

Compliance Report

Telecommunications Ads Survey 2007



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1. Summary

This survey analyses the compliance rate, against the advertising Codes, of Telecommunications advertising. For non-broadcast advertising, it is timed to take account of the recent update of the CAP Help note on Price Claims in Telecommunications Marketing.

The Help Note on Price Claims in Telecommunications Marketing has been revised twice since it was first launched in 1998. The latest revision takes into account technological developments in the industry as well as recently published ASA Council rulings on complaints. The basic principles of the Help Note remain the same: comparisons should be clear and fair; ads targeted at consumers should quote VAT-inclusive prices; footnotes should be legible and claims should not exaggerate the availability or extent of benefits likely to be obtained.

The survey was designed to ensure that a representative sample of ads across the non-broadcast and broadcast spectrum was assessed.

Including duplicates, 448 advertisements were assessed in the Survey. Of the 309 unique advertisements (excluding duplicates), 22 breaches were found, a compliance rate of 93%.

Although the compliance rate was encouraging, the same problem – that of inclusive mobile phone handsets being advertised as “free” – accounted for all the breaches. Clearly the industry has not yet adopted the requirement to stop using “free” in that context; the CAP Compliance teams will ensure that it does. The exceptional compliance rate for all the remaining ads in the survey is a welcome and commendable result and might be attributable to several factors including the widespread use of Copy Advice by telecommunications advertisers and their agencies, the effective dissemination of new guidance to the industry and the role that companies play in monitoring their competitors.

2. Introduction

2.1 Background

The Telecommunications market is changing rapidly, with new services and products being offered to consumers on an almost daily basis. In response to this evolving market, CAP has identified these three potential problems as especially important in terms of assessing telecommunications marketing: the use of “Free” and “Unlimited”; the adequate explanation of complex products and services and the comparison of services with those of competitors. This survey has been undertaken as a response to the rapid developments in the Telecommunications sector and guidance in the new Help Note on Telecommunications Marketing.

The Advertising Standards Authority (ASA) is the independent body that endorses and administers the CAP and BCAP Codes, which apply to the content of non-broadcast and broadcast marketing communications. CAP is responsible for ensuring that the self-regulatory system works in the public interest and achieves that by investigating complaints, identifying and resolving problems by research and by promoting and enforcing high standards by ensuring that everyone who commissions, prepares and publishes marketing communications observes the CAP and BCAP Codes.

The Committee of Advertising Practice (CAP) is the body that created and revises the CAP Code. It represents advertisers, promoters and direct marketers, their agencies, the media and trade and professional organisations in the advertising, sales promotion and direct marketing industries. CAP provides a pre-publication copy advice service and co-ordinates the activities of its members to achieve the highest degree of compliance with the CAP Code. CAP’s Broadcast Committee (BCAP) is contracted by the broadcast regulator, Ofcom, to write and enforce the codes that govern TV and radio advertising. The Committee comprises representatives of broadcasters licensed by Ofcom, advertisers, agencies, direct marketers and interactive marketers.

The Compliance team works to ensure that marketing communications comply with the CAP and BCAP Codes and with ASA decisions. The team follows-up ASA adjudications, monitors marketing communications and takes immediate action to ensure marketing communications that breach the Codes are removed from the media. One of the team’s objectives is to create a level-playing field for marketers and it ensures that by communicating decisions that have sector-wide ramifications. The Compliance team conducts surveys (such as this) to assess compliance rates in certain industries, sectors or media; those surveys help to identify marketing trends and to anticipate subjects of concern that need to be addressed by the ASA, CAP or BCAP.

2.2 Code Rules

The CAP and BCAP Codes lay down the criteria for acceptable marketing communications and try to ensure that all advertising is legal, decent, honest and truthful. Specific rules apply to sectors of advertising such as alcoholic drinks, children, motoring, weight control, distance selling and sales promotions. No specific rules exist for telecommunications advertisements. Please refer to page 17 for the Code Clauses used to assess ads in this survey.

CAP publishes industry Help Notes that provide information for specific sectors, based not only on the CAP Code rules but also on the findings of ASA adjudications. They help advertisers, agencies and publishers ensure their advertising adheres to the Code. Non-broadcast advertisements in this survey were judged against the CAP Code and the guidance set out in the Help Note on Price Claims in Telecommunications Marketing (see page 20).

2.3 Survey Objectives

The Survey objectives were to:

- Assess compliance rates for advertisements for telecommunications products and services in the national and regional press, mailings, posters and television advertisements.
- Identify trends and resolve breaches.
- Contact advertisers responsible for ads that seemed to breach the rules and obtain assurances that future ads would comply and
- Act as a deterrent to bad practice and an encouragement to good practice.

3. Methodology

3.1 Method

The CAP Compliance team monitored ads that appeared in the national and regional press, magazines, mailings and online and on posters, television and radio during the week of 5 to 12 February 2007*. The ads were sourced and collated from Thomson Intermedia Plc.

If it identified a breach of the Codes, the CAP Compliance team wrote to the advertisers and asked for a written assurance that the relevant advertisement would be withdrawn or amended to comply with the Codes. The advertisers were asked to send an assurance within 72 hours.

3.2 Media monitored in the survey

Advertisements surveyed appeared in these newspapers:

- Daily Record Scottish Edition
- Daily Star
- Mirror
- Sun
- Daily Star Sunday
- Independent on Sunday
- Mail on Sunday
- Observer
- Sunday Telegraph
- Sunday Times
- Metro
- The London Paper
- London Lite
- Independent
- Jersey Evening Post
- Daily Mail
- Belfast Telegraph
- Daily Telegraph
- Evening Standard
- Express
- Financial Times
- Guardian
- Irish Examiner
- Irish Independent
- Manchester Evening News
- News Of The World
- People
- Racing Post
- Scotsman
- Sunday Mirror
- Sunday Tribune
- The Irish Times
- Sunday Business Post
- Times

and in these magazines:

- All About Soap
- Bliss
- Chat
- City A.M
- Closer
- Company
- Computer Weekly
- Cosmo Girl
- Cosmopolitan
- Esquire
- GQ
- Grazia
- Heat
- Herald
- Inside Soap
- Kerrang
- Love it!
- Mojo
- New Musical Express
- New Woman
- New!
- Now
- Nuts
- OK!
- Pick Me Up
- Radio Times
- Real People
- Reveal
- Soaplife
- Star
- Time Out
- Total TV Guide
- TV and Satellite week
- TV Choice
- TV Easy
- TV Quick
- TV Times
- Uncut
- Vogue
- Whats on TV
- Zoo Weekly

We assessed ads on these TV channels:

- ABC1
- Animal Planet
- Animal Planet +1
- At The Races
- B4

- Boomerang
- Boomerang +1
- Bravo
- Bravo +1
- Bravo 2
- C4 (all networks)
- Carlton Network
- Carlton Network Too
- Channel 4
- Challenge TV
- Chart Show TV
- Channel 4 Midlands
- Classic FM TV
- Crime and Investigation Network
- Discovery
- Discovery +1
- Discovery Civilisations
- Discovery Health
- Discovery Real Time
- Discovery Real Time +1
- Discovery Real Time Extra
- Discovery Science
- Discovery Travel & Living
- Discovery Wings
- E!
- E4
- E4 +1
- Eurosport
- Extreme Sports Channel
- Film 4
- Film 4 +1
- Five (all networks)
- Flaunt
- Fox News
- FTN
- FX
- GMTV
- Granada ITV
- Hallmark
- ITV (all networks)
- Kerrang
- Kiss TV
- Living TV
- Magic TV
- More 24
- More 4
- Motors TV
- Movies 24
- MTV
- National Geographic
- Paramount
- Performance Channel

- Premiership Plus
- Q
- Reality TV
- S4C
- Sci- Fi + 1
- Sci Fi Channel
- Scottish ITV
- Scuzz
- Setanta Sports
- Sky
- Smash Hits
- The Amp
- The Biography Channel
- The Box
- The History Channel
- The Hits
- The Travel Channel
- The Vault
- TMF
- Toonami
- Trouble
- Turner Classic Movies
- UK Living
- UKTV (all channels)
- VH1
- Zone Horror
- Zone Reality
- Zone Reality Extra

We assessed ads on these radio stations:

- LBC FM
- Metro City
- Capital Radio
- Clyde 102.5
- Radio City
- 104.9 XFM
- Classic FM
- Heart 106.2 FM
- Mercia 97.0
- Virgin FM
- Century FM
- Smooth FM
- Real Radio Scotland
- Magic 105.4

And online ads on these websites:

- Shopping.lycos.co.uk
- MSNproperty
- www.map24.com
- uk.geocities.yahoo.com

- uk.chat.yahoo.com
- www.xe.com
- www.ivillage.co.uk
- www.letssingit.co.uk
- www.edirectory.co.uk
- uk.mobile.yahoo.com
- www.thisislondon.co.uk
- www.fivetv.com
- www.cricket365.com
- uk.groups.yahoo.com
- www.freeonlinegames.com
- www.dailymail.co.uk
- www.thisismoney.co.uk
- www.thesun.co.uk
- www.getlippy.com
- www.cricinfo.com

4. Findings

4.1 Compliance rate

The Survey sought to establish the proportion of advertisements for telecommunications products and services that appeared between 5 February and 12 February 2007 that complied with the relevant CAP or BCAP Code. As previously stated, 448 advertisements were included in the survey; of those 139 were duplicates leaving a total of 309 unique ads for assessment. We identified 22 Code breaches from the sample of 309 ads.

The compliance rate was 93%.

All the breaches related to the same problem: the misleading use of “free” to describe mobile phone handsets that should have been described as “inclusive” or “at no extra cost”.

4.2 Media examined:

Most of the advertisements assessed appeared in the national press and magazines. In total, 63% of the surveyed ads were press and magazine advertisements.

Table 1: Survey Sample breakdown by media type

Medium	Number of ads	% of total
Press and magazines	190	61.5
Direct Mailing	49	15.9
Television	31	10.0
Outdoor	29	9.4
Online	5	1.6
Radio	5	1.6
Total	309	100%

4.3 Compliance by Media:

From a sample of 309 ads 22 breaches were identified.

Table 2: Breaches by Media Type (excluding duplicates)

Medium	Number of Breaches
Press and magazines	18
Television	2
Radio	0
Outdoor	0
Online	1
Mailings	1
Total	22

4.3.1 Newspaper and magazine advertisements

In the sub-sample of 190 ads, we identified 18 breaches in the national and regional press and magazines. The compliance rate in those media was 91%.

4.3.2 Television advertisements

In the initial sub-sample of 50 television ads, 19 were sponsorship credits that fall outside the ASA's remit. That left 31 ads for assessment. Two from the sample of 31 breached the BCAP Television Code, a compliance rate of 94 %.

4.3.3 Outdoor advertisements

We assessed 26 outdoor ads were assessed. Of those, two were duplicates, leaving a total of 24 unique ads. No breaches were identified, giving a compliance rate of 100%.

4.3.4 Mailings

We assessed 65 mailings. Of those, 16 were duplicates, leaving a total of 49 unique mailings. We identified one breach, a 98% compliance rate.

4.3.5 Online ads

We assessed five online ads and identified one breach, a compliance rate of 80%.

4.3.6 Radio

We assessed five radio ads and identified no breaches, a compliance rate of 100%.

Table 3: Compliance by media

Medium	Number of ads assessed (ex dups)	Breaches	Compliance rate
Press and magazines	190	18	91%
Television	31	2	94%
Outdoor	24	0	100%
Mailings	49	1	98%
Online	5	1	80%
Radio	5	0	100%
Total	309	22	93%

4.4 Complaints:

The ASA received 15 complaints about ads assessed in the survey. Several of those were about whether one company's ads were misleading for not giving adequate prominence to the cost of line rental payable to a third party to receive the telecoms bundle being advertised. The ASA considered that the complaints were unjustified because the requirement to pay line rental was stated in the body copy.

Eight members of the public objected to another company's ad that claimed "absolutely no download limits". The complainants believed the claim was misleading, because the company enforced a fair usage policy that limited the amount of bandwidth available to subscribers. At the time of publication the ASA is investigating the complaints.

5. Conclusions

The survey found that, excluding duplicates, the compliance rate for the advertisements assessed was an encouraging 93%. The relatively high compliance rate could be due to several factors. As previously stated, large companies in the sector play an important role in monitoring their competitors' advertising. Between October 2006 and July 2007, the ASA received 15 competitive complaints from one company alone. Notably, 9 of those complaints resulted in an ASA investigation. The major players in the telecommunications market devote considerable resource to ensuring their competitors comply with ASA decisions; they know that competitors are watching their advertising. Also, the ASA and CAP have devoted considerable time to ensuring guidance for telecommunications is disseminated effectively. CAP consulted the industry about the recent Help Note revision, published articles about the new Help Note in newsletters, held an "advice:am" seminar for the industry, updated its online guidance and, after the publication of policy setting or changing adjudications, conducted sector compliance projects to ensure the industry operates on a level playing field.

The picture seems even more encouraging given that all the recorded breaches were about a single problem: the (mis)use of "free" to describe inclusive mobile phone handsets.

Clause 32.3 of the CAP Code states that "Promoters should not describe an individual element of a package as "free" if the cost of that element is included in the package price". The principle outlined in Clause 32.3 of the CAP Code is similarly expressed in clause 5.2.4 of the BCAP Television Code, which states "a) Advertisements must not describe an offer as "free" if there are costs to consumers other than actual postage or carriage, non-premium rate telephone charges or reasonable travel required to collect the offer ... b) No element of an offer may be described as "free" if viewers are likely to be misled as to whether it is genuinely additional to the offer". The assessment of the term "free" was applied consistently across all media assessed in the Survey.

In assessing advertisements against the Code, it is important to establish whether an advertised product comprises elements that are "included" in the price, as opposed to elements that are genuinely free. In previous investigations, the ASA concluded that elements such as broadband, calls and mobile phone handsets were usually inclusive parts of packages and should not, therefore, be described as "free". The adjudications in Appendix 3 signal that specific conditions should be met before elements of a package may be described as "free". The adjudications address concerns that marketers might advertise "free" individual elements of packages whose cost was already included in the package price. The wording of Clause 32.3 of the CAP Code implicitly permits the description "free" if the cost of the "free" element is not included in the package price. Some marketers argue that the availability of a "free" element in a package, at a separate selling price, is enough to demonstrate that the cost of that element is not included in the package price. On the other hand, the ASA now expects marketers to be able to prove that the cost of a package has not been inflated to recover the cost of the "free" element. For mobile phones, the cost of the handset is often recovered by increasing the cost of call time consumers pay for. But mobile phone companies have pointed out that SIM-only packages (without a handset) are available for the same price as those including a "free" handset. They say some customers might want to buy their handset separately. In light of those arguments, until July last year, the ASA accepted the use of "free" to describe handsets in packages that were also available with a SIM-only option. But on 19 July 2006 the ASA published an adjudication against Carphone Warehouse Ltd (see page 27) that overturned the previous position. The adjudication did not explicitly refer to mobile phone handsets explicitly but the logic outlined in the adjudication on complaint 1, when applied to mobile phone packages, suggests that because a SIM-only option is an alternative to the more commonly used handset-included

option, the SIM-only option is, to all intents and purposes, a constituent part of the package. In that context, the handset should be described as “inclusive”, not “free”.

Although ads that continued to refer to included handsets as “free” were recorded as breaches in this survey, it seems that the lessons of the adjudication have not been explained adequately to the industry. The Compliance teams will act to ensure a level playing field.

6. Pre-publication advice for non-broadcast advertisers

Seeking advice from the CAP Copy Advice team is the best way to ensure that proposed non-broadcast advertisements and sales promotions do not break the CAP Code. We urge advertisers, publishers, agencies and other people or organisations involved in the preparation of marketing communications are urged to use our service. The Copy Advice team can draw on ASA research and previous ASA adjudications and is experienced at advising on the likely reaction of both the public and competitors. Consult the team on 020 7580 4100 (telephone), 020 7580 4072 (fax) or on copyadvice@cap.org.uk. The team responds to almost 90% of written enquiries within 24 hours.

Also, promoters, their agencies and the media can stay the right side of the line by using AdviceOnline, an up-to-date database of advice that tells you what you can and cannot do and links users to relevant Code clauses, Help Notes and past ASA decisions. We encourage users to subscribe to Update@CAP, an e-mail newsletter. Both services are free and available on www.cap.org.uk.

Appendix 1 – Relevant CAP and BCAP Code rules

Cap Code

Substantiation

- 3.1 Before distributing or submitting a marketing communication for publication, marketers must hold documentary evidence to prove all claims, whether direct or implied, that are capable of objective substantiation. Relevant evidence should be sent without delay if requested by the ASA or CAP. The adequacy of evidence will be judged on whether it supports both the detailed claims and the overall impression created by the marketing communication. The full name and geographical business address of marketers should be provided without delay if requested by the ASA or CAP.

Truthfulness

- 7.1 No marketing communication should mislead, or be likely to mislead, by inaccuracy, ambiguity, exaggeration, omission or otherwise.

Comparisons with identified competitors and/or their products

- 18.1 Comparative claims are permitted in the interests of vigorous competition and public information. They should neither mislead nor be likely to mislead.
- 18.2 They should compare products meeting the same needs or intended for the same purpose.
- 18.3 They should objectively compare one or more material, relevant, verifiable and representative features of those products, which may include price.

Other comparisons

- 19.1 Other comparisons, for example those with marketers' own products, those with products of others who are not competitors or those that do not identify competitors or their products explicitly or by implication, should be clear and fair. They should neither mislead nor be likely to mislead. The elements of comparisons should not be selected in a way that gives the marketers an artificial advantage.

Sales Promotions, Free offers and free trials

- 32.3 Promoters should not describe an individual element of a package as "free" if the cost of that element is included in the package price.

BCAP Television Advertising Standards Code:

5.1 DEFINITION OF MISLEADING ADVERTISING

No advertisement may directly or by implication mislead about any material fact or characteristic of a product or service

5.2.1 Evidence

Licensees must obtain adequate objective evidence to support all claims

5.2.2 Implications

Descriptions, claims and illustrations must not imply attributes, capabilities or performance beyond those that can be achieved in normal use

5.2.3 Qualifications

All important limitations and qualifications must be made clear

5.2.4 (a) Advertisements must not describe an offer as 'free' if there are costs to consumers other than actual postage or carriage, non-premium rate telephone charges or reasonable travel required to collect the offer. Advertising must make clear the extent of the consumer's liability for any costs

(b) No element of an offer may be described as 'free' if viewers are likely to be misled as to whether it is genuinely additional to the offer

5.4.6 Comparative advertising

There must be no realistic likelihood that viewers will be misled as a result of any comparison, whether about the product or service advertised or that with which it is compared

BCAP Radio Advertising Standards Code

Section 2 Rule 3

3. Misleadingness

All advertisements must comply with the requirements of the Control of Misleading Advertisements Regulations 1988 (as amended). The ASA is empowered to regard a factual claim as inaccurate unless adequate evidence of accuracy is provided within a short period of time when requested. The ASA will require advertisements that are found to be misleading to be withdrawn and not played again.

In particular:

a) Advertisements must not contain any descriptions, claims or other material which might, directly or by implication, mislead about the product or service advertised or about its suitability for the purpose recommended.

b) Advertisements must clarify any important limitations or qualifications, without which a misleading impression of a product or service might be given.

Scripts must not contain complicated technical jargon. Relevant scientific terminology may only be used in a way that can be readily understood by listeners without specialist knowledge.

c) Before accepting advertisements, Licensees must be satisfied that all descriptions and claims have been adequately substantiated by the advertiser. A half-truth, or a statement which inflates the truth, or which is literally true but deceptive when taken out of context, may be misleading for these purposes. Ambiguity in the precise wording of advertisements and in the use of sound effects must be avoided.

Advertisements must not falsely suggest or imply official approval for a product.

Section 2 Rule 6

6. Fair Comparisons

Advertisements containing comparisons with other advertisers, or other products, are permissible in the interest of vigorous competition and public information provided that:

- a) the principles of fair competition are respected and the comparisons used are not likely to mislead listeners about either product;
- b) points of comparison are based on fairly selected facts which can be substantiated;
- c) comparisons chosen do not give the advertiser an artificial advantage over his competitor;
- d) they comply with Section 2, Rule 7 Denigration.

Section 2 Rule 20

20. Use of the word 'Free'

Advertisements must not describe products or samples as 'free' unless they are supplied at no cost or no extra cost (other than postage or carriage) to the recipient.

A trial product may be described as 'free' provided that any subsequent financial obligations from the customer are specified in the advertisement, eg. the cost of returning the product in the case of dissatisfaction or the cost of the product at the end of the trial period.

Appendix 2 – CAP Help Note on Price Claims in Telecommunications Marketing

Committee of Advertising Practice
(Non-broadcast)

Help Note on Price Claims in Telecommunications 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, contact the BACC www.bacc.org.uk for TV ads or the RACC www.racc.co.uk for radio ads. Also, marketers should consider provisions of the law and guidance such as the Code of Practice for Traders on Price Indications.

Background

These guidelines, drawn up by the Copy Advice team with help from the telecommunications industry, are intended to help marketers, agencies and media interpret the CAP Code as far as it relates to the subject discussed. They neither constitute new rules nor bind the ASA Council in the event of a complaint about a marketing communication that follows them.

1. Basic Principles

- 1.1 Marketers should assume that different consumers with different call patterns will behave rationally in selecting the best-value service available, even if that is not borne out by evidence.
- 1.2 Comparisons should be clear and fair. The ASA will determine fairness on the basis of whether consumers would consider services comparable and whether elements of a comparison have been presented in a way that allows consumers to make an informed and rational choice.
- 1.3 Unless addressed exclusively to the trade, quoted prices should include VAT payable.
- 1.4 Footnotes should be legible to a person reading at a normal speed.
- 1.5 Price claims should not exaggerate the availability or extent of benefits likely to be obtained by consumers.

2. General

- 2.1 Marketers should distinguish between absolute claims, referring to all consumers or products, and conditional claims, referring to some consumers or products. Claims stating “up to” or “from” are likely to be regarded as absolute claims referring to a range of savings unless qualified otherwise. They should not exaggerate the availability of benefits likely to be obtained by consumers; for example, 10% availability of the maximum benefit attributed to an “up to” or “from” price claim is likely to be considered a reasonable proportion that avoids exaggeration.

Examples:

“Save up to 50% on international calls versus X.”

Implies that all international tariffs are cheaper with the marketer than with X and the maximum discount (which should be available on a reasonable proportion of international tariffs) is 50%.

“You could save 30% when you sign up for package Y.”

Implies that some, but not all, consumers will save when they sign up for Y and that a reasonable proportion of consumers will save 30%.

- 2.2 If other charges or conditions are likely to affect a consumer’s understanding of a price statement or comparison, marketers should explain the claim. The prominence of the explanation will depend on the nature and context of the claim. Marketers may generally state in a footnote whether one-off or periodic charges apply and to what extent (e.g. payments in advance, rental charges to the marketer, discount scheme charges or installation charges).

Example:

“Daytime national calls only 1p per minute with package Z.”

Consumers are likely to have some understanding that they will need to pay a periodic charge to the marketer for the package. Stating the existence and extent of that charge in a footnote is unlikely to mislead.

If the charges are unlikely to affect a consumer’s understanding of a claim, marketers should notify consumers of the charges and their extent before a purchase or rental is made. (See Tariff Comparisons section for guidance on qualifying fees for individual calls).

Significant conditions are likely to require prominent qualification. For detailed guidance on the right degree of prominence, see the CAP Help Note on Claims that Require Qualification.

- 2.3 Unqualified claims about calls to UK landlines or similar (e.g. “unlimited calls to UK landlines” or “local and national calls just Xp per min”) are likely to mislead because, unless told otherwise, consumers assume they include specific categories of calls (e.g. non-geographic or internet calls), which are

often excluded from the price plan. If such exclusions exist, those types of claims should be accompanied by a statement of the types of calls that are either included in or excluded from the claim. A footnote is unlikely to be prominent enough unless linked to the claim with an asterisk.

Examples:

“*UK landline calls are those made to area codes beginning 01 and 02 excluding the Channel Islands.”

“*UK calls exclude those made to the Channel Islands, internet, non-geographic and premium-rate numbers (e.g. those beginning 084, 087, 090 ...).”

- 2.4 If consumers must continue to pay rental to a third-party line provider to access a call service, the marketer should state that in the body copy. Marketers of voice-over IP services need not state that line rental must be paid to a third party provided they state in the body copy that broadband is required to make calls.
- 2.5 If a package charge applies to more than one type of service (e.g. line rental provision and call provision or a telephone service and an entertainment service), the marketer should avoid referring only to the part of the charge it considers covers one of the services if consumers cannot pay the part-charge but have to pay the full charge for the ‘bundle’ of services (also see 2.2). Ideally marketers should quote inclusive prices but a prominent statement of all elements of the price might be acceptable.
- 2.6 Marketers should not describe an individual element of a package as “free” if the cost of that element is included in the package price. For example, if a marketer charges for line rental and packages that service with calls at no ppm cost, those calls should not be described as “free” because they are intrinsic elements of the package. Terms such as “inclusive”, “unlimited” or “at no extra cost” might be acceptable (see 2.7).

But, if an extra element is added, for example for a limited-period offer or to form a more attractive product, the element could be described as “free” for a reasonable period if the original package (without the extra element) had been available beforehand at the same price, again for a reasonable period. The period that the ASA would regard as “reasonable” would vary according to the circumstances. In making such judgements, the ASA is likely to take account of, for example, the typical frequency of purchase of the product category: products bought weekly could make the claim for a much shorter period than those bought once every few years.

- 2.7 It should be acceptable to describe an aspect of a service as “unlimited” (e.g. “for just £12 a month you can make unlimited calls to numbers beginning 01 and 02”) despite the existence of a fair-use policy, which is invoked to prevent misuse of the service, providing the policy’s existence is stated in the ad. Other significant conditions associated with an unlimited service, such as a

requirement to redial after 59 minutes, should also be stated. Including those statements in a footnote is likely to be acceptable.

- 2.8 The nature of short-term promotional prices should be made clear in marketing communications; a footnote is unlikely to be considered prominent enough.
- 2.9 When using a specific call duration to illustrate a cost or saving, marketers should not select a duration that provides an unrepresentative benefit.

3. General Guidance on Comparisons

- 3.1 Marketers making comparisons should assume that consumers act rationally in selecting the best service (e.g. tariff or package) available to them. Marketers should compare their service with the competitor's most comparable service and should name clearly the services (e.g. tariffs or packages) that form the basis of comparison.
- 3.2 If two or more services are equally comparable, marketers may choose which should be the subject of the comparison. They should, however, be able to show that no obviously more comparable service exists.
- 3.3 In the interest of consumer awareness, it should be acceptable for a marketer to compare breakthrough technology with a competitor's existing technology despite the latter also offering similar breakthrough technology: consumers might be unaware of the breakthrough technology and benefits it might offer over more established technology that meets the same needs. The new type of product or service must meet the same needs or be intended for the same purpose as the existing product or service undergoing comparison. For example, comparing a VoIP service with a competitor's fixed-line service should be acceptable even if the competitor also offers a VoIP service. Marketers should, however, state prominently that the competitor offers a more comparable product or service. That statement should be both near, and similar in size, to the comparative claim.
- 3.4 Marketers should state differences between services undergoing comparison that are likely to influence consumers' evaluation of that comparison (see also 2.2).
- 3.5 Marketers should not compare their promotional prices with their competitor's usual prices if their competitor has a more comparable promotional offer running at the same time. Marketers choosing to compare their usual price with their competitor's usual price when the latter has a relevant promotional price at the time of going to press should do so in a way that makes that limited basis of comparison clear and should prominently explain details of the competitor's promotion that are relevant to the comparison. It should be acceptable for marketers to compare their promotional price with a competitor's normal price if the competitor does not have a relevant promotional price and the basis of the comparison is clear (see 2.8).

- 3.6 If it is impossible to include competitors' discount schemes (e.g. limited numbers schemes) in comparisons, marketers should say so in a footnote.

4. Total Bill Comparisons

- 4.1 Unqualified savings claims are likely to be interpreted as market-wide total bill comparisons and, if those are not intended, marketers should provide a relevant explanation of the limited basis of the savings.
- 4.2 Marketers that can show that all their tariffs are lower than (or lower than and, in some respects, equal to) those of a competitor may normally state that consumers can typically save on their total bills by switching from that competitor.
- 4.3 If at least one of a marketer's tariffs is more expensive than the most comparable of its competitor's tariffs and no generally accepted call pattern data exists, the marketer should normally avoid making total bill savings claims addressed either to consumers in general or to specified groups of consumers (e.g. those who make international calls). Factors that might render those claims unrepresentative and misleading include: different tariff structures, different inclusive package elements, different definitions of call pattern types, the possibility that consumers with a certain call pattern type only might be attracted to an operator's service and the possibility that consumers' call patterns might change after switching providers.
- 4.4 In principle, marketers may make total bill savings claims that relate to an individual call pattern (e.g. after defining an individual call pattern or after inviting consumers to send in itemised bills that illustrate individual call patterns) but will usually need to explain the context of the claim more prominently than in a footnote. Variables such as time (e.g. weekday peak, weekday off-peak and weekend), type (e.g. local, national, international, non-geographic and differing mobile networks), call length and degree of usage (e.g. low, average and heavy) combine to make up different call patterns. Marketers will note the difficulty in conveying that amount of information to consumers in a meaningful way.

5. Tariff Comparisons

- 5.1 In the absence of generally accepted call pattern data, it might not be possible to deduct from price claims quoted in tariff comparisons savings that result from discount schemes (e.g. limited numbers schemes). The exclusion of those savings should be stated clearly in a footnote.
- 5.2 If a marketer compares tariffs with different charging styles (e.g. ppm versus pps charging) the difference should be explained in a footnote. If, however, the marketer's uncommon method of charging is unlikely to affect a

consumer's understanding of a price statement or comparison, that explanation is not necessary.

- 5.3 When making price statements or tariff comparisons, marketers should normally state clearly in a footnote the extent of any relevant call set-up fee or minimum fee. If, however, the call set-up fee or minimum fee is more than the pence per minute charge stated in the marketing communication, marketers should state clearly in the body copy the extent of the fee.
- 5.4 Indirect access operators whose services require consumers to make a call over another network at extra cost should, if possible, include the cost of that call in their quoted prices. If differing factors affect the extent of that cost, marketers should state both costs with equal prominence, for example "Calls to India for just Xp per minute plus your normal rate".
- 5.5 If a comparison is between two tariffs that apply for non-identical periods (e.g. weekday off-peak tariffs that start or end at different times), the marketer should explain the differences in a footnote.
- 5.6 If a marketer that is making a comparison has a single tariff for a specified call type (e.g. an international call to a specified country) and the competitor has several time-dependent tariffs for its comparable call, the marketer should state the time when its competitor's tariff is valid. An explanatory footnote is unlikely to be considered prominent enough.

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, www.cap.org.uk, contains useful advice on CAP Code interpretation and a full list of Help Notes as well as access to the AdviceOnline database, which has links to relevant Code clauses and ASA adjudications.

May 1998
Revised: March 2003
Revised: November 2006

Appendix 3 – ASA adjudications referred to in the Survey

**Centrica Telecommunications Ltd
t/a One.Tel**

*3rd Floor, Building One
Chiswick Park
566 Chiswick High Road
London
W4 5BY*

Publish Date: 21 Dec 2005

Media: National press

Sector: Computers and telecommunications

Industry complaint from: London

Agency: EHS Brann

Complaint :

BT objected to a press ad that was headlined "Lower line rental guaranteed." Text stated " ... Line rental from Onetel comes with a choice of great value call plans. These plans all feature free weekend calls to any landline numbers starting 01 and 02 ... ". The complainants objected that the use of "free" was misleading, because they believed the calls were inclusive in the advertisers' line rental package.

Codes Section: (Ed 11: 3.1; 7.1; 32.3)

Adjudication: Complaint upheld

Onetel said 'free' referred to their call plans, which were distinct from line rental. They said consumers did not need to take line rental from them to benefit from their call plans and could, if they wanted, make weekend calls without paying for either line rental or calls. They believed, because customers did not pay per minute rates for weekend calls, the use of the term 'free' was appropriate for all plans whether a monthly package payment applied or not. They pointed out that, should a customer opt for a call plan that invoked a monthly fee, they would receive enhanced benefits in addition to the weekend calls.

We noted consumers could sign up for call packages from Onetel without signing up for their line rental. We considered, however, that the claim in the ad was about the benefits available to customers who took line rental. We noted all Onetel line rental customers automatically qualified for call plans. We noted Onetel offered three call plans, two of which invoked a monthly charge and one, which consumers automatically received if they did not sign up to another plan, that was available at no extra charge; all three call plans offered weekend calls at no additional charge. We considered that weekend calls were an inclusive feature of the two plans that invoked a monthly charge and told Onetel not to describe those calls as "free". We considered that weekend calls offered under a call allowance that, in isolation, did not involve a monthly fee but was offered in conjunction with a line rental agreement, were an intrinsic part of a "bundled" package; they were therefore not free, but inclusive in the overall package price. We concluded that, in this context, the use of 'free' to describe weekend calls was misleading and advised Onetel to consult the CAP Copy Advice team before advertising again.

The Carphone Warehouse Ltd
t/a TalkTalk Ltd
 1 Portal Way
 London
 W3 6RS

Publish Date: 19 Jul 2006
Media: Press general
Sector: Computers and telecommunications
Public & Industry complaints from:
 Nationwide (x50)

Complaint :

Advertising in a range of media promoted a new TalkTalk telephone package with "free broadband forever". Media included a TV ad, a press ad and a CD promotion.

The TV ad claimed "Join TalkTalk, the home phone company, and get broadband free forever." Onscreen text stated "Connection fee and contract apply. Subject to availability. Terms and Conditions at talktalk.co.uk".

The press ad claimed "Free broadband forever". Smaller text at the bottom of the ad stated "... Connection fee and contract apply. Subject to availability. Terms and Conditions at talktalk.co.uk".

The CD promotion was headlined "Everything you need to get FREE broadband forever". It further claimed "Free broadband forever - up to 8 Meg(3)". The 3 linked to smaller text on the back of the promotion which stated "At connection time we will give you the highest available speed. Subject to availability. 8Meg refers to your download speed Terms and conditions apply".

145 people, including competitors British Telecom, Tiscali and ntl:Telewest, complained about the advertising. They said it was

1. misleading to suggest that the broadband was free when it involved an 18 month contractual commitment to the Talk3 International (T3I) calls package; a connection charge of £29.99; ongoing costs of £9.99 per month plus line rental (£20.99 in total) and a disconnection fee of £70.

2. also misleading to claim broadband was "free forever".

3. not sufficiently clear from the advertising that the availability of broadband was dependent on being connected to a qualifying telephone exchange and that people not connected to such an exchange would have to pay a further £10 per month for the broadband service.

4. The ASA also challenged whether it should have been made clear in the ads that a delay of around 10 weeks would apply before people would receive broadband.

Codes Section: (Ed 11: 3.1; 7.1; 32.3)

Adjudication:

1. Complaint upheld

TalkTalk said T3I was a brand new, competitively priced calls package offering an unlimited number of anytime calls in the UK and to 28 countries worldwide. They

said broadband was not part of this package but was an added optional service also available to buy separately at a cost of £35 a month. They said broadband was provided at no extra cost to all subscribers of the T3I calls package and could therefore be considered similar to many other "buy one get one free" offers or, for example, free insurance offered on a new car. They had also relied on the CAP (Non-broadcast) Help Note on "Free" Claims for Internet Packages currently displayed on the CAP Website which stated "marketers may claim their services are "free" where consumers pay nothing for each element of the service but are required to pay for another separate item. An example would be offering a completely free Internet service but requiring customers to make a certain amount of non-internet related calls each month or subscribe to a cable television service". They said the connection fee also applied to people who just took out the T3I calls package and was associated with the calls package rather than broadband. They said they had received no complaints directly from consumers and that over 340,000 customers had opted to take broadband from them when signing up to T3I with over 10,000 customers opting to take T3I without broadband. They said they recognised the principle of the CAP (Non-broadcast) Help Note on "Free" Claims that attributing an optional extra to a new service and calling it "free" was not permitted because it could be used as a way for advertisers to inflate the price of a service to cover the extra "free" element. They assured the ASA that this was not the case for TalkTalk's T3I calls package.

The Broadcast Advertising Clearance Centre (BACC) said they had considered very carefully whether to allow TalkTalk to refer to their broadband as "free" in the TV ad. They said they understood that the T3I calls package had been available beforehand without the broadband element. They decided that, because they understood it was an existing package and because the T3I calls package was available without taking broadband and because the connection charge and monthly cost would be the same for people who chose not to take the broadband option, the broadband was additional to the calls package and therefore could be considered free.

The ASA noted that the T3I calls package cost only £1 per month more than the next-highest-priced "T3" calls package and included some international calls. We also accepted that customers had a choice as to whether to take broadband and that broadband was available separately, albeit for £35 a month. We also noted that TalkTalk had relied in good faith on the CAP (Non-broadcast) Help Note on "Free" Claims for Internet Packages in order to claim the broadband element was "free". However, we understood that CAP intended this help note to relate only to existing packages. We did not therefore consider it applied because T3I was a brand new package. Also, CAP (Broadcast) Help Note on "Free" claims stated "... if an extra element is added ... to form a more attractive product, the element could be described as "free" for a reasonable period as long as the original package (without the extra element) had been available beforehand at the same price, again for a reasonable period."

We considered that, because T3I was a brand new package, and the intention was that the broadband element would always be an optional extra to that package, the broadband was, to all intents and purposes, a constituent part of the new T3I package; it was only available as an option to people who paid a connection charge to sign up and who continued to pay a monthly charge. We considered this made

broadband an intrinsic part of the new T3I calls package which made it different to "free insurance" or "buy one get one free offers". Although we acknowledged that the price difference of T3I had not been inflated beyond that of equivalent competitor's call packages we still considered that the broadband element should not have been described as "free".

We told TalkTalk to seek CAP Copy Advice before using "free" in future non-broadcast advertising and that the claim be removed.

On this point, the TV ad breached CAP (Broadcast) TV Advertising Standards Code rules 5.1 (Misleading advertising), 5.2.1 (Evidence) and 5.2.4 (Use of free).

On this point the CD promotion and press ad breached CAP Code Clauses 3.1 (Substantiation) and 7.1 (Truthfulness).

2. Complaint upheld

TalkTalk said the broadband was free and would be free forever as they had no plans to charge for it. They said it was not an introductory offer and the claim "free forever" made this clear to consumers. They said the use of "forever" was driven by their initial market research where customers said they would view the offer as "too good to be true" such that customers would expect a time limit to apply if "forever" was not used.

The BACC said they were already of the opinion that TalkTalk broadband could only be "free" for a reasonable period of time, after which consumers would expect to receive it for that cost and it would therefore become an "inclusive" part of any charge made to receive it. However they said it would be unduly literal to forbid the use of "forever" during the period in which they had thought it was permissible to refer to the broadband as "free". They said for the customers who signed up whilst it was "free" it would be "free forever" as they would always receive it at no extra cost. They said this differentiated it from a promotional offer in which, for example, it would be "free for six months" after which a charge would apply.

We noted that the offer was not introductory. However, as we did not consider the broadband could be described as free (as outlined in point 1 above) we considered the claim "free forever" to be misleading. Furthermore, even if the broadband could be described as "free" we did not consider it was possible for TalkTalk to substantiate the claim "free forever". Inevitably, for those people who had signed up to the offer when it was advertised as "free", the broadband would become "inclusive" after a reasonable period of time because they would continue to pay £20.99 a month. The benefit of "free" broadband would therefore stop once it became inclusive because customer's future payments would be for an "inclusive" rather than "free" aspect of what they were paying for.

On this point, the TV ad breached CAP (Broadcast) TV Advertising Standards Code rule 5.1 (Misleading advertising).

On this point the CD promotion and press ad breached CAP Code Clause 7.1 (Truthfulness).

3. Complaint upheld

TalkTalk said all their advertising made clear that the service was subject to availability, which was industry practice. They said in view of the complaints they intended to include a sticker on their in-store posters to reinforce this message and to ask people to check availability on the TalkTalk website. They said they had certainly not intended to mislead people about whether they would have to pay £10 per month and the charge was only applied to those BT exchanges that TalkTalk was not going to unbundle. They said customers could not proceed with an order without first being informed about whether the £10 per month charge would apply to them. They said they planned to "unbundle" 1000 exchanges, which meant they would install their own equipment in those BT exchanges. This would give them access to 70% of the population and enable them to provide those people with broadband at no extra cost.

The BACC said the TV ad included the onscreen text "Subject to availability" which made clear to all viewers that they may not be able to receive the service.

We considered that "Subject to availability" was not sufficiently clear to highlight to consumers that the TalkTalk broadband service was only available without an extra charge to homes that were connected to an exchange which TalkTalk had (or proposed to) "unbundle". We considered that "Subject to availability" was ambiguous and could have been interpreted by consumers to mean that availability was limited, or that it was dependent on technical issues outside of TalkTalk's control. Furthermore the CD Promotion only referred to the availability of the 8 Meg download speed, not the broadband service in general. We welcomed the proposed changes TalkTalk planned to make and we told them to seek CAP Copy Advice on how best to explain the availability of their service in their non-broadcast advertising.

On this point, the TV ad breached CAP (Broadcast) TV Advertising Standards Code rules 5.1 (Misleading advertising) and 5.2.3 (Qualifications).

On this point the CD promotion and press ad breached CAP Code Clause 7.1 (Truthfulness) and 30.2 (Availability).

4. Not upheld

TalkTalk said demand for the service was much higher than anticipated and they were working as hard as they could to enable the broadband as soon as possible for all people who had signed up. They said the likely timescale for enabling broadband was made clear through their website, which people had to use to check availability before signing up. They said their staff used the same system in shops and over the telephone and therefore all customers would know how long the delay was likely to be before signing up.

The BACC said they did not think people would be put off signing up to the T31 package just because the broadband would take 10 weeks to set up.

We accepted that the delays were partly caused by exceptional demand for the service. We considered it would have been extremely difficult to accurately measure the likely response to the offer. We noted that most broadband services took some time to set up and people would therefore expect a delay of some kind, although not

usually as long as 10 weeks. Given the difficulties in anticipating demand, we accepted, in this instance, that it would have been difficult for TalkTalk to accurately reflect in their advertising when first broadcast/published that there would be a considerable delay in the broadband service for some customers. However we advised TalkTalk that, should the delays persist, we would expect them to reflect this in any future advertising so that potential customers are aware from the advertising itself of the problems rather than having to rely on information from TalkTalks' website or their staff.

On this point we investigated the TV ad under CAP (Broadcast) TV Advertising Standards Code rule 5.1 (Misleading advertising) and 5.2.3 (Qualifications) but did not find it in breach.

On this point we investigated the CD promotion and press ad under CAP Code Clause 30.1 (Availability) but did not find them in breach.

The ads must not be broadcast or published again in their current form. We told TalkTalk to seek CAP Copy Advice on how best to explain the availability of their service and before using "free" in their non-broadcast advertising.

The ad breached CAP Code clauses 3.1 (Substantiation), 7.1 (Truthfulness), 32.3 (Free offers and free trials).

Response

BT said, since the end of June 2006, they had given new subscribers to their Total Broadband packages the choice of a 12-month or an 18-month contract, whereas they had previously been able to have only a 12 month contract.

BT said, because it was fundamentally the same as the existing 12-month contract but included different pricing options and additional features such as internet calls, the 18-month contract was not a new package. They argued that the internet calls were a free part of an existing package. They said internet calls were offered to all BT customers without charge, regardless of which package they subscribed to.

Assessment

Upheld

The ASA considered that, because the contract length in the 18-month BT package was of longer duration than that in previously offered packages and was therefore more onerous on the consumer, it was a new package. We considered that the internet phone calls were an inclusive part of that new package and that they should therefore not be described as "free".

We considered that, because ads (a) and (b) were aimed at new customers for the 18-month contract only, it was misleading to describe the calls as free in those ads.

We noted ad (c) advertised both the 12-and 18-month BT Total Broadband packages. We considered that, because they had been added to an existing package at no cost, it was not misleading to describe the internet calls used by subscribers to the 12-month contract as "free". However, because the internet calls could not be described as "free" to potential subscribers to the 18-month contract, we considered that it was misleading to describe the internet calls as free in ad (c).

The ads breached CAP Code clauses 7.1 (Truthfulness) and 32.3 (Free offers and free trials).

Action

We told BT to ensure in future that they did not refer to the internet calls included in their new 18-month package as free.

Adjudication of the ASA Council (Non-broadcast)