

RESPONSE OF CHANNEL 5 BROADCASTING LTD (FIVE) TO THE DCMS CONSULTATION ON PRODUCT PLACEMENT IN TELEVISION

Five welcomes the opportunity to contribute to the DCMS consultation on product placement. Our view of product placement has remained consistent over the last few years: we believe it could result in a modest new revenue stream for commercial television, although this would take some years to develop. And we believe appropriate and sensitive regulation would ensure product placement was acceptable to viewers and not undermine the editorial integrity of programmes.

We do not wish to give the impression that product placement would have a dramatic impact on the finances of commercial broadcasters. In fact, it is quite possible that Five would suffer a net loss of revenue from the introduction of product placement, at least in the short term. But we remain broadly supportive of its introduction in the hope it will prove beneficial in the longer term.

Our detailed responses to the consultation are set out below in answer to the consultation questions.

CONSULTATION QUESTIONS

1 What, if any, viewer and other safeguards there should be additional to those required by the AVMS Directive?

The AVMS Directive sets out broad principles which should provide a sturdy basis for the regulation of product placement. However, we recognise that some further restrictions may be necessary to make the regulation of product placement consistent with advertising regulation (in such areas as gambling, alcohol and HFSS products).

2 How should those additional safeguards be imposed - by law, or by means of the Ofcom Code?

Five strongly believes that whatever further restrictions the government may consider necessary should be implemented through Ofcom regulation. It is preferable for there to be a flexible regulatory regime that can respond to new pressures and circumstances, rather than having to operate within rules that can only be varied by Parliament itself.

As Ofcom will need to draw up detailed rules and guidance to govern product placement anyway, it makes sense for Ofcom to have ownership of the regulatory framework within the constraints imposed by the Directive and any clear statements of government policy. We recognise that it may be necessary for Parliament to give Ofcom powers to set standards for product placement in the same way as it has powers to set standards for advertising and sponsorship.

3 Is the range of figures for the potential financial benefit of introducing television product placement set out a Part 3 of this document (between £25m and £140m p.a.) still broadly applicable?

Five does not believe the financial benefits of product placement are likely to be anything like as high as £140 million in the short or medium term. It is salutary to remember that it has been 20 years since television sponsorship was first permitted; it took 12 years for sponsorship revenues to reach £56 million¹, while today annual revenues are estimated to have reached only £180 million, despite the huge growth in the number of commercial television channels and hence of sponsorship opportunities. Five has never believed there are vast sums to be made from product placement; we have always maintained that it could provide a modest new revenue source that would take some years to develop fully.

The recent announcement by advertisers' trade association ISBA that it no longer supports product placement is likely to further depress estimates of how much new money would be generated by legalisation.

Five is concerned that we may suffer a net loss of revenue if product placement is allowed. This could occur if the money spent on product placement comes from existing TV advertising budgets. Relatively few of our commissioned programmes present opportunities for product placement compared to ITV's - partly because we do not commission the sort of drama and large entertainment formats to which product placement is best suited; and partly because we do not have such well-established titles as *Coronation Street* or *The X Factor*, where the advertiser knows well in advance the nature of the programme and how a product might be utilised. Therefore, existing advertising money could be channelled into ITV in the form of product placement revenues – with an ensuing loss to Five's advertising revenues that is not compensated by whatever limited money we raise through product placement. And as a publisher broadcaster reliant on independent companies to make programmes for us, we would be likely to have to share some of these revenues with producers.

We are also concerned that ITV should not be allowed to use revenues from product placement to get round the constraints imposed by CRR, for example by making spending on product placement a requirement of concluding an advertising sales deal or by allowing only those advertisers who deliver a certain level of advertising spend to agree product placement on high value shows. We believe the government

¹ ITC note on programme sponsorship,
http://www.ofcom.org.uk/static/archive/itc/itc_publications/itc_notes/view_note65.html

should indicate to the Competition Commission that it should take this into account as part of its current review of CRR.

4 Is it possible to narrow this wide range of estimates?

We believe the Ofcom estimate of revenues of around £25-£30 million after five years should be seen as the upper rather than lower limit of the range.

5 Are there grounds for thinking that the potential benefits have increased or decreased since last year?

6 Has any new evidence emerged about the possible benefits since the earlier consultation?

The deadline for submission of evidence to the DCMS consultation on AVMS implementation was October 2008. At that time, the full effects of the recession and its impact on the TV advertising market were not known. It is clear that there is now much less money in the market than there was then; at the same time, we detect no greater enthusiasm on behalf of advertisers for product placement (indeed, the ISBA statement suggests advertiser enthusiasm has cooled). Therefore we believe the commercial benefits of product placement are probably lower now than they were at the time of the previous DCMS consultation.

7. If product placement is allowed in programmes made by or for UK television, should any of the programme genres permitted by the AVMS Directive be excluded?

8. Should UK controls on product placement be more specific as to what is meant by 'films and series' in which product placement can appear?

9. Are there definable types of 'films and series' in which product placement either should or should not be permitted?

Television is a creative business, capable of generating new ideas and new formats that cross traditional genre boundaries. For example, a decade ago there was very little "reality television" – now reality is a well-established, indeed prevalent genre. We see no merit in creating artificial distinctions between types of shows in which product placement should be allowed and those in which it should be forbidden.

10. Should UK controls on product placement be more specific as to what is meant by 'sports programmes' in which product placement can appear?

11. Is there any reason to restrict product placement in particular types of sports programming?

We agree that the term "sports programmes" should have a broad definition, including live sports broadcasts and all other programmes about or featuring sport. We do not see any reason for specific product placement restrictions in sports programmes.

12. *Should UK controls on product placement be more specific as to what is meant by 'light entertainment' programmes in which product placement can appear?*

13. *Is there any reason to restrict product placement in particular types of 'light entertainment' programme?*

Again, we see no merit in introducing a distinction between different types of entertainment programming.

14. *Should there be a specific prohibition of product placement in*

- *religious programmes*
- *news programmes;*
- *current affairs programmes;*
- *consumer programmes; or*
- *any other specific type of television programme?*

Five continues to believe, as we have argued before², that product placement should not be permitted in news and current affairs programmes. It is easy to identify news programmes - or the news elements in programmes that contain news, such as our early evening show *Live from Studio Five* – and public service broadcasters are obliged to identify their current affairs output in order to meet their Ofcom quotas.

However, we are not convinced there is a case for excluding consumer programmes. Firstly, there are definitional issues about exactly what constitutes a “consumer programme” (all programmes about property, cookery and travel could be deemed to be consumer programmes). Secondly, the editorial integrity of such programmes relies on trust between viewers and programme makers, so any use of product placement that undermined that trust (such as featuring products in return for payment) would be counterproductive. General rules governing the appropriateness of product placement similar to the rules on sponsorship in the Ofcom Broadcast Code should be sufficient to prevent abuse, rather than an outright ban on placement in consumer programmes that would affect items not specifically featured as well as those that are the subject of such programmes.

We do not believe product placement should be allowed in programmes showing acts of worship and other religious ceremonies or practices.

15. *Should any or all product placement be restricted or prohibited in programmes with a disproportionately high child audience?*

16. *If so, how should that assessment be made in advance of a programme being broadcast?*

We do not believe there should be restrictions on product placement in programmes with a particular appeal to children, over and above the outright ban on placement in children's programmes. Unlike children's programmes, such programmes are not

² Response of Channel 5 Broadcasting Ltd (Five) to Ofcom's Consultation on Product Placement, March 2006, page 3

aimed specifically at children; and children already see a range of product placement in acquired programmes and movies.

There is also a serious practical problem with introducing a restriction on product placement in programmes with a disproportionately high child audience. By their nature, product placement deals would need to be concluded at an early stage of production, before final editorial decisions are taken and before the programme is scheduled. It is much easier for a broadcaster to take a view as to whether a programme is likely to appeal particularly to children (and therefore to impose appropriate spot advertising restrictions) once it has been completed and scheduled than at an early stage of production.

Moreover, some programmes that do not attract a large child audience on first showing may attract a relatively high proportion of children on a repeat showing at a different time of day or on a subsequent showing on a secondary channel; whereas it is possible not to show certain adverts around the subsequent transmissions, it would not be feasible to edit out products that are integral to the programme.

Such a restriction might also have a chilling effect – product placement deals might not be done in case a programme turned out to have a particularly high child audience.

17. How could a 'disproportionately high child audience' be defined?

The use of 120 indexing is a well established and widely accepted industry norm.

18. Should there be restrictions on placing certain types of products (e.g. HFSS foods or alcohol) in programmes with a disproportionately high child audience?; and if so

19. Should those restrictions be the same as or greater than those which are currently in place for the scheduling of spot advertising of those products?

We do not believe product placement should be used, or seen to be used, as a way of getting round existing advertising restrictions. Therefore, we would not object in principle to restrictions of this kind, so long as there was sensitive handling of the practical problems referred to above.

20. How could 'undue prominence' be avoided, given the commercial imperative for audiences to recognize the products and services that have been placed?

Five believes the concept of undue prominence is already well understood by UK broadcasters and is rarely breached. We also believe the commercial success of product placement will rely on undue prominence being enforced; major advertisers will only be attracted to product placement if they believe they can integrate their products into programmes in ways that do not compromise them editorially by seeming out of place. So we believe the apparent tension in this question would not exist in practice.

21. At what point should the Government, or Ofcom, draw the line between legitimate paid placement of goods or services and illegitimate 'direct encouragement' to purchase or hire them?

The principle enshrined in section 9 of the Ofcom Broadcast Code should form the basis for regulation of product placement: the broadcaster must maintain editorial control over content, and programmes must not be distorted for commercial purposes. As part of this, there must be no "call for action" on behalf of the products featured.

22. Are rules – in addition to those that prevent 'undue prominence' and the promotion of placed products – needed to safeguard editorial integrity? If so, what should these be?

Such rules should be contained in the Ofcom Broadcast Code, accompanied by appropriate guidance to broadcasters.

23. Should television placement of smoking accessories such as cigarette papers and pipes be prohibited?

In so far as these products can be advertised on television, we do not believe there should be a ban on their product placement.

24. Should television placement of alcohol, HFSS foods or gambling be subject to an outright prohibition; or, if not prohibited, should it be subject to restrictions of some kind?

We believe outright prohibition would be unreasonable. All of these products can be advertised on television, albeit with certain restrictions. Advertisers have the right to advertise these products and adult viewers have a reasonable expectation they should be allowed to see such advertisements. We cannot see the justification for allowing such products to be advertised but not to be product placed.

As we indicated in our answer to questions 18 and 19, we would not object to rules restricting the type of programmes in which such products could be placed. Nor would we object to restrictions on the ways in which placed products are represented (for example, rules governing how placed alcohol products were seen). Indeed, we would not want to see product placement rules that were less effective than the rules governing spot advertising, as this could lead to certain products being portrayed editorially in ways that were inconsistent with the ways in which they can be represented in commercials. But we strongly believe any such restrictions should be drawn up by Ofcom and incorporated in its Broadcast Code after careful deliberation.

25. If it is not practicable to apply the detail of the BCAP Code rules on alcohol advertising to alcohol product placement, would the simple AVMS Directive rules that alcohol advertising must not be aimed specifically at minors and must not encourage immoderate consumption provide adequate safeguards?

Five believes any regulatory system for product placement should be consistent with the BCAP Code as far as explicit or implicit claims made for products are concerned, and Ofcom should amend its Broadcast Code to mirror what is in the BCAP Code where appropriate.

26. Are there any alternative forms of safeguard that may be appropriate?

No, we believe Ofcom is best placed to regulate this activity.

27. What methods of assessment and monitoring would be most effective in ensuring that there was accurate and reliable information about the actual effects of any introduction of product placement in these areas?

We believe it should be for Ofcom to monitor product placement as it monitors other aspects of the Broadcast Code. Ofcom's considerable research reputation and capability makes it the appropriate body to assess the effects of product placement.

28. Would it be possible or desirable to levy a charge on product placements to enable monitoring and/or research to take place?

If product placement is to be governed by the Ofcom Broadcast Code, then the monitoring work should be paid for through the general fees broadcasters pay Ofcom. A stand-alone levy similar to that used to fund the ASA is not appropriate, as product placement is equivalent to sponsorship rather than advertising.

29. Are there any other product or service categories whose placement should be subject to prohibition or restriction?

30. If so, what, and why?

Prohibition and restriction should be applied to, but only to, those products that are prohibited or restricted under the BCAP Code.

31. If television product placement is allowed, what models might there be for revenue sharing between broadcaster and producer?

32. Does the industry anticipate that the commercial negotiation of product placement arrangements would form part of the terms of trade between broadcasters and producers?

Five believes that revenue sharing and other arrangements should be the subject of commercial negotiation between broadcasters and producers. Such negotiations need to be based on broadcasters as licensees being responsible for compliance of product placement; broadcasters will need to have full knowledge of all product placement deals in programmes they broadcast.

As product placement develops, then the terms under which it is allowed may well form part of the negotiated commercial terms of trades agreed between individual broadcasters and producers. But as the shape, size and nature of a product placement market is currently unknown, we see no grounds for any reference to it being included in the statutory requirements governing public service broadcasters' relations with independent producers, nor for broadcasters' Codes of Practice to be obliged to include any reference to it.

We would be surprised if the government introduced new regulation in this area, as it said only seven months ago that it was "satisfied that Ofcom's guidelines within which Terms of Trade are agreed between producers and broadcasters are at a sufficiently high-level to allow for innovative agreements...The Government agrees that regular reviews of the guidelines could chill the commercial market while the reviews were undertaken"³.

33. What impact would allowing television product placement have on the existing prop placement market, and on the ability of broadcasters to source props and services in this way?

Prop placement has provided valuable assistance to help resource programme production for many years. We would hope such assistance continued, alongside whatever nascent product placement market developed. However, we are conscious of the danger identified by ISBA of prop placement being squeezed by the introduction of product placement.

34. How should television product placement be notified to viewers?

36. Should notifications to viewers mention the product(s) which has or have been placed?

Five believes a balance must be struck between the need for transparency about product placement, including the Directive's requirements for signalling, and the need to avoid both undue prominence of placed products and measures that are irritating to viewers.

³ *Digital Britain – Final Report*, Chapter 5 paragraph 84

Therefore, we would be opposed to continuity announcements, on-screen text or other highly prominent ways of signalling placement in a programme, as this would quickly lead to viewer irritation, especially in programmes that appear weekly or more often or in a schedule that comprises several programmes all featuring product placement.

We would also be opposed to the name of the products being announced. This would give them a degree of prominence that may well be incompatible with the undue prominence provisions of the Broadcast Code by unnecessarily highlighting items that should be integrated seamlessly in to the programme.

We believe a simple, recognisable but not over prominent logo or symbol could be developed, to be used by all broadcasters to signal the inclusion of placement in a programme; this would be comparable to the longstanding on-screen use of '888' or 'subtitles' to indicate that a programme is subtitled. This would meet the requirement of the Directive and alert viewers in a way they did not find annoying.

35. When should it be notified to viewers – should we go beyond the EU requirement for notification before and after the programme and after any ad breaks?

The requirement in the Directive is more than sufficient. A one hour programme with three centre breaks would contain five signals.

37. Do you have any other views about alerting viewers to the presence of product placement in a television programme?

We recognise that when product placement is signalled in a programme, viewers may want to know the identity of the products placed. Therefore, we believe Ofcom should require broadcasters to publish such information, which could be included in end credits or on a website.

38. Should the prohibition of 'thematic placement' extend to placements which feature only generic products and services or types of product and service rather than branded ones?

39. Should the prohibition of 'thematic placement' extend to the placement in a programme of references to the beliefs, policies, aims or objectives of the placer?

It is not clear that these potential forms of placement are necessarily of a different order (for example, why should a drama requiring locations in a factory and a church be able to have one placed but not the other?). These questions should be considered further by Ofcom in drawing up detailed rules and guidance.

40. If television product placement is to be allowed, should there be rules which prevent negative placements?

Yes. Types of commercial communication prohibited under the BCAP code should not be allowed under product placement rules.

41. Should the regulation of television product placement, if it is to be allowed, contain specific controls on the use of simulated products?

We believe there ought to be some controls of this nature, which Ofcom should consider when drawing up detailed rules and guidance.

Channel 5 Broadcasting Ltd

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