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Committee of Advertising Practice (Non-broadcast)

Help Note on Price Claims in Utilities Marketing

CAP Help Notes offer guidance for non-broadcast marketing communications under the British Code of Advertising, Sales Promotions and Direct Marketing (the CAP Code). For advice on the rules for TV or radio commercials, consult Clearcast www.clearcast.co.uk for TV ads or the RACC www.racc.co.uk for radio ads.

Background

These guidelines, drawn up by the Copy Advice team with the help of the utilities industry, are intended to help marketers, agencies, media and those direct sellers who distribute marketing material interpret the rules in the CAP Code as far as they relate to the subject discussed. They do not constitute legal advice or new Code rules and do not bind the ASA Council in the event of a complaint about a marketing communication that follows them.

1. General

1.1 A savings claim should not exaggerate the availability or extent of benefits likely to be attained by consumers. It should be qualified, if necessary, to refer to the conditions that affect it, for example: the product or service against which the comparison is being made; the fuel or combination of fuels that must be bought for the claim to be valid; the usage pattern of the consumer for the claim to be valid, for example low, average or high; the relevant payment method, for example monthly direct debit or quarterly credit; the relevant tariffs and other relevant discounts, for example early payment discounts and dual fuel discounts.

1.2 A claim that states or implies that all consumers will save, for example “savings on gas”, is unlikely to be acceptable if any do not, even if qualification to that effect, for example “available only to consumers with average consumption”, is made elsewhere in the marketing communication. (Such a claim is ‘absolute’ in that consumers are unlikely to think it subject to significant conditions; any

significant qualification might only contradict the claim). The claim should be amended to reflect the condition that applies to it, for example “savings on gas for consumers with average consumption,” and to explain the condition elsewhere in the marketing communication or to remove the implication that all consumers will save, for example “you could save on gas.”

1.3 The prominence of the qualifying claim depends on many factors, not least its size, its clarity and its positioning, and especially on the significance of the qualification. Savings claims are usually phrased conditionally (for example “you could save”) and are therefore subject to qualifying conditions. If a conditionally phrased headline savings claim is likely to apply to a significant proportion of the audience (for example those with average consumption, on the standard tariff and paying by a common payment method), qualification of those conditions might be acceptable only in a footnote. If such a claim is not specific about the extent of the savings, qualification may not be required. If a conditionally phrased headline savings claim is likely to benefit a small proportion of the audience (for example those on the standard tariff and paying by a common payment method but with high consumption), either more prominent explanation of the high consumption condition is likely to be necessary (for example in the body copy) or, if the claim refers to amounts or percentages that can be saved, an “up to” claim may be appropriate (but see section 1.4).

1.4 Claims that refer to amounts or percentages that can be saved should be similarly qualified. If the claim indicates that few will benefit, “up to” and “from” may be used (see section 1.3). If “up to” or “from” are used, at least 10% of consumers should be able to save the stated amount. If at least 10% do save that amount but some consumers save nothing, the claim should reflect that fact, for example “you could save up to”.

1.5 An average consumption figure quoted in marketing communications and/or used as the basis for claims should be based on up-to-date, industry-recognised figures (for example, those recommended by Energywatch). Marketers should use those figures to quantify what constitutes high or low usage. Consumption figures alone should not be used to qualify that a claim applies to consumers with low, average or high consumption, because consumers might not know that 30,000 kWh of gas, for example, is an unusually high annual consumption.

2. Savings against previous prices

2.1 Marketers making savings claims against their previous prices should state prominently whether a significant proportion of the saving derives not from cheaper fuel but from some other factor, for example changes in the method of payment or level of applicable VAT. A footnote can be used to explain the saving.

3. Savings against a competitor's prices

3.1 Comparisons should be clear and fair and should compare products meeting the same needs or intended for the same purpose. The ASA will determine fairness on the basis of whether customers would consider services comparable and whether elements of a comparison have been presented in a way that allows customers to make an informed and rational choice. For example, marketers should not, when quoting lower tariff charges than a competitor, imply that customers can save a certain amount on their total bill over a given period if that saving is reduced significantly, or nullified, by higher standing charges.

3.2 Marketers making tariff comparisons should assume that customers act rationally in selecting the best service available to them. When comparing, they should compare their tariff with their competitor's equivalent or most similar tariff; equivalence will normally be based on frequency of payment, payment method, dual fuel discount if applicable and tariff "bands" (for example, Low User, Standard, Business). For example, they should compare their direct debit (discounted) price with their competitor's equivalent price, not with their competitor's non-discounted price (but see section 3.4).

3.3 Similarly, if marketers feature their discounted and non-discounted tariffs in a comparative savings claim, they should include their competitor's discounted price as well as its non-discounted price. They need not do so if they separate the references to the prices so that customers are unlikely to compare the marketer's discounted price with the competitor's non-discounted price.

3.4 A comparison with a competitor's dissimilar tariffs is acceptable only if the ad states prominently that the competitor offers a tariff lower than the one featured. That explanatory statement should be both near to and similar in size to the savings claim or text in a table.

3.5 Marketers should not claim a saving, that includes a dual fuel discount, against a competitor on one fuel if the competitor offers a lower price on the other fuel. Even if the marketer includes the competitor's dual fuel discount, the comparison is likely to mislead because the competitor's lower price on the other fuel will at least partly offset the marketer's lower price on the featured fuel. Marketers who include a dual fuel discount in a saving against a competitor should compare the prices of both fuels.

3.6 Marketers may choose which of their competitor's tariffs should be the subject of a comparison if two or more tariffs are equally comparable; they should, however, be able to show that no obviously more comparable tariff exists. The tariffs used as the basis of comparison, and any significant differences between them, should be stated clearly (see section 1.3).

3.7 Marketers who compare their projected prices with a competitor's present prices should state in the body copy when their prices will become available. Marketers should use the most up-to-date prices, or confirmed future prices, as the basis of those comparisons.

4. Savings against an average of competitors' prices

4.1 As well as following the advice in section 3, marketers who compare their prices with an average of their competitors' prices should explain the basis of the comparison and ensure both that the identity of their competitors is clear and that those competitor prices selected for the comparison are relevant to the audience addressed. They should neither unfairly select only those competitor prices that give them an advantage nor include competitor prices that are irrelevant to the audience addressed.

5. Dual fuel offers

5.1 Marketers who offer savings that depend on the supply of more than one type of fuel should explain that dependence prominently (for example, in the body copy if the savings claim is in the headline); they should not imply that customers taking only one type of fuel can benefit from those savings if they cannot.

5.2 If the inclusion or exclusion of prompt-payment discounts or late-payment penalties from price claims is likely to affect consumer's understanding of the claim, marketers should either state that clearly (see section 1.3) or fully describe the competitors' service that is the subject of the comparison. For example, "paid 10 days after billing" (though see section 3.2 for advice on comparisons).

6. "Price Freeze" Products

6.1 Marketing communications for a product of this nature should include all significant conditions that apply to it (for example, premiums that might apply to an existing utilities price, the date to which frozen prices will be available, limited availability, offer open to dual-fuel customers only or cancellation fees that might apply).

6.2 As stated in section 1.2, if the product is subject to conditions that exclude certain consumers or has limited availability, claims should be amended either to reflect the conditions that apply to it (for example, "Price freeze for dual fuel consumers in Greater London") or to remove the implication that the product is available to all consumers (for example, "your prices could be frozen") and the conditions should be explained elsewhere in the marketing communication.

6.3 When advertising "price freeze" products, marketers may want to refer to a competitor's recent price rise. Although it is acceptable to do so, marketers must ensure that they do not misleadingly imply, by omission or otherwise, that they have not implemented price rises in the past unless they have not done so. Assuming that information stated is factually correct, an acceptable claim is "All major suppliers have raised their prices in the last 12 months. (Competitor X) has just raised its prices by x%. By freezing your prices with us...".

6.4 Marketers should ensure that they make clear the prices that will apply to a "price freeze" product. For example, if a given price freeze offer depends on consumers signing up to a marketer's new rates after a price increase, that fact should be made clear by, for example, "Sign up for frozen prices at our new rates."

7. Switching Sites

7.1 Marketing communications should not mislead by omission or otherwise in relation to the nature of a switching site. Special care should be taken with the

use of claims such as “Independent” and “Comprehensive.” The presence of a commercial relationship between a switching site and a provider does not necessarily preclude descriptions of such a site as impartial or independent unless the commercial relationship influences the recommendations made by it. To legitimately claim that a site is comprehensive it should compare all of the prices available at any given time.

7.2 A savings claim made for a switching site is subject to the guidance offered in sections 1 to 5.

8. VAT

8.1 Unless addressed exclusively to the trade, quoted prices, including those for unit rates and standing charges, should include payable VAT.

8.2 If marketers include a VAT-exclusive price as well as a VAT-inclusive price, the inclusive price should be the more prominent.

8.3 If VAT is charged at different levels for different customers, prices should include the level of VAT applicable to the largest of the addressed audiences. A footnote should state that level.

9. Regional or local suppliers

9.1 If they refer to either themselves or their competitors as the regional, local or existing supplier, marketers should supply a reasonable proportion (for example, more than half) of consumers at whom the marketing communication is addressed.

9.2 If they refer to a competitor as the regional/local/existing supplier, marketers should state the identity of the competitor; a footnote is acceptable for this statement.

10. Size or degree of qualification

10.1 Footnotes should be legible to a normally-sighted person reading the marketing communication once at a normal speed.

10.2 Marketers who are required to qualify a claim in a footnote may do so with more prominence (for example, in the body copy).

10.3 If a poster contains no body copy but the claim requires more prominent qualification than that provided in a footnote, marketers should add a sub-heading or similar.

10.4 Whether footnotes need to be asterisked to the claim depends on several factors: for example, the importance of the qualification and the prominence of the footnote in the context of the rest of the marketing communication. Marketers who want help should consult the Copy Advice team.

11. The Law

11.1 Marketers should consider the provisions of the Control of Misleading Advertisements Regulations 1988 (as amended), Part III of the Consumer Protection Act 1987, the Price Marking Order 1999 and the guidance in the Code of Practice for Traders on Price Indications. The Consumer Credit (Advertisements) Regulations 1989 apply to comparisons of credit terms.

Advice on specific marketing communications is available from the Copy Advice team by telephone on 020 7492 2100, by fax on 020 7404 3404 or by e-mail on copyadvice@cap.org.uk. The CAP website at www.cap.org.uk contains a full list of Help Notes as well as access to the AdviceOnline database, which has links through to relevant Code rules and ASA adjudications.

November 1998
Revised: November 2000
Revised: March 2003
Revised: November 2003
Revised November 2006