L-Awtorità tax-Xandir
MALTA
Broadcasting Authority

Product Placement

Guidelines on the Application of Article 16M of the Broadcasting (CAP. 350)

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1. Overview

1.1 This document provides guidance for audiovisual media services, primarily television broadcasts, on the application of **Article 16M of the Broadcasting Act** concerning product placement.

1.2 It sets out how the Broadcasting Authority (hereinafter "the Authority") interprets the concept of product placement, including **what constitutes product placement and when it can be used**, editorial independence and responsibility of audiovisual media services using product placement, how **undue prominence** is assessed in practice and the **disclosure which must** be carried out in these cases.

1.3 Where relevant, these guidelines considered the interpretative practice of other European regulators. Nonetheless, given the *sui generis* nature of Malta's audiovisual market, country specific interpretations are essential to ensure transparency for viewers, safeguarding editorial independence, and promoting consistent industry standards.

2. Legal Basis

2.1 Article 16M of the Broadcasting Act regulates product placement within programmes on services licensed or under the jurisdiction of the Broadcasting Authority.

2.2 These provisions implement the **Audiovisual Media Services Directive (EU) 2010/13, as amended by Directive (EU) 2018/1808**, which permits product placement as per below provisions.

Article 16M(2)

Commercial product placement shall be allowed in all audiovisual media services, except in news and current affairs programmes, in consumer affairs programmes, in religious programmes and services and in children's programmes.

Article 16M(3)

Programmes that contain product placement shall meet the following requirements:

a) *their content and organisation within a schedule, in the case of television broadcasting, or within a catalogue in the case of on-demand audiovisual media services, shall under no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the media service provider;*

b) *they shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services;*

c) *they shall not include undue thematic placement of commercial products;*

d) *they shall not give undue prominence to the product in question;*

e) *viewers shall be clearly informed of the existence of product placement by an appropriate identification at the start and at 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.*

Furthermore;

Article 16M(4)

In any event, programmes shall not contain product placement of:

a) *cigarettes and other tobacco products, as well as electronic cigarettes and refill containers, or product placement from undertakings whose principal activity is the manufacture or sale of those products;*

b) *specific medicinal products or medical treatments available only on prescription;*

c) *tattoo drawing as defined in the Control of Tattooing Act, which is broadcast between 6.00 a.m. and 9.00 p.m.;*

d) *alcoholic drinks of more than 1.2% alcohol which are broadcast between 6.00 a.m. and 9.00 p.m.;*

e) *gambling products which are broadcast between 6.00 a.m. and 7.00 p.m., infant formula and weapons and munitions.*

2.3 Article 16M shall be read together with, inter alia:

- Article 16K (Provisions applicable to audiovisual commercial communications)
- Article 16L (Provisions applicable to audiovisual media services or programmes)
- Third Schedule to the Broadcasting Act
- S.L.350.23, Requirements as to Advertisements, Methods of Advertising and Directions applicable to Tattoo Advertising
- S.L.350.24, Requirements as to Advertisements Methods of Advertising and Directions applicable to Alcoholic Drink Advertising, Sponsorship and Teleshopping.
- S.L.350.25, Requirements as to Advertisements Methods of Advertising and Directions applicable to Gambling Advertising.
- S.L.350.30, Requirements to Standards and Practice on Programmes involving the participation of certain Health Professionals in the Broadcasting Media and Requirements as to Advertisements, Methods of Advertising and Directions applicable to Medicinal Products and Treatments

3. Why Regulate Product Placement?

3.1 Product placement is a **commercial communication integrated into editorial content**. It is therefore more difficult for viewers to identify and may risk **becoming covert or surreptitious advertising.**

3.2 Regulation of product placement is not intended to prevent legitimate financing models. Rather, it provides a regulatory framework that allows product placement in certain formats while ensuring that commercial references remain transparent, proportionate and editorially justified.

4. Definition and Interpretation of Product Placement

4.1 Core Definition

4.1.1 For the purposes of Article 16M, product placement occurs where **ALL** the following elements are present:

a) A product, service, trademark or equivalent sign **is included (physically) or referred to (verbally) within a programme**; and

b) The inclusion or reference is made in return **for payment or other valuable consideration**; and

c) The primary or significant purpose of the inclusion is **to obtain a promotional advantage for the product, service or trademark.**

4.1.2 Nonetheless, in line with other European regulators, the Authority will take **a substance-over form approach**: if, when viewed objectively, the arrangement functions as product placement, it will be treated as such even if the media service provider describes it differently (e.g. "collaboration", "barter", "partnership" or unintentional).

4.1.3 For the purpose of determining whether a product, service, trademark or equivalent sign has been included or referred to within a programme, the Authority will consider whether there is;

a) a **clear brand inclusion** (a brand name is **fully visible** or **explicitly referred to verbally**) or
b) whether **visual and/or verbal cues are sufficient** to amount to a clear brand inclusion.

4.1.4 Any reference to a product, service, trademark, or equivalent sign which goes beyond mere identification, and that **cannot be considered as being simply the placement of a brand/product**, may result in undue prominence within the meaning of Article 16M(3)(d) or thematic placement within the meaning of Article 16M(3)(c).

4.2 What is not Product Placement?

4.2.1 The following examples generally **do not constitute** product placement, though they may raise other regulatory issues:

Editorially justified references: the inclusion of brands shall be permitted only where strictly necessary to report or explain a factual event, issue, controversy, regulatory action, legal matter, public interest concern, or other subject matter that cannot reasonably be presented without identifying the brand concerned. Such references must be incidental to the editorial content. Examples include reporting on a product recall, consumer safety issue, regulatory investigation, court proceedings, or the incidental appearance of a press backdrop not arranged by the audiovisual media service.

5. Permitted and Prohibited Product Placement

5.1 Permitted Programme Types

5.1.1 Product placement **may be permitted,** subject to all conditions in this document, in inter alia:

- Films (including TV drama)
- Series and other scripted fiction
- Entertainment, magazine and lifestyle programming
- Documentaries
- Sports programmes
- On-demand audiovisual media services (except the prohibitions below)

5.2 Prohibited Programme Types

5.2.1 Product placement is prohibited in the following:

- **News** and **current affairs programmes** (including political, parliamentary, and investigative news formats)
- **Children's programmes**, or programmes clearly aimed at children
- **Religious programmes**, including transmissions of religious services and religious instruction
- **Consumer-advice** and **factual investigative programmes** where the integrity of impartial information is essential

This is consistent with restrictions found in the AVMSD and transposed in Article 16M(2)

5.2.2 However, to avoid over-regulation, product placement in consumer-advice and factual investigative programmes **will remain permissible** where the products do not form an integral part of the script. A typical example would be the inclusion of branded clothing or drinks in a technology review programme.

5.2.3 Wherever product placement is permissible and an expert is invited to provide an informed opinion on a particular service, good or product, the expert shall not be identified or presented as a representative or expert of the brand, manufacturer, supplier or provider concerned. This applies equally to verbal introductions or references and to on-screen captions or other superimposed text. In such cases, the expert shall be identified solely by their generic professional title or function (e.g. Director, Manager, Chief Operations Officer), without any reference to the relevant brand, company or other commercial undertaking.

5.2.4 Programme promotions for programmes containing product placement **shall not include** snippets in which the product placement appears.

5.3 Prohibited Product Categories

5.3.1 In line with Article 16M(4), even in permitted programme genres, product placement shall not include:

c) **Tobacco products** and related items such as electronic cigarettes and refill containers or undertakings whose principal activity is the manufacture or sale of those products
d) **Prescription-only medicines or treatments**
e) **Weapons and ammunition**
f) **Infant formula**

5.3.2 Furthermore, Article 16M(4) provides for a list of products which **are only permissible in specific time periods.**

a) **Tattoo advertising** (only between 21:00 and 06:00)
b) **Alcoholic drinks** of more than 1.2% alcohol (only between 21:00 and 06:00)
c) **Gambling products** (only between 19:00 and 06:00)

5.3.3 The Authority may update or supplement this list by circular, in line with evolving EU and national standards.

6. Product Placement Disclosure Requirements

6.1 General Principle

6.1.1 Product placement must never be covert. Any failure to appropriately disclose product placement shall constitute a breach of Article 16M(3)(e).

6.2 How to Properly Disclose Product Placement

6.2.1 In view of Article 16M(3)(e), and following a public consultation (12th October 2021: Circulars 5/21 and 5/21B), where product placement is present, broadcasters or media service providers shall:

- Display an on-screen statement reading: *F'dan il-programm jidhru xi prodotti kummerċjali.*

6.2.2 The symbol and/or announcement shall appear:

- At the **start** of the programme
- At the **end** of the programme; and
- **After each advertising break**

6.2.3 Furthermore, the disclosure must:

- Be **clearly legible** and visible for a sufficient duration
- **Not include promotional language** (ex: encouraging the purchase of those products)
- **Not identify specific brands** (the aim is to signal the presence of placement, not to advertise)

6.3 On-demand Services

6.3.1 The same disclosure requirements applicable to programmes containing product placement shall also apply to on-demand programmes. Accordingly, disclosure shall be made at the beginning and end of each on-demand programme that contains product placement and after each advertising break, where applicable.

7. Editorial Independence, Promotion and Undue Prominence

7.1 Editorial Independence

7.1.1 The Authority will consider that editorial independence has been compromised where:

- The placement **influences the content, structure, or scheduling of the programme** in a way that affects editorial freedom (e.g. script, wardrobe, set design, camera angles) to ensure visibility

- Storylines, casting or production decisions **appear to be dictated by the brand** or its representatives and **designed primarily to provide exposure to a brand**
- The programme is materially altered **to accommodate the commercial partner**, beyond what is editorially justified

7.2 Surreptitious Advertising vs Product Placement

7.2.1 Following reasoning used at European level by media regulators and case law, “surreptitious advertising” occurs, for example, when:

a) **Products are discussed,** particularly where this is done overtly using positive or superlative language (e.g. “l-aqwa”, “l-aħjar”, “l-itjeb”, “value for money” or “worth it”).
b) Presenters **encourage viewers to purchase or use the product**, or to visit specific outlets or websites
c) **Prevent fair or critical coverage** of products or market sectors
d) Comparative claims are made that **favour the placed product** without clear editorial justification
e) Turn editorial segments **into de facto advertorials**

7.2.2 Henceforth, in all cases, programme references to placed products must remain descriptive, contextual or incidental, and not sales driven as explained in 7.2.1 above.

7.3 Undue Prominence – How the Authority Will Assess It

7.3.1 Following European-wide practice, undue prominence may result from either:

a) **Lack of editorial justification:**

i. The product would not naturally appear in the scene or format; and/or
ii. The frequency, detail or context of the reference exceeds what is needed editorially.

b) **Manner of inclusion:**

i. Long or repeated close-us of the product or logo
ii. Frequent verbal references not required by the story
iii. Scenes structured around showcasing the product, rather than the narrative purpose

7.3.2 In assessing undue prominence, the Authority will consider:

i. **Frequency and duration** of visual and verbal references
ii. **Shots** designed to draw particular attention to a product, service, trademark or logo (e.g. repeated or prolonged close-ups, prominent foreground placement, or framing that gives the product a significance disproportionate to its editorial relevance).
iii. **Integration in narrative:** whether the product is naturally integrated or artificially inserted
iv. Whether the **overall impression** suggests advertising rather than storytelling
v. The **conglomeration of advertising techniques**, whereby a placed brand also features as a sponsor, appears in advertising breaks, and is displayed through pop-up advertising.

7.3.3 Irrespective of the factors listed in paragraph 7.3.2, any pop-up advertising displayed concurrently with a product, service, trademark or brand that is the subject of product placement within a programme shall be deemed to constitute undue prominence.

7.3.4 A single brief shot may still be unduly prominent if it is clearly gratuitous, for instance a dramatic lingering logo shot disconnected from the scene's narrative.

7.4 Thematic Placement – Why it Should be Avoided

7.4.1 Thematic Placement means a form of commercial integration whereby a programme's theme, storyline, plot, character development, dialogue, setting, or other editorial elements are created, adapted, or substantially influenced for the purpose of facilitating, supporting, or enhancing the exposure of a product, service, brand, trademark, or commercial undertaking.

Unlike product placement, where a product or brand is incorporated into an independently conceived editorial context, thematic placement occurs where the editorial content itself is shaped, modified, commissioned, or directed in response to commercial considerations associated with the featured product, service, or brand.

7.4.2 In assessing undue prominence, the Authority will consider:

- whether the **overall theme, premise, or narrative focus of the programme has been shaped by the characteristics, values, or marketing objectives of a commercial undertaking;**
- whether any part of the storyline, plot, characters, programme structure, or editorial direction of the programme **has been created, modified, dictated, or significantly influenced by commercial integration** in order to accommodate a commercial partner or featured product;

7.4.3 For the avoidance of doubt, thematic placement may be considered to exist **even where there is no undue prominence**, if the overall narrative or editorial framework has been designed or substantially influenced to serve a commercial promotional purpose.

7.4.4 Henceforth, whilst product placement concerns the placement of a product within a storyline; thematic placement concerns the placement of a storyline around a product.

8. Special Considerations for News, Children's Programming & Religious Content

8.1 News and Current Affairs

8.1.1 **Product placement is prohibited**. Even where no payment is involved, journalists must avoid any appearance of commercial influence over editorial choices.

8.1.2 On location, reference to branded locations or equipment (e.g. press conferences and sporting gear) must be editorially justified and handled neutrally. **If the presence of branding is avoidable and obviously promotional**, the Authority may consider that standards on impartiality and commercial influence are at risk. This stands in contrast to studio setups, where editorial control can be exercised more effectively.

8.1.3 Henceforth, the inclusion of brands within the studio is strictly prohibited. This prohibition applies to electronic devices used by newscasters, branded clothing, and any brand names, logos, or trademarks that may appear on-screen, including those visible in thumbnails or other content displayed on studio monitors.

8.2 Children's Programming

8.2.1 Placement in children's programmes is prohibited. This is in line with the heightened protections used throughout the EU.

8.2.2 Even in **family or general-audience programmes where placement is allowed**, careful consideration must be taken when:

- Children are central characters engaging with placed products (e.g. toys and foods particularly those which qualify as High in Fat, Sugar and Salt (HFSS))

8.3 Religious Programming

8.3.1 Product placement is prohibited in religious programmes as this risks undermining respect for religious beliefs and practices.

8.3.2 No product placement or overtly commercial references are allowed within mass broadcasts, prayer services, sermons or socio-religious programmes.

9. Responsibilities of Broadcasters and On-Demand Media Service Providers

9.1 Broadcasters and on-demand services are responsible for ensuring **that all programmes they transmit comply with Article 16M and this guidance**, whether produced in-house, commissioned, or acquired.

9.2 On-demand services must still ensure that their **platform provides the disclosure as provided for in section 6.2 of this document.**

10. Compliance, Monitoring and Sanctions

10.1 Where the Authority determines that Article 16M or related provisions have been breached, it may, in accordance with the Broadcasting Act:

a) **Issue directions** and/or corrective measures
b) **Impose administrative fines**
c) Require the withdrawal or re-editing of content for future transmissions

10.2 In accordance with paragraph 10.1(b) of these guidelines, any breach of Article 16M of the Broadcasting Act, including any breach of the requirements or prohibitions contained in any of its sub-articles, shall constitute a breach of the applicable provisions of the Act and may result in the imposition of an administrative fine of up to **€2,300**.

10.3 Repeated offences are considered in licence renewal and other regulatory processes.

11. Annex – Examples

11.1 Practical Examples

11.1.1 **Clear Product Placement – Permissible (with Conditions)**

Example A – Vehicle in a Drama Series

A car importer supplies vehicles for a television series in exchange for guaranteed screen time of the cars. The cars' logos are visible.

- Assessment: This is product placement (payment in kind/cash + negotiated prominence).
- Conditions:
  - Programme must be a permitted genre (fiction)
  - Disclosure requirements must be followed
  - Use of the cars must not be unduly prominent (no excessive close-ups, no overt praise)
  - Plotlines must not be distorted to showcase the vehicles

Example B – Kitchen Appliances, Food products in a Magazine, Lifestyle or Game Show

A cooking show or segment uses branded kitchen appliances and food products supplied in view of a commercial agreement in exchange for exposure. The brand is visible in normal shots but not repeatedly zoomed in. Presenters do not promote the brand verbally.

- Assessment: Product placement allowed in this genre.
- Conditions:
  - Full disclosure
  - No promotional language or direct calls to purchase
  - Shots remain functionally necessary, not gratuitous
  - Script should not be dictated by the brands

11.1.2 **Borderline Cases – Risk of Undue Prominence**

Example C – Repeated Close-Ups of a Drink

In a talent show or game show, the jury's table is filled with branded soft-drink cups. The logo is in the centre of the frame during most jury shots, with repeated close-ups and no obvious editorial reason for this prominence.

- Assessment: Even if placement is permitted in this genre, this is likely undue prominence
- Required Action: Re-frame shots, reduce logo visibility, and ensure that viewers are not given the impression of an advert within the show

Example D – Presenter Wearing Branded Clothing

A presenter in an entertainment or magazine programme wears clothing bearing a visible brand logo. The logo appears intermittently during normal presentation of the programme but is not the subject of particular camera focus or discussion.

- Assessment: The mere appearance of a branded item of clothing does not automatically constitute undue prominence. The Authority will assess the visibility, size and the frequency with which the brand is displayed.

- Required Action: Where branding becomes excessively prominent, broadcasters should consider alternative wardrobe choices, reduce logo visibility, or adjust camera framing to avoid creating the overall impression of advertising within the programme.

11.1.3 **Not Product Placement – But Still Regulated**

Example E – Incidental Branding in News

A news report covers a press conference where a corporate logo appears on a backdrop behind the speakers. No payment is made to the broadcaster, and the location cannot reasonably be altered.

- Assessment: Incidental branding; not product placement
- Conditions:
  - The editing should not intentionally dwell on the logo more than is necessary. Any editorial references must remain neutral.
  - Nonetheless, where Sound on Tape (SOT) interviews or other recorded contributions are required, they should, where reasonably practicable, be conducted in a manner that avoids unnecessary prominence of corporate branding. In particular, interviewees should not be positioned directly in front of pop-up banners, branded backdrops, or similar promotional displays where alternative framing or locations are available.

Example F – Vox Pop

In a current affairs programme, a journalist conducts a vox pop on a topical issue. In some instances, shops appear in the background, with their branding clearly visible.

- Assessment: Incidental branding; not product placement
- Conditions:
  - This will be regarded as incidental only where the interviews are not all conducted in the same location featuring the same brand in a consistent or repetitive manner.