory environment that permits product placement?

Question 7:

- a) Is it sufficient to rely on the editorial responsibility of broadcasters to regulate the potential excesses of product placement?*
- b): Do stakeholders believe that Ofcom should, initially at least, apply regulatory constraints to the way in which product placement appears in programmes e.g. prohibiting scripted references to attributes of products, limiting the length of time products, logos, brand names etc can appear?*

Question 8: Should 'calls to action' be permitted around placed products or services e.g. 'red button' interactivity, 'buy now' exhortations from presenters?

Question 9: Do stakeholders agree with Ofcom's provisional view that:

- a) products and services prohibited from advertising cannot be placed in programmes?*
- b) only products and services that would be permitted to advertise in breaks around a particular programme may be placed in that programme?*

Question 10: Are there additional products not currently prohibited from advertising that should be excluded from use in product placement e.g. over the counter medicines?

Question 11: Are there other provisions of the Advertising Codes that should be extended to product placement e.g. creative treatments, substantiation of claims?

Question 12: Is the market best placed to determine the commercial parameters that should govern product placement negotiations?

Question 13: Should any deregulation of product placement apply as appropriate to radio broadcasting?

Annex 2

List of respondents

A2.1 Ofcom received 67 responses to the consultation in total. Of these 8 were submitted on a confidential basis. Non-confidential responses were received from:

- BBC
- Caroline Television Limited
- Chrysalis Radio
- Discovery
- Emap
- Five
- Gcap Media
- GMG Radio
- Information TV Limited
- ITV SMG UTV Channel TV
- Paramount Comedy
- S4C
- SCBG
- Splash FM Limited
- The Mystery Channel
- Trustar Global Media
- Turner Broadcasting
- Virgin Radio
- Big Film Group
- Advertising Association
- CRCA
- Equity
- IPA

- ISBA
- Motion Picture Association
- PACT
- ASA
- Icstis
- Medicines and Healthcare Products Regulatory Agency
- The Portman Group
- RACC
- Advisory Committee for England
- Campaign for Courtesy
- Campaign for Press and Broadcasting Freedom
- National Heart Forum
- National Consumer Council
- Public Voice
- Smoke Free Norfolk Alliance
- Sustain on behalf of Children's Food Bill Campaign
- VLV
- Weigh Concern

Private individuals:

- Hugh Geach
- Ben Morrow
- John Rossetti
- Nick Hunn
- Steve Kay
- D Pearson
- M Evans
- M McCaghrey

Product Placement Statement

- D Hutchinson
- N Defoe
- J Goddard
- A Cooper
- B Young
- T Levine
- R Melman
- M Hoscik
- P Forster
- G Spence