

Proposed amendments to CAP's rules on sales promotions

CAP's evaluation of responses



1. Introduction

The Committee of Advertising Practice (CAP) has consulted on proposed changes to its rules on sales promotions, in order to achieve greater consistency with UCPD & the CPRs. This document provides more detailed responses on specific comments received in relation to each proposed rule and question.

1.1 How to use this document

This document should be read alongside the original consultation document, which can be found [here](#).

2. List of respondents and their abbreviations used in this document

| | Organisation / Individual | Abbreviation |
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| 1 | LegalEyes | LE |
| 2 | Promo Veritas | PV |
| 3 | National Trading Standards Board and Association of Chief Trading Standards Officers | NTSB & ACTSO |
| 4 | Direct Marketing Association | DMA |
| 5 | E.ON Energy Solutions Ltd | EON |
| 6 | British Retail Consortium | BRC |
| 7 | Trading Standards in Scotland | SCOTSS |
| 8 | Trading Standards Institute | TSI |
| 9 | British Telecommunications | BT |
| 10 | Institute of Promotional Marketing | IPM |

Question 1

Proposed rule:

8.9 Promoters must be able to demonstrate that they have made a reasonable estimate of the likely response and either that they were capable of meeting that response or that consumers had sufficient information to make an informed decision on whether or not to participate - for example regarding any limitation on availability and the likely demand.

| 1. Do you agree with the amended wording of this rule? If not, please explain why. | | | |
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| | Respondent making comments on the proposal: | The respondents listed on the left supported CAP's proposed amendments. Some of them requested further information or made additional suggestions. Summary of significant points follows below: | CAP's evaluation: |
| 1.1 | PV | Considered that it would be helpful to include additional wording which ensures that the information is communicated clearly. | CAP considers this to be a helpful suggestion, which reflects article 7.2 of UCPD and will include it in the amended rule. |
| 1.2 | NTSB & ACTSO | Considered that the rule or supporting guidance should ensure the relevant information is communicated clearly Presented some queries about how compliance with the rule could be practically achieved | See above CAP will provide supporting guidance on the practical application of the rule in due course, in particular how expectations around how to achieve a 'reasonable estimate' could vary across different scenarios. |
| 1.3 | BRC | Considered this would be a sensible change to the rules, as it would allow promotions where there is limited stock available, and provided customers are aware of that fact, the promotion would be unlikely to contravene the principles of the Directive and Regulations. Expressed concern about how the rule would work in practice, where estimating demand may prove difficult, particularly for multi-platform retailers, and felt in particular that the third example given in the consultation could potentially give rise to a misleading situation. Suggested that CAP could delete 8.10 and amend 8.9 to include generic statements such as such as "subject to availability" for cases where demand cannot be accurately | As noted in the consultation document, there is the potential for any promotion to cause disappointment; the purpose of these rules, in line with the CPRs, is to provide all the information the consumer may need to decide whether to participate, which may then offset any disappointment they may experience if they ultimately fail to benefit from the promotion. CAP acknowledges the pressures of a fast-moving retail world and multi-channel promotions. CAP also considers that these developments make it increasingly important that consumers are able to have confidence in |

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| | | calculated. | <p>the integrity of a promotion. A promoter launching any kind of incentive should be aware of how quickly the product might run out, in order to manage its own processes and the expectations of the consumer. CAP considers that it is consistent with the CPRs to require promoters to be fully transparent about anticipated demand and communicate with the consumer the likelihood of them obtaining a promotional item, as indicated by this amended rule.</p> <p>CAP acknowledges the concerns presented here but did not intend the examples given to be exhaustive or definitive, rather to illustrate the kind of information it might be appropriate for a promoter to provide. In the examples given, the intention would be to give the consumer as much information as possible about whether they are likely to benefit from the promotion – by indicating the promoter’s best estimate of how long stock might last. CAP will develop guidance to support this rule in due course.</p> <p>CAP considers that the requirements of rule 8.10 are distinct from those set out in 8.9 and that it remains appropriate to keep those rules separate.</p> <p>As noted in Q3 below, CAP considers it would be helpful to change the order of the rules.</p> |
| 1.4 | DMA EON IPM SCOTSS TSI | The organisations listed on the left supported CAP’s proposed amendments without making further significant comments | |

Question 2

Proposed rule:

8.11 Promoters must not encourage the consumer to make a purchase or series of purchases as a precondition to applying for promotional items if the number of those items is limited, unless the limitation is sufficiently clear at each stage for the consumer accurately to assess whether participation is worthwhile.

| 2. Do you agree with the amended wording of this rule? If not, please explain why. | | | |
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| | Respondent making comments on the proposal: | The respondents listed on the left supported CAP's proposed amendment. Some of them requested further information or made additional suggestions. Summary of significant points follows below: | CAP's evaluation: |
| 2.1 | PV | Agreed with the recommendation, although suggest amending it to read 'is made sufficiently clear....' | CAP considers this to be a helpful addition and will include it in the new wording. |
| 2.2 | BRC | Believed this to be a sensible change, but would asked CAP to consider relaxing the prohibition on use of particular phrases in 8.10. | CAP's legal advice has not indicated that the present wording of 8.10 is inconsistent with UCPD/CPRs. CAP does not consider that 8.10 prohibits any particular phrase, rather it urges caution. |
| 2.3 | DMA EON IPM SCOTSS TSI | The organisations listed on the left supported CAP's proposed amendments without making further significant comments | |

Question 3

Proposed rule:

8.12 If promoters rely on being able to meet the estimated response as in rule 8.9 but are unable to supply demand for a promotional offer because of an unexpectedly high response or some other unanticipated factor outside their control, they must ensure relevant timely communication with applicants and consumers and offer a refund or a reasonable equivalent.

| 3. Do you agree with the amended wording of this rule? If not, please explain why. | | | |
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| | Respondent making | The respondents listed on the left supported CAP's proposed amendments. Many of them requested further information or made additional suggestions. Summary | CAP's evaluation: |
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| | comments on the proposal: | of significant points follows below: | |
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| 3.1 | PV | Agreed with the recommendation, but expressed concern that if read in isolation, the proposed rule might imply that if a promoter had no estimate or did not intend to rely on any estimate that they had prepared, then they would not be required to communicate with entrants or provide a refund or substitute product. | <p>After considering responses, CAP considers that it is appropriate to remove the reference to rule 8.9 here and reorder the rules to make the reference to estimated response clearer.</p> <p>CAP considers this rule makes it clear that all promoters make a reasonable estimate and then either meet it or not; if they know they will not meet the likely demand, they should give consumers sufficient information to make an informed decision on whether or not to participate. In all cases, promoters would be required to make an estimate of likely response at the outset; this rule relates to those who subsequently rely on being able to meet that estimate.</p> |
| 3.2 | NTSB & ACTSO | Suggested that at 8.12 the offer matches that referred to in the Package Travel Regulations for problems with holidays e.g. 'reasonable equivalent' should be changed to 'equivalent or better'. | After considering responses, CAP considers that 'reasonable substitute product' is more appropriate here. |
| 3.3 | BRC | <p>Accepted the spirit of this change but considered it needed to be made clearer whether this applies only if promoters had made a reasonable estimate.</p> <p>Also noted that the consultation was incorrect to link this rule to banned practice 19 in UCPD. Noted that under contract law it may sometimes be appropriate to offer either a refund or reasonable substitute.</p> | <p>CAP considers that 8.9 makes clear that all promoters must make a reasonable estimate and then either meet that estimate or provide sufficient information about the likely demand.</p> <p>After considering responses, CAP agrees it was incorrect to link this amendment to prohibited practice 19, which does deal with competitions and prize promotions; these are dealt with separately at 8.15.1. This rule reflects contract law, under which it may be appropriate for a consumer to claim a refund or a reasonable substitute product, depending on the circumstances.</p> <p>After considering responses, CAP has further amended the proposed rule.</p> |
| 3.4 | BT | Noted that it was incorrect to link this rule to banned practice 19. | See above |

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| 3.5 | DMA EON SCOTSS TSI IPM | The organisations listed on the left supported CAP's proposed amendments without making further significant comments | |
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Question 4

CAP proposed to delete rule 8.16:

Promoters must normally fulfil applications within 30 days in accordance with rule 9.4 and refund money in accordance with rule 9.5.

| 4. Do you agree that the deletion of this rule is necessary and that the harm described will continue to be prevented? | | | |
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| | Respondent making comments on the proposal: | The organisations listed on the left supported CAP's proposal to delete. Many of them requested additional guidance as to what the deletion would mean in practice. Summary of significant points follows below: | CAP's evaluation: |
| 4.1 | NTSB & ACTSO | Agree with this proposed change, provided the issue is covered by the Distance Selling Rules. | CAP notes that the distance selling rules are themselves subject to consultation. As noted in the rationale for deleting this rule, the harm described by this rule remains to be prevented by 8.15.1. In terms of the timeframe specified in rule 8.16, CAP considers on reflection that it would be appropriate to include a reference to the industry practice of normally fulfilling promotions within 30 days, which also reflects consumer expectations. CAP has further amended rule 8.15.1 to reflect this. |
| 4.2 | DMA PV EON BRC TSI SCOTSS IPM | The organisations listed on the left supported CAP's proposal to delete without making further significant comments | |

Question 5

Proposed rule:

8.17 Marketing communications or other material referring to sales promotions must communicate all applicable significant conditions the omission of which are likely to mislead. Significant conditions may, depending on the circumstances, include:

| 5. Do you agree with the amended wording of this rule? If not, please explain why. | | | |
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| | Respondent making comments on the proposal: | The organisations listed on the left supported CAP's proposed amendments. Many of them requested additional guidance as to what the amendments would mean in practice. Summary of significant points follows below: | CAP's evaluation: |
| 5.1 | PV | <p>Agreed with the principle but suggested a slight amendment:</p> <p>All marketing communications or other material referring to sales promotions must communicate all applicable significant conditions where the omission of such conditions or information is likely to mislead. Significant conditions may, depending on the circumstances, include:</p> | CAP considers this to be a helpful suggestion and has further amended the rule to include the latter amendment. |
| 5.2 | EON TSI NTSB & ACTSO DMA SCOTSS IPM | The organisations listed on the left supported CAP's proposed amendments without making further significant comments | |
| | | The organisations listed on the left opposed CAP's proposed amendments. Summary of significant points follows below: | |
| 5.3 | BRC | <p>Disagreed with this proposal and did not want to exclude the possibility of having material that did not enable a consumer to take up the promotion but which nonetheless advertised the promotion</p> <p>In addition considered that the ASA's remit should not include point of sale material or on-pack labelling.</p> <p>Preferred the ASA to stick to the wording of the UCPD/CPRs.</p> | <p>CAP notes that the proposed wording requires relevant significant conditions to be included in material where its omission is likely to mislead. This allows for flexibility in cases where the material is not aimed at encouraging the consumer to make a transactional decision.</p> <p>CAP also considers that it remains appropriate for the ASA's remit to cover POS and on-pack in relation to sales promotions.</p> |

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| | | | CAP considers that it is appropriate for its rules to reflect the requirements of UCPD/CPRs. |
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Question 6

Proposed rule:

8.17.4.b Unless the promotional pack includes the promotional item or prize and the only limit is the availability of that pack, prize promotions and promotions addressed to or targeted at children are likely to need a closing date

| 6. Do you agree with the amended wording of this rule? If not, please explain why. | | | |
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| 6.1 | NTSB & ACTSO EON BRC SCOTSS TSI | The organisations listed on the left supported CAP’s proposed amendments without making further significant comments | |
| | | The organisations listed on the left opposed CAP’s proposed amendment. Summary of significant points follows below: | |
| 6.2 | PV | Would prefer CAP to provide greater protection than UCPD allows. | <p>CAP’s legal advice indicates it would be unlawful for its rules to exceed the requirements of UCPD.</p> <p>CAP acknowledges that UCPD envisages particular protection for children, but does not prohibit promoters from running promotions addressed to children from running promotions without an end date in all circumstances.</p> <p>CAP proposes to draft guidance to support this rule which may remind promoters that promotions addressed to or targeted at children will be likely to need a closing date in most cases and promoters which do not include one will need to demonstrate to the ASA that its absence has not caused detriment to consumers.</p> |
| 6.3 | DMA | Felt that it was important to retain greater protection for children, and if CAP is prevented from doing so by UCPD, asked that guidance should clearly indicate when a closing date should be provided for a sales promotion addressed to or targeted at children. | See above. |

Question 7

8.17.4.d Promoters **must** state if the deadline for responding to undated promotional material will be calculated from the date the material was received by consumers, **if the omission of that information is likely to mislead**

| 7. Do you agree with the amended wording of this rule? If not, please explain why. | | | |
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| 7.1 | PV NTSB & ACTSO DMA EON BRC SCOTSS TSI IPM | The organisations listed on the left supported CAP's proposed amendments without making further significant comments | |

Question 8

8.17.4.e Unless circumstances outside the reasonable control of the promoter make it unavoidable, closing dates must not be changed **in a way that is likely to disadvantage the consumer**. If **because of unavoidable circumstances** they are changed, promoters must still do everything reasonable to ensure that consumers who participated within the original terms are not disadvantaged.

| 8. Do you agree with the amended wording of this rule? If not, please explain why. | | | |
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| | Respondent making comments on the proposal: | The organisations listed on the left supported CAP's proposed amendments. Many of them requested additional guidance as to what the amendments would mean in practice. Summary of significant points follows below: | CAP's evaluation: |
| 8.1 | PV | Agree with the principle but suggested that the phrasing could be helpfully amended to clarify that dates should not be changed unless circumstances out of the promoter's control made it unavoidable and a change would not disadvantage consumers. Proposed additional amendments: 8.17.4.e Closing dates must not be changed, unless circumstances outside the reasonable control of the promoter make it unavoidable AND the change does not disadvantage the consumer. If because of unavoidable circumstances a closing date is | CAP has considered responses and made further amendments which clarify the limited circumstances in which it may be acceptable to change a closing date. CAP considers this is consistent with UCPD, as well as being helpful for promoters and consumers. |

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| | | changed, promoters must still do everything reasonable to ensure that consumers who participated within the original terms are not disadvantaged. | |
| 8.2 | NTSB & ACTSO SCOTSS | Agreed with CAP's proposed wording and accepted it was necessary to reflect UCPD. Also noted it seemed unlikely that the changing of a closure date, which did not cause any consumer disadvantage would have led to any complaints. | See above |
| 8.3 | DMA | Noted that changing closing dates should be discouraged, but recognised that circumstances outside the promoter's control may sometimes make it necessary. Considered that the ASA was used to assessing the impact of promoters' actions and would continue to prevent dates being changed to the detriment of consumers. | See above |
| 8.4 | BRC | Considered that the proposed wording was not entirely clear. Felt it would be helpful for the rule to clarify circumstances under which those participating might be disadvantaged by a chance – noting that in cases where a prize is on offer, any extension of a closing date is likely to increase the pool of participants and decrease the chances of winning for those participants who had entered under the original terms. Also considered that it was legitimate to run promotions without closing dates in some circumstances. | See above CAP will develop guidance to support this rule in due course, which could expand on the kind of circumstances that the ASA would consider to be 'unavoidable', and also changes to closing dates which were unlikely to disadvantage participants. CAP's additional rules on closing dates (8.17.4) set out circumstances where it may be deemed defensible not to include a closing date |
| 8.5 | BT | Welcomed CAP's proposal to clarify that promoters may extend the closing date of offers, noting that BIS and the OFT had envisaged that a closing date could be changed if the change was clearly communicated and the original date had been made in good faith, a principle that they felt was also reflected in the CPRs Considered in addition that there was a distinction to be drawn between different types of promotions, which may give different chances of consumers being disadvantaged by a change to the original closing date. Suggested that CAP re-word the proposed rule 8.17.4.3 to make it permissive rather than prohibitive, e.g. "A closing date may be changed either where it is unlikely to cause any consumer disadvantage, or where circumstances outside the promoters' control make a change unavoidable.' | See above CAP does not consider it is necessary to distinguish between different types of promotions here. CAP considers that this rule should indicate that closing dates should only be changed under very specific and limited circumstances, and it is appropriate to set it out in a way that reflects that policy. |
| 8.6 | EON TSI IPM | The organisations listed on the left supported CAP's proposed amendments without making further significant comments | |

Question 9

Proposed rule:

8.17.8 Availability The availability of promotional packs if it is not obvious; for example, if promotional packs could become unavailable before the stated closing date of the offer. **Any limitation on availability should be sufficiently clear for a consumer to assess whether participation is worthwhile.**

| 9. Do you agree with the amended wording of this rule? If not, please explain why. | | | |
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| | Respondent making comments on the proposal: | The organisations listed on the left supported CAP’s proposed amendment. Many of them requested additional guidance as to what the amendment would mean in practice. Summary of significant points follows below: | CAP’s evaluation: |
| 9.1 | PV DMA NTSB & ACTSO EON BRC SCOTSS TSI IPM | The organisations listed on the left supported CAP’s proposed amendment without making further significant comments | |

Question 10

Proposed rule:

8.19 Promoters must not claim that consumers have won a prize if they have not. The distinction between prizes and gifts, or equivalent benefits, must always be clear. Ordinarily, consumers may expect an item offered to a significant proportion of participants to be described as a ‘gift’, while an item offered to a small minority may be more likely to be described as a ‘prize’. If a promotion offers a gift to a significant proportion and a prize to a minority, special care is needed to avoid confusing the two: the promotion must, for example, state clearly that consumers “qualify” for the gift but have merely an opportunity to win the prize. If a promotion includes, in a list of prizes, a gift for which consumers have qualified, the promoter must distinguish clearly between the two.

| 10. Do you agree with the amended wording of this rule? If not, please explain why. | | | |
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| 10.1 | DMA | The organisations listed on the left supported CAP’s proposed amendment | |

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| PV NTSB & ACTSO EON BRC SCOTSS TSI | without making further significant comments | |
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Question 11

Proposed rule:

8.23 Promoters must avoid rules that are too complex to be understood by potential participants and only exceptionally supplement conditions of entry with extra rules. If extra rules cannot be avoided, promoters must tell participants how to obtain them; the rules must contain nothing that could reasonably have influenced consumers against buying or participating.

| 11. Do you agree with the amended wording of this rule? If not, please explain why. | | | |
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| | Respondent making comments on the proposal: | The organisations listed on the left supported CAP's proposed amendment. Many of them requested additional guidance as to what the amendment would mean in practice. Summary of significant points follows below: | CAP's evaluation: |
| 11.1 | PV | Agreed with the principle but expressed concerns about interpretation and proposed two additional amendments: 8.23 Promoters must avoid rules that are overly complex and unlikely to be understood by a significant proportion of potential participants and only exceptionally supplement conditions of entry with extra rules. If extra rules cannot be avoided, promoters must tell participants how to obtain them and the amended rules must contain nothing that could reasonably have influenced consumers against buying or participating. | After considering responses, CAP has further amended the rule. |
| 11.2 | NTSB & ACTSO | Agreed but suggested it would be clearer for the rule to state 'they must only exceptionally supplement...' or "and must only supplement conditions of entry with extra rules in circumstances where this cannot be avoided". | See above |
| 11.3 | SCOTSS | Agreed, but would prefer rule to state 'they must only exceptionally supplement...' | See above |
| 11.4 | BRC | Agreed but suggested that the potential participants should be changed to the average consumer on the grounds that the makeup of potential participants cannot be known. | CAP agrees that the average consumer test is likely to be applied here by the ASA, but considers it inappropriate to refer to that legal |

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| | | | test in its non-statutory rules. After considering responses, CAP has further amended the rule in a way that gives the ASA scope to apply that test where appropriate. |
| 11.5 | DMA EON TSI IPM | The organisations listed on the left supported CAP's proposed amendments without making further significant comments | |

Question 12

Proposed rule:

8.25 Participants in instant-win promotions must get their winnings at once or must know immediately what they have won and how to claim without delay, cost or administrative barriers. Instant-win tickets, tokens or numbers must be awarded on a fair and random basis and verification must take the form of an independently audited statement that all prizes have been distributed, or made available for distribution, in that manner.

CAP proposed to delete 'unreasonable'[cost]

| 12. Do you agree with the amended wording of this rule? If not, please explain why. | | | |
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| | Respondent making comments on the proposal: | The organisations listed on the left supported CAP's proposed amendments. Many of them requested additional guidance as to what the amendment would mean in practice. Summary of significant points follows below: | CAP's evaluation: |
| 12.1 | DMA EON NTSB & ACTSO BRC SCOTSS TSI IPM | The organisations listed on the left supported CAP's proposed amendment without making further significant comments | |
| | | The organisations listed on the left opposed CAP's proposed amendment or requested clarification. Summary of significant points follows below: | |
| 12.2 | PV | Raised concerns over practical applications of this rule | CAP considers that its proposed amendment is consistent with the clear case law. The additional examples raised by the respondent |

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| | | | relate to how to interpret the rule – such examples are more appropriate to be addressed in CAP guidance than the rule itself. |
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Question 13

Proposed rule:

8.28 Participants must be able to retain conditions or easily access them throughout the promotion. In addition to rule 8.17, prize promotions are likely to be required to specify clearly before or at the time of entry:

| 13. Do you agree with the amended wording of this rule? If not, please explain why. | | | |
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| | Respondent making comments on the proposal: | The organisations listed on the left supported CAP’s proposed amendment. Many of them requested additional guidance as to what the amendment would mean in practice. Summary of significant points follows below: | CAP’s evaluation: |
| 13.1 | NTSB & ACTSO | Agreed with the rationale for amending this rule, but suggested some amendments to add clarity | CAP has considered responses and agrees that it would be helpful to be more specific about the intention of this rule, which is to be less prescriptive than previously, while continuing to require promoters to provide relevant information where its omission is likely to mislead. CAP has made further amendments which reflect this. |
| 13.2 | BRC | Considered that wording such as “could include” or “may include” would be preferable, and more consistent with the principles in the Directive. | See above |
| 13.3 | SCOTSS | Agreed with the rationale for amending this rule, but suggested some amendments to add clarity | See above |
| 13.4 | DMA EON TSI PV IPM | The organisations listed on the left supported CAP’s proposed amendments without making further significant comments | |

Question 14

Proposed rule:

8.28.5 how and when information about winners and results will be made available. Promoters must either publish or make available on request the name and county of major prizewinners and, if applicable, their winning entries **except for when promoters are subject to an absolute legal requirement never to publish such information. Promoters must obtain consent to such publicity from all competition entrants at the time of entry. Prizewinners must not be compromised by the publication of excessive personal information**

| 14. Do you agree with the amended wording of this rule? If not, please explain why. | | | |
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| | Respondent making comments on the proposal: | The respondents listed on the left supported CAP's proposed amendment. Many of them requested additional guidance as to what the proposal would mean in practice. Summary of significant points follows below: | CAP's evaluation: |
| 14.1 | PV | Proposed a further amendment to emphasise that there are only limited circumstances where the law would prevent a promoter from publishing prizewinners' details | CAP has made a further amendment to this rule which reflects this suggestion. |
| 14.2 | EON NTSB & ACTSO DMA BRC SCOTSS TSI IPM | The organisations listed on the left supported CAP's proposed amendments without making further significant comments | |
| | | The respondents listed on the left opposed CAP's proposed amendment or requested clarification. Summary of significant points follow below: | |
| 14.3 | LE | Expressed concern that the proposed amendment removed promoters' obligations to publish prizewinners' details. | CAP considers that the proposed amendment does not negate the requirement on promoters to publish or make available on request the name and county of major prizewinners. CAP notes that terms and conditions often make it a clear the manner in which winners' details will be publicised; the second proposed amendment clarifies that consent should be obtained during entry in order that promoters are able to publish winners' details. |

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| | | | The amendment makes an exception for promoters who are subject to a legal requirement not to do so – to CAP’s knowledge the only promoter to whom this presently applies is NS&I. |
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| 15. Do you have any general comments on the changes proposed by CAP to the sales promotion rules, or on the sales promotion section in general? | | | |
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| | Respondent making comments on the proposal: | The organisations listed on the left made additional significant points which follow below: | CAP’s evaluation: |
| 15.1 | PV | Also noted that the consultation and the CAP Code section is entitled Sales Promotions, and considered that it would be appropriate to rename it the ‘promotional marketing’ section, in line with the terminology now favoured by the industry. | The suggestion to rename the section will be kept on record and addressed at the soonest opportunity. |
| 15.2 | BT NTSB | Requested that CAP ensures that the proposed changes and any guidance on compliance with this section is reviewed to take account of the Pricing Guidance that is to be written by the Trading Standards Institute early next year. | CAP agrees that it will be necessary and desirable to ensure that these changes are consistent with the Pricing Practice Guidance. CAP is involved in the development of this guidance and will develop its own guidance on how it affects compliance with its Code in due course. |
| 15.3 | BRC | Expressed concerns that the CAP and BCAP codes, and decisions made by the ASA under the codes go beyond the maximum harmonisation requirements of the UCPD/CPRs. Considered that, whilst the ASA is the self-regulator for the advertising industry, it fulfils a number of functions that cross over into the world of public regulation, for example by acting as the delegated regulator for advertising on television and as an “established means” under the Consumer Protection from Unfair Trading Regulations. Suggested this enhanced its arguments that the codes needed to be consistent with the | CAP considers that the relation of the Code to the law has always been complex, and requires careful consideration with regards to maximum harmonisation legislation that includes provisions for marketing. CAP recognises that Most of the sales promotions rules fall within the scope of UCPD and the CJEU has previously confirmed that Member States cannot retain national rules on |

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| | <p>text of the Consumer Protection from Unfair Trading Regulations/Unfair Commercial Practices Directive</p> <p>Noted it had previously raised this concern when CAP consulted on the future of the code in 2008, when the CPRs were introduced and noted it had continued reiterate this point in the ASA's recent consultation on prioritisation principles.</p> <p>Suggested that the review of the UCPD by The European Commission might provide an appropriate moment to call for further reflection on the status of any self-regulatory option on the grounds that it believes what is essentially a regulatory body is undermining the single market and indeed the fully harmonised nature of the Directive by imposing requirements that go beyond that Directive.</p> <p>Stated a belief that in principle, if the self-regulatory system were to continue, the Codes should say no more and no less than the Directive as transposed itself.</p> <p>Also considered that the operation of the ASA investigations process should be a transparent one in which both sides can see the evidence, argue their case and cross question each other. And there should be a truly independent and transparent appeals process.</p> <p>Given the procedures required for TSI Code scheme recognition (and formerly OFT code scheme recognition) and the ADR Directive with its requirements for a totally independent and transparent process, suggested that the Commission would similarly expect such a system to operate for this section of the Codes and indeed all other sections that relate to implementation of the CPRs.</p> <p>Offered to engage with the ASA on this point and also welcomed the opportunity to provide feedback on the current wording of the codes, to ensure they are in line with the text of the Directive and Regulations.</p> | <p>sales promotions which go beyond the provisions of the Directive.</p> <p>The objective of this consultation was to ensure that CAP's rules on sales promotions reflect the provisions of the UCPD/CPRs; CAP understands that the BRC would prefer it to delete those rules that relate to the legislation and refer directly to the text of that legislation instead.</p> <p>CAP agrees this would be simple to achieve and might even be the safest legal option to ensure maximum harmonisation, but considers this approach would require detailed guidance to flesh out industry-specific details while expecting ASA council to interpret that guidance in a way that is consistent with UCPD.</p> <p>CAP considers that retaining specific detailed rules that reflect UCPD/CPRs is ultimately more helpful for industry practitioners to successfully comply with the relevant law when running promotions and marketing campaigns; CAP refutes in the strongest possible terms any suggestion that it undermines the single market.</p> <p>CAP's legal advice indicates that the amendments to the sales promotion rules reflect legal interpretations that clarify the application of the legislation.</p> |
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