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Rt Hon Lord Currie of Marylebone
Chairman
Advertising Standards Authority
Mid City Place
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27 June 2019

Dear Lord Currie

Proposed extension to the remit of the Advertising Advisory Committee

We write in response to the request to Ofcom from BCAP and CAP (the Committees) to facilitate the extension of the remit of the Advertising Advisory Committee (AAC) to provide advice on issues affecting both broadcast and non-broadcast advertising. As you are aware, the existing remit of the AAC is restricted to broadcast advertising only.

We have considered the potential impact of extending the AAC's remit and the associated changes that would be needed to the Memorandum of Understanding (MoU) between Ofcom and BCAP, ASA(B) and BASBOF ("the co-regulatory parties"). The MoU reflects the scope, nature and operation of the co-regulatory arrangements for broadcast advertising and establishes the structure and remit of the AAC¹.

Ofcom is minded to agree to the Committees' request, subject to the safeguards set out in Annex 1 and taking into account comments from any interested parties.

Background

On 17 May 2004, following public consultation, Ofcom contracted out to the Advertising Standards Authority (Broadcast) (ASA(B)) and the Broadcast Committee of Advertising Practice (BCAP) certain of its statutory functions in relation to the regulation of broadcast advertising.² These functions include the development and enforcement of standards codes relating to broadcast advertising.

¹ https://www.ofcom.org.uk/data/assets/pdf_file/0029/79472/memorandum_of_understanding_2014.pdf, paragraphs 34-37.

² https://www.ofcom.org.uk/data/assets/pdf_file/0018/51309/regofbroadadv.pdf, pages 7 and 17.

The AAC was established to address concerns raised through the consultation about the transparency and accountability of a co-regulatory system for broadcast advertising. These concerns were that:

- BCAP, being made up entirely of advertising and broadcasting industry representatives, would not reflect the voice of the consumer in its code-making;
- the process of setting of rules by BCAP would be less transparent than the process which it replaced; and
- the new system would lack an appropriate degree of independence for a body carrying out public functions.

As the MoU states, the AAC was therefore formed to 'provide independent, third party advice to BCAP on advertising issues, particularly in relation to the BCAP Code'. The statement that followed Ofcom's 2004 consultation set out how the AAC would operate, including Ofcom's role within it, and how it would support greater transparency and accountability.³ This arrangement was formalised in the MoU between the co-regulatory parties.

Impact of the proposed extension of the AAC's remit

Since its inception, the AAC has demonstrated that it is effective in ensuring a consumer perspective is taken into account when BCAP considers broadcast advertising regulation policy. When Ofcom reauthorised the co-regulatory arrangement in 2014, we assessed if the co-regulatory system continued to meet relevant criteria including, among other things, accessibility, transparency, adequate resourcing and effectiveness of enforcement measures. We were satisfied that it did.⁴

Given the increasing convergence between broadcast and non-broadcast advertising issues, Ofcom recognises the benefits of extending the remit of the AAC to enable it to look at advertising in the round, and provide a consumer perspective that applies across all media. As Ofcom has no role in the regulation of non-broadcast advertising (apart from advertising on on demand programme services and on online services which meet the definition of a Television Licensable Content Service), we recognise that an extension of the AAC's remit would impact on Ofcom's role within it.

Ofcom and the Committees have discussed the potential impact of this change. It is the view of all parties that there is scope to amend the MoU to ensure both that the core purpose of the AAC is maintained (i.e. to represent the interests of citizens and consumers) and that Ofcom does not become involved in matters outside of its regulatory remit.

³https://www.ofcom.org.uk/_data/assets/pdf_file/0018/51309/regofbroadadv.pdf, pages 7 and 17.

⁴ https://www.ofcom.org.uk/_data/assets/pdf_file/0028/58942/statement.pdf, paragraphs 1.6-1.7.

Proposed Amendments to the MoU

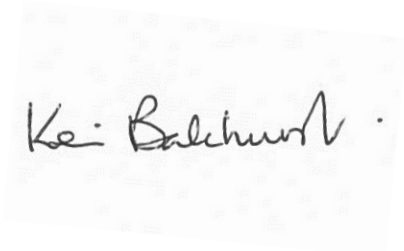
To reflect Ofcom's changing role in the AAC, Ofcom and the Committees have provisionally agreed changes to the MoU, subject to a consultation (see Annex 1). The proposed amendments reflect discussions between Ofcom and the Committees, in which the Committees initially proposed changes to Ofcom, which we have now considered and responded to in this consultation. We consider the proposed amendments are appropriate to enable the AAC to represent consumer interests across all forms of advertising, while maintaining a system that provides robust, consistent, proportionate and targeted regulation of broadcast advertising.

In Annex 1, we have summarised the rationale for each proposed change and Ofcom's consideration and response to it.

Next Steps

Ofcom will be publishing a copy of this letter, together with the relevant documentation, on our website. We will also draw it to the attention of interested parties through an emailed update, so that they, and the public more widely, are given the opportunity to comment on the proposals, and their comments can be taken into account before we reach our final decision and any amendments are made to the MoU.

Yours sincerely

A handwritten signature in black ink that reads "Kevin Bakhurst". The signature is written in a cursive style and is positioned above a faint, light-colored rectangular stamp or watermark.

Kevin Bakhurst

Cc James Best, Chairman, Broadcast Committee of Advertising Practice (BCAP)
Sir Chris Powell, Chairman, The Broadcast Advertising Standards Board of Finance Ltd
(basbof)