

# Pricing Regulatory Statement

Price comparisons and VAT claims in advertising



## Contents

Price comparisons .....	3
Value Added Tax (VAT) exclusive pricing claims.....	5
Contact us.....	7

## Price comparisons

The UK Advertising Codes are the responsibility of two industry Committees - the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) and are independently administered by the Advertising Standards Authority (ASA). The Codes require advertisements across media to be legal, decent, honest and truthful, promoting consumer trust in advertising and maintaining fair competition between businesses.

### Background

In March 2012, BCAP proposed to remove rule 3.39 from the UK Code of Broadcast Advertising (BCAP Code) which set out minimum requirements for a comparison between products based on their price:

*Advertisements that include a price comparison must state the basis of the comparison. Comparisons with a competitor price must be with the price for an identical or substantially equivalent product and must explain significant differences between the products. If the competitor offers more than one similar product, marketers should compare their price with the price for the competitor's product that is most similar to the advertised product.*

However, because the rule could be seen to prevent marketers from comparing items that were not identical or substantially similar, but nonetheless met the same need or intended purpose as required by comparative advertising law, BCAP proposed to remove it from the BCAP Code. BCAP's consultation document can be found [here](#).

### BCAP's evaluation of responses

BCAP received comments from advertisers that were divided on its proposal to delete rule 3.39 from the BCAP Code. Some respondents were pleased that BCAP acknowledged that comparisons between brand and non-branded products could be made as this reinforced the existing legal framework that favoured objective comparisons. However, others were concerned that the removal of the rule would result in a greater number of misleading comparative claims, for example, if two products met the same need or intended purpose, but varied markedly in their quality. In such cases, the respondents argued that the comparative claim would be misleading and unfair, because the significant differences in quality might not be fully explained to the consumer in an advertisement.

BCAP noted the concern of some respondents that the removal of 3.39 altogether would result in a proliferation of misleading comparative claims. However, it considered that the existing provisions in the Code, including rules 3.33 to 3.35, which govern comparisons with identified competitors in addition to general rules that prevent misleading advertising, offered sufficient protection for both businesses and consumers. Furthermore, removal of the requirement to compare with only identical or substantially similar products would not absolve advertisers of their responsibility to ensure their advertising does not mislead or the requirement that they hold substantiation for their claims.

## BCAP's decision

In light of the responses received, BCAP decided to retain the first sentence of rule 3.39 which requires that advertisements that include a price comparison must state the basis of the comparison. It considered the wording did not restrict legitimate comparative claims, and the wording would provide reassurance both to consumers and advertisers that the basis of comparisons would be clear in advertisements, for example, a retailer would be required to state if premium goods were being compared with non-premium goods. The revised rule now states:

**3.39** *Advertisements that include a price comparison must make the basis of the comparison clear.*

In addition to the retention of the above sentence in 3.39, BCAP has decided to add the words “which may include price” to the end of rule 3.35 to reflect fully the legal requirements for comparative claims and underscore the fact that comparisons with identifiable competitors, including those based on price, must be objective, representative and verifiable. The revised rule 3.35 now states:

**3.35** *Advertisements must objectively compare one or more material, relevant, verifiable and representative feature of those products, which may include price.*

The revised rules take immediate effect.

## CAP's decision following BCAP's consultation

After careful consideration of BCAP's consultation and the responses it received, CAP also decided it would be proportionate to also remove the requirement in the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing (CAP Code) that comparisons with a competitor's price must be with the price of an identical or substantially equivalent product. Like BCAP, CAP considered it would be useful to retain the first sentence of the rule so it was clear the Code required the basis of comparisons to be clear. The revised CAP Code rules state:

**3.35** *They must objectively compare one or more material, relevant, verifiable and representative feature of those products, which may include price.*

**3.39** *Marketing communications that include a price comparison must make the basis of the comparison clear.*

*CAP has published a Help Note on Retailers' Price Comparisons and a Help Note on Lowest Price Claims and Price Promises.*

The revised rules take immediate effect.

## Value Added Tax (VAT) exclusive pricing claims

The UK Advertising Codes are the responsibility of two industry Committees - the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) and are independently administered by the Advertising Standards Authority (ASA). The Codes require advertisements across media to be legal, decent, honest and truthful, promoting consumer trust in advertising and maintaining fair competition between businesses.

### Background

In March 2012, BCAP launched a full public consultation proposing an amendment to its rule on the use of VAT-exclusive claims to take account of when advertisers may be able to use VAT-exclusive prices. Previously, advertisers could only present VAT-exclusive prices in advertisements if they were seen or heard by an audience comprising only business consumers who paid no VAT. Often it was difficult for advertisers to be confident that their advertisements would be seen only by those who did not pay VAT or could recover VAT, potentially dissuading advertisers from making business to business claims in broadcast media. The rule stated:

**3.19** *Quoted prices must include non-optional taxes, duties, fees and charges that apply to all or most buyers. VAT-exclusive prices may be given only if all or most consumers pay no VAT or can recover VAT; advertisements that quote VAT-exclusive prices must prominently state the amount or rate of VAT payable if some consumers are likely to pay VAT.*

However, BCAP considered that it would be permissible to give VAT-exclusive prices in advertisements seen or heard by business and non-business consumers provided it was clear to whom the price claim was addressed. It consulted on whether the rule should focus on the audience of the price claim, rather than the audience of the advertisement. For example, if an advertisement appeared both to business and non-business consumers but claimed “trade price £X (excl VAT)” it would be clear to audiences that the VAT-exclusive price was addressed to business consumers who may recover the cost of VAT. In some circumstances, advertisers may wish to make claims within the same advertisement for both non-business and business consumer audiences and include two separate prices.

### BCAP’s evaluation of responses

BCAP received three responses in support of BCAP’s proposal. It received one substantive response objecting to its proposed amendment on the basis that it could allow some advertisers to give undue prominence to a VAT-exclusive price, even though most of the audience would have to pay a VAT-inclusive price. While BCAP understood the concerns of the respondent, it considered that if price claims were clearly addressed to the appropriate audience, they were unlikely to mislead audiences about the price they had to pay. It also noted the potential benefits to advertisers from the possibility to make more claims towards a business audience with greater certainty that they would comply with the Code.

## BCAP's Decision

After careful consideration and balancing the potential benefits with the risks identified by one respondent, BCAP concluded that the rule should be amended to allow VAT-exclusive claims to be made so long as they were clearly addressed to audiences that did not pay VAT or could recover VAT. BCAP did, however, consider that, on reflection, the wording of the rule could be amended further to make the intent of the rule clearer that quoted prices must be inclusive of non-optional taxes, duties, fees and charges, but that, VAT-exclusive prices may be given if those claims were clearly addressed to those that did not pay VAT or could recover VAT. Furthermore, it considered that the addition of the word 'such' in the final sentence would underscore the fact that if advertisers made VAT-exclusive price claims they must, in all circumstances, be accompanied by a prominent statement of the amount or rate of VAT payable.

The revised BCAP Code rule states:

**3.19** *Quoted prices must include non-optional taxes, duties, fees and charges that apply to all or most buyers. However, VAT-exclusive prices may be given if all those to whom the price claim is clearly addressed pay no VAT or can recover VAT. Such VAT-exclusive prices must be accompanied by a prominent statement of the amount or rate of VAT payable.*

The revised rule takes immediate effect.

## CAP's Decision

As noted in the [Consultation Document](#), CAP had already considered this issue in light of its Online Remit Extension and adopted a similar policy approach to that of BCAP. Following BCAP's consultation and revision to its proposed rule, CAP has decided to amend its equivalent rule in the CAP Code to ensure a consistent approach in both broadcast and non-broadcast advertising.

The revised rule in the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing states:

**3.18** *Quoted prices must include non-optional taxes, duties, fees and charges that apply to all or most buyers. However, VAT-exclusive prices may be given if all those to whom the price claim is clearly addressed pay no VAT or can recover VAT. Such VAT-exclusive prices must be accompanied by a prominent statement of the amount or rate of VAT payable.*


The revised rule takes immediate effect.

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