

## Consultation: Energy Labelling

### Evaluation Table

| CONSULTATION QUESTION: Do you agree to the wording of the proposed new CAP and BCAP rules? If not, please explain why. |   |   |  |
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|  | Respondent making points in favour of the proposal: | Summary of significant points:  | CAP and BCAP's (B/CAP's ) evaluation:  |
| 1.1.1  | Aldi Stores Limited                                 | <p>We welcome the 'first line' industry self-regulation mechanism proposed by DEFRA and agree that CAP and BCAP are the appropriate bodies to deliver this.</p> <p>As is the case with general advertising issues, we would hope that CAP and BCAP will be able to give guidance on subjective areas prior to publication should it be required.</p>  | B/CAP agrees.  |
| 1.1.2  | An organisation requesting confidentiality          | <p>Part 6, Clause 10 (2)</p> <p>- in the heating sector, most products will fall under the scope of the energy labelling directive, but there are a few exceptions - how will these be dealt with in the market place to ensure that no advantage or disadvantage exists on new/existing technologies eg Biomass and boilers over 400 kW.</p> <p>- 'making the product information available' - what is deemed a suitable timescale for marketers to provide the information from implementation of the codes (eg updating the current literature)?</p> | <p>PLEASE NOTE THAT THE B/CAP CONSULTATION QUOTES AN EARLIER VERSION OF THE ENERGY INFORMATION REGULATIONS 2011, THE CORRECT NUMBERING OF THE PROVISIONS ARE AS FOLLOWS:</p> <p><i>PART 4</i></p> <p><i>Information requirements</i></p> <p>9.—(1) Any person who offers any products regulated by an EU measure for sale, hire or hire-purchase or displays to end-users directly or indirectly by any means of distance selling, including the internet must bring to the attention of end-users information relating to the consumption of electric energy, and where relevant other essential resources during use, and any other supplementary information, by means of—</p> <p>(a) the fiche; and</p> <p>(b) the label related to the products,</p> <p>in accordance with the EU measure.</p> <p>(3) Any person who advertises a specific model of a product regulated by an EU measure must, when energy-related or price information is disclosed, include a reference to the energy efficiency class of the product as set out in the EU measure.</p> <p>The proposed new rules will apply to all products subject to delegated regulations. If respondents feel that the products which need to comply with the new rules create an inequitable situation in the marketplace they should raise their concerns with DEFRA and the European Commission. The ASA will only enforce the proposed rules against products subject to delegated regulations.</p> <p>The proposed new distance selling rule, like other Code rules in that section, seeks to ensure that consumers are provided with relevant information before they make a commitment. The proposed CAP rule states:</p> |

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|       |  |  | <p>9.10 Marketers must make product fiche information about products that fall under delegated regulations available to consumers before commitment.</p> <p>The proposed BCAP rule states:</p> <p>8.6 Advertisers must make product fiche information available about products that fall under delegated regulations to consumers before commitment.</p> <p>The delegated regulations begin to take effect from March 2012 at which point B/CAP expects all advertising to comply with the new Code rules.</p>   |
| 1.1.3 | An organisation requesting confidentiality | Part 6, clause 10 (3) - for marketing communications, every time the product is mentioned, does the energy class also need to be mentioned too, or is one reference per communication enough? Will this also refer to social media as well as traditional methods of communication?  | B/CAP will consider the need for guidance on the new rules in due course. The proposed Code rule states that advertisements for "specific energy-related products, subject to a delegated regulation, that include energy-related information or disclose price information, must include a reference to the product's energy efficiency class i.e. in the range A+++ to G" so each advertisement must contain a reference to the energy efficiency class. The CAP rules will apply to all media covered by the remit of the CAP Code which, as a result of the digital remit extension in March 2011, will cover marketing communications on marketers own websites and social media.                                       |
| 1.1.4 | Halfords                                   | We agree to the wording of the proposed new CAP and BCAP rules.  | B/CAP notes the respondent's agreement to its proposals.   |
| 1.1.5 | Trading Standards Institute (TSI)          | <p>CAP and BCAP express the view in the consultation that they would like to see the requirements made clear in the Codes, especially in so far as they relate to manufacturers and retailers. TSI would support this and welcomes any practical steps to assist businesses.</p> <p>The proposed wording in the consultation would appear to be satisfactory for the purposes of communicating the requirements.</p>   | B/CAP agrees.  |
| 1.1.6 | Trading Standards Institute (TSI)          | <p>TSI supports the intention of the Regulations which is to ensure that consumers are provided with full information about energy consumption to allow them to make informed choices about the products they buy.</p> <p>In November 2009, the National Measurement Office (NMO) was appointed as the Market Surveillance Authority (MSA) for the purposes of ensuring compliance with the Energy Using Products Framework Directive and the Energy Labelling Directive. Trading Standards retained responsibility for checking the requirement on retailers to display the energy label correctly, with the NMO taking responsibility for ensuring that the information being displayed was accurate and correct.</p> <p>The NMO has been nominated by the Secretary of State for Environment Food and Rural Affairs (Defra) to enforce the requirements of the Energy Information Regulations on her behalf.</p> <p>Trading Standards have been given responsibility for enforcing the requirements which relate to the displaying of information to consumers and providing technical and performance information in the form of a 'fiche' if requested.</p> | <p>B/CAP notes the comments of the respondent on the Energy Information Regulations.</p> <p>B/CAP understands that the requirements for the content of the 'fiche' are defined by the Energy Labelling Directive and its subsequent delegated regulations which are specific to each energy related product. This is not something on which B/CAP can offer guidance.</p> <p>B/CAP agree that the Energy Information Regulations should be interpreted in a way that is not overly burdensome for business and therefore considers that it is sufficient to make product fiche information available to consumers before they make a transactional commitment when the product is sold by any means of distance selling.</p> |

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|       |   | <p>In order to assist business in meeting the requirement, TSI would welcome guidance on what information the 'fiche' should contain and believes that it should not be too onerous.</p> <p>The 'fiche' is aimed at assisting consumers to make informed choices and, therefore, should provide the relevant and necessary information to fulfil this, without being burdensome for the business.</p>   |   |
|       | <b>Respondent making points against the proposal:</b> | <b>Summary of significant points:</b>   | <b>CAP and BCAP's evaluation:</b>   |
| 1.2.1 | Home Retail Group                                     | <p>We accept that the Secretary of State has the ability to delegate the enforcement of the legislation to third parties, however we would emphasize that this is a delegation of enforcement.</p> <p>The ASA may well be able to investigate alleged non compliances to determine if the legislation has been breached, however in the event that a non compliance is identified, that allegation of non compliance should be the subject of due legal process – the matter should be heard before a court, who will have to determine if the evidence exists to prove beyond all reasonable doubt that an offence has been committed.</p> <p>It would be inappropriate for the ASA to conclude that matter is a prima facie offence and publish that decision or apply any of its other sanctions, as that may be prejudicial, and potentially a breach of natural justice.</p> <p>The proposal for DEFRA to delegate this matter is therefore ill conceived as it confuses the requirement to investigate a criminal offence using due process, with a shortcut to handle complaints about legal non compliances through a non legal, self regulatory process.</p> | <p>The ASA is not a law enforcement body and enforces the Codes, not the law. Where necessary the Codes reflect legal provisions in order to assist marketers so they are aware of most of the requirements they have to abide by when creating advertisements. B/CAP's proposal provides marketers with certainty about how complaints about the Energy Information Regulations 2011 will be handled because the National Measurement Office and Trading Standards have agreed to forward complaints to the ASA in the first instance. B/CAP considers this will ensure that the requirements are interpreted consistently, thus creating an even playing field.</p> <p>If the ASA receives a complaint about the proposed new rules they will assess the complaint under the Code rules, not the law and their final adjudication will state whether the advertisement breached the Code, not the law. B/CAP does not consider this to be prejudicial or a breach of natural justice.</p>   |
| 1.2.2 | Home Retail Group                                     | <p>Home Retail Group does not agree with the proposed wording. The Group does not believe that the requirements of the legislation need to be laid out within the codes.</p> <p>We suggest that Energy Labelling does not need to be included as a separate entry as the CAP and BCAP code already include a requirement that marketing communications are legal (section 1.1 covers this.)</p> <p>There is no need for additional detail.</p> <p>CAP would be at liberty to provide guidance on the specifics of the legislation through CAP help notes or sector specific guidance. This approach would allow the Code to remain simple and uncluttered, applying to a wide range of legislation without the complexity of having different sections for differing pieces of legislation.</p>   | <p>See 1.2.1.</p> <p>B/CAP disagrees and considers that the proposed new rules accurately reflect the requirements in the Energy Information Regulations 2011.</p> <p>The Codes contain a clause to remind marketers of their responsibility to ensure their advertisements are legal but there are limitations to the application of that rule. The ASA usually invoke that rule when there is no other Code rule that can be cited and the breach of the law is reasonably clear cut. If the ASA uphold under this provision in the Code they would not determine that the advertiser had breached the law, but rather that the advertiser has failed to demonstrate the legality of their advertising. As explained above, the ASA is not a law enforcement body and it is not appropriate for the ASA to have to determine whether an advertiser has breached the Energy Information Regulations 2011 on each individual complaint it receives. B/CAP is of the view that it is pragmatic to include Code rules which reflect those legal provisions so that the ASA has a Code rule it can consider complaints against. Furthermore, B/CAP considers that the certainty the relationship between the ASA and DEFRA and the NMO provides will be beneficial to marketers.</p> <p>B/CAP will consider the need for guidance on the proposed rules in due course.</p> |
| 1.2.3 | Home Retail Group                                     | <p>We would suggest that the code is not changed at all; the NMO and trading standards community are briefed by DEFRA of the opinion</p>  | <p>The NMO and Trading Standards will only refer complaints to the ASA in the first instance if the advertising Codes incorporate the relevant provisions of the Energy Information</p>   |

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|  |  | <p>that complaints relating to energy labelling should be referred to the ASA in the first instance.</p> <p>The ASA having investigated the matter should refer any identified non compliance back to the relevant market surveillance authority for appropriate enforcement action following due legal process.</p> <p>This approach would allow the ASA to dismiss any complaints that turn out to be unjustified but also allows the ASA discretion to deal with matters informally, for example where a prima facie breach has been identified and the advertiser agrees to amend the advert voluntarily.</p> | <p>Regulations 2011. The ASA's processes and procedures must be clear and transparent so it is unlikely to be acceptable or pragmatic to marketers or consumers to refer each instance in which it considers an advertisement may be in breach back to the market surveillance authority, particularly when that authority may have referred the complaint to the ASA.</p> <p>B/CAP notes that if the ASA considers a complaint under the new proposed rules they will still retain the discretion to resolve complaints how they see fit, which may include informally resolving complaints where the marketer has agreed to amend the advertisement. The ASA complaint and investigation procedures can be found <a href="#">here</a>.</p> |
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