

OFCOM

Broadcasting Code Review: Commercial References in Radio Programming: Consultation

A response by the Advertising Association.

September 2010

1. About the Advertising Association

1.1 The Advertising Association represents the entirety of the advertising and promotional marketing industries, including advertisers, agencies, media and support services in the UK. In 2009, advertising expenditure was £14.5bn.

1.2 Advertising is crucial to a competitive market in products and services and is vital to the funding of culture and sporting events. We are one of the UK's most important creative industries, employing nearly 250,000 people, and providing £6.2bn gross added value to the UK economy each year. Further information about the organisation is available at: <http://www.adassoc.org.uk/>

2. Commercial references in radio broadcasts.

2.1 The Advertising Association supports the principle of commercial references in radio, and believes that additional freedom in commercial communications will benefit broadcasters, advertisers, agencies and consumers.

2.2 The additional revenues that a significant liberalisation would generate will help to make commercial radio more financially secure, and provide additional funds for innovative programming. Additionally it will widen the access for advertisers and agencies to the important medium of commercial radio.

2.3 The Advertising Association is pleased that Ofcom is looking at options to liberalise commercial communications on commercial radio in the UK at the same time as exploring options for more liberal commercial communications on television. It is sensible that radio is not left grappling with a substantially more restrictive regulatory regime than television.

Part 2.

Response to specific consultation questions.

Option A: 'Do nothing' and maintain the principle of separation

Question 1 (a): Do you consider that Option A should be adopted by Ofcom?

No, this option should not be adopted by Ofcom.

Question 1 (b): If so, do you wish to comment on Option A?

No

Question 1 (c): If not, please explain why. You may wish to respond to this under Question 2 below under 'Alternative approaches'.

The Advertising Association does not believe continuing with the present system is compatible with increasing commercial freedoms and providing new revenue streams for broadcasters. The principle of separation will need to be removed if revision of the Broadcasting Code is to represent a meaningful liberalisation.

Question 1 (d): Do you have any comments on the rule set for Option A above? If so, please refer to any individual rules by reference to their current rule numbers.

No

Question 1 (e): Do you agree with our assessment of the impact, including in relation to equality issues, of Option A on listeners, the radio industry and any other parties?

Given that this route represents maintaining the status quo we are confident that Ofcom's assessment is likely to be extremely accurate.

Question 1 (f): If not, please explain why, providing any evidence or data you have to support your answer.

Alternative approaches

Question 2 (a): Do you wish to suggest an alternative approach in relation to the regulation of commercial communications on radio?

No

Question 2 (b): If so please outline your proposals, which should comply with relevant legislation (including the Communications Act 2003, Article 10 of the European Convention on Human Rights and Schedule 1 of The Consumer Protection from Unfair Trading Regulations 2008)

N/A

Option B: Maintains the principle of separation but provides a defined set of exemptions

Question 3 (a): Do you consider that Option B should be adopted by Ofcom?

No

Question 3 (b): If so, do you wish to comment on Option B? If you responded to the 2009 Code Consultation you may wish to refer Ofcom to your 2009 response.

N/A

Question 3 (c): If not, please explain why. Again, if you responded to the 2009 Code Consultation you may wish to refer Ofcom to your 2009 response.

The Advertising Association does not believe continuing with the present system is compatible with increasing commercial freedoms and providing new revenue streams for broadcasters. Option B retains much of the inflexibility of the present system and in terms of allowing freedom to broadcasters, it compares unfavourably with the liberalisation of commercial communication rules in television.

The principle of separation will need to be altered more substantially if revision of the Broadcasting Code is to open up new revenue streams for broadcasters and new opportunities for agencies and advertisers.

Question 3 (d): Do you agree with our approach to the issue of not-for-profit funders? If you responded to the 2009 Code Consultation you may wish to refer to Ofcom's 2009 response on the issue of Public Information Programming.

Given we do not believe that Option B should be adopted by Ofcom, we do not feel it relevant to express any views here.

Question 3 (e): Do you have any comments on the rule set for Option B. If so, please refer to any individual rules by reference to the proposed rule numbers. You may also wish to outline any further exemptions (to the separation between commercial communications and spot ads) beyond those referred to in the rule set above.

No

Question 3 (f): Do you agree with our assessment of the impact, including in relation to equality issues, of Option B on listeners, the radio industry and any other parties?

Yes

Question 3 (g): If not, please explain why, providing any evidence or data you have to support your answer.

N/A

Option C: Allows the integration of commercial communications and programming (except in relation to spot ads)

Question 4 (a): Do you consider that Option C should be adopted by Ofcom?

Yes, the Advertising Association believe that Option C should be adopted by Ofcom. We believe that the BCAP code, as well as consumers' awareness of the funding model of commercial radio provides sufficient protection for consumers, while also allowing broadcasters to exploit a new revenue stream. The transparency principle, which the Advertising Association is committed to, will provide listeners with extra protection and reassurance.

This new revenue will make commercial radio stations more financially secure, free up more money for investment in the content that consumers enjoy and boost advertiser and agency investment in commercial communications on radio.

Question 4 (b): If not, please explain why.

N/A

Question 4 (c): Do you agree with our approach to the issue of additional prohibitions or restrictions? Do you agree with our approach to a proposed review period? In particular do you wish to comment on the criteria which could govern a future review?

We agree with Ofcom's view that the restrictions and prohibitions provided in the BCAP Code, together with the different nature of radio audiences, programming and consumption mean that it is not necessary to include additional consumer protections in commercial references on radio. The AA believes that additional restrictions will not necessarily provide extra protection for the public, but would hinder broadcasters and advertisers in exploiting this new revenue stream.

We believe Ofcom will need to be aware of the "complaints and issues" raised by self-appointed pressure groups and balance this with feedback from the general public, before embarking on any review on these bases.

Question 4 (d): Do you agree with our proposed approach prohibiting commercial references in programming primarily aimed at children and the related guidance we propose.

Ofcom proposes that, under Option C, the use of commercial references integrated within children's radio programming would be prohibited. We believe that this proposal is unnecessary, for the following reasons:

- *The BCAP Code already includes a rule making clear that adverts must avoid anything likely to condone or encourage poor nutritional habits or an unhealthy lifestyle, especially to children. As it is proposed that any commercial communication included in radio programming must comply with all the relevant requirements of the BCAP Broadcast Advertising Standards Code, we believe that this requirement will provide children with sufficient protection and complies with the requirement within the 2003 Communications Act 'that persons under the age of eighteen are protected'.*

- *In 2007, when the advertising of HFSS foods and drinks around children's TV programming was prohibited, it was felt to be unnecessary to extend the same restriction to children's radio programming, given radio's audience profile and the nature of radio output and listening. The same factors behind this decision remain. As Ofcom states, the 'immediate nature of the signaling of commercial communications on radio provides additional protections for listeners'. Commercial communications in radio programming exist in a very different manner to product placement on TV and should therefore not be considered comparable.*

- *We believe those responsible for radio programming primarily aimed at children would adopt a highly responsible attitude towards the use of commercial communications in children's radio programming. Already Fun Kids' (the station that will be most affected by this proposal) overarching principle is that commercial messages carried on the station are focused more on parents and carers, not children. In addition, the station does not carry commercial messages for fast food, carbonated drinks or sweets, and this policy will continue indefinitely, and scripts all of their own promotions, therefore securing complete control over output.*

Question 4 (e): Do you agree with our proposed approach to consumer affairs

We do not believe there is the need for additional regulation around consumer affairs programming. We are also keen to reflect the fact that some of our members believe that broadcasters should be allowed to place sponsorship credits around news bulletins (though not in them), and that this would open up a significant revenue stream.

Question 4 (f): Do you agree with our approach to the issue of not-for-profit funders? In particular do you wish to comment on the range of safeguards which would be in place?

Yes; we believe the built-in safeguards are adequate.

Question 4 (g): Do you agree with our approach to the issue of the selection or rotation of music? In particular do you wish to comment on our proposed approach in relation to the Public File guidelines, and our proposed approach to related Code Guidance, including the issue of appropriate intervals for, and content of, broadcast messages directing listeners to the Public File on stations' websites? You are also welcome to provide comments in relation to the selection or rotation of music in programming primarily aimed at children.

Yes, we believe that the signalling of commercial arrangements and the transparency this affords the listener should be extended to music where relevant.

Question 4 (h): Do you have any comments on the rule set for Option C (above)? If so, please refer to any individual rules by reference to the proposed rule numbers set out above.

No

Question 4 (i): Do you have any comments on the discussion on guidance for Option C (above)?

No

Question 4 (j): Do you agree with our assessment of the impact, including in relation to equality issues, of Option C on listeners, the radio industry and any other parties?

Yes

Question 4 (k): If not, please explain why, providing any evidence or data you have to support your response.

N/A

Option D: Allows the integration of commercial communications and programming (including in relation to spot ads)

Question 5 (a): Do you consider that Option D should be adopted by Ofcom?

The Advertising Association supports the implementation of Option C at the present time, but believes that the eventual implementation of Option D would provide the most favourable environment for broadcasters, advertisers (and through additional investment in programming) listeners.

Question 5 (b): If not, please explain why.

We believe that Option C represents significant liberalisation which will help to make commercial radio more financially secure, and provide additional funds for innovative programming. Additionally it will widen the access for advertisers and agencies to the important medium of commercial radio. We hope that Option C will act as a stepping stone to the eventual adoption of Option D, and we suggest

that in the review of the new arrangements – planned to start in 2 years – Option D is considered again.

Question 5 (c): If so, do you wish to make any comments about our approach to Option D?

N/A

Question 5 (d): Do you agree with our assessment of the impact, including in relation to equality issues, of Option D on listeners, the radio industry and any other parties?

Yes

Question 5 (e): If not, please explain why, providing any evidence or data you have to support your answer.

N/A