

Regulation Concerning Sales Promotions in the Internal Market

PUBLIC CONSULTATION ON
A PROPOSAL FOR A
REGULATION CONCERNING
SALES PROMOTIONS IN THE
INTERNAL MARKET

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Public Consultation on a Proposal for a Regulation concerning Sales Promotions in the Internal Market

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1. INTRODUCTION

PURPOSE OF CONSULTATION

The purpose of the consultation is to seek views on a draft Regulation to create a harmonised single market for the offering of sales promotions.

RESPONSES

How to respond to this consultation:

by e-mail: Gemma.Dawson@dti.gsi.gov.uk

by post: Miss G Dawson
Consumer and Competition Policy Directorate
Room 407
Department of Trade and Industry
1 Victoria Street
London, SW1H 0ET

CLOSING DATE

Responses must be received by 25th October 2002.

CONFIDENTIALITY

Your response to this consultation document may be made publicly available in whole or in part at the Department's discretion. If you do not wish all or part of your response (including your identity) to be made public, you must state in the response which parts you wish us to keep confidential. The consultation document asks for estimated figures of costs and benefits. If you provide figures, please let us know if you want this part of your response to be kept confidential. Where confidentiality is not requested, responses may be made available to any enquirer, including enquirers outside the UK, or published by any means, including on the Internet.

CONSULTEES

We are sending this document to the consultees listed in Annex A. Please tell us if you know of others who would be interested in receiving this consultation. It is also available by request from the contact listed above and can be viewed on our website at:

<http://www.dti.gov.uk/cacp/ca/consulta.htm>

HELP WITH QUERIES

If you would like help with queries or further information about this consultation please contact the official named above, by email, post or telephone: 0207 215 6937

2. BACKGROUND & SUMMARY

A sales promotion is a discount, free gift, premium¹, or promotional contest or game. Sales promotions can be used by companies to break into new markets with innovative products; to encourage customer loyalty; to stimulate short-term competitive actions; to rapidly respond to lost sales and to efficiently manage stocks. As such they impact on and benefit the consumer, SMEs, larger businesses and those engaging in cross-border activity.

In 1996, the European Commission published a Green Paper on Commercial Communications² which highlighted the existence of obstacles to the use of sales promotions across border and invited views on the best way to tackle the problem. The majority of responses to the Green Paper gave strong support to the initiative and in 1998 a Commission Communication³ based on information contributed by a group of national experts set out plans for the examination of regulatory restrictions on discounts, sales promotions, and sponsorship. A 'shadow' consultative group of UK industry, consumer, and regulatory experts was established to discuss the issues under consideration and to advise UK national experts.

In light of this work, it was concluded that long-standing market controls in many member states have prevented the development of a Single Market in sales promotions across borders. In October 2001, the European Commission issued a proposal for a Regulation on Sales Promotion.

The Regulation is part of the Internal Market for Services Strategy and if adopted would be directly and uniformly applicable in member states. It aims to replace existing restrictions with a clear and legally certain environment. The goal is to encourage cross-border activity for the benefit of both business and the consumer.

- > **Business** will be able to conduct pan-EU sales promotions without incurring the cost and disincentive of different regulatory regimes. This will benefit not only businesses who intend to promote cross-border, but also the promotional industry in general.
- > **Consumers** will benefit from increased choice and competition as more EU markets make use of sales promotions and UK consumers are able to access those markets more effectively. New information and transparency requirements will add to existing consumer protection measures.

¹ Defined in the regulation as a temporary offer to provide a good or service of a type which is not identical to the good or service with which it is offered for purchase.

² COM (96) 192

³ COM (98) 0121

The Regulation is subject to the co-decision procedure in the EU institutions and qualified majority voting. The first reading of this proposal has been voted in the European Parliament's Legal Affairs Committee and is expected to be voted in the Parliament's plenary session in the autumn.

The consultation document is intended to explain the effects of the Regulation and invites views on how the Regulation as drafted would operate and what amendments might be necessary. Consultees are also invited to provide an initial assessment of the costs and benefits associated with the Regulation.

3. CONSULTATION ON A PROPOSAL FOR A REGULATION CONCERNING SALES PROMOTIONS IN THE INTERNAL MARKET

In discussion of the articles, please refer to the draft Regulation at part 6 of this document.

Introduction

The aim of the proposed Regulation is to create a harmonised regime for sales promotions involving offers of discounts, free gifts, premiums, and promotional competitions and games. This is to be achieved by a combination of an overall prohibition on general restrictions on the use and communication of these offers, a mutual recognition regime for cross-border sales promotions and new transparency requirements.

The Commission have proposed three types of provisions to remove the existing internal market barriers in sales promotions:

- Harmonisation of certain provisions where national rules are considered proportionate to the public interest
- The replacement of certain restrictions with targeted harmonisation measures
- The application of mutual recognition to remaining national requirements relating to sales promotions

Choice of Legal Instrument

The Regulation will be directly applicable in member states and will not need to be transposed into national legislation in the same way as a Directive although some implementing measures will be required, principally to ensure that the Regulation, once adopted, can be enforced. The proposal for a Regulation is intended to establish uniform rules, strengthen legal security and ensure transparency.

Recitals

Recitals are not legally enforceable but set out the context and principle of the legal instrument. The recitals lay down the benefits and necessity of a Regulation in commercial communications. They explicitly exclude gambling activities, betting and lotteries from the scope. The Regulation is intended to complement the existing Community acquis (the current EU body of law) applicable to commercial communications. Key legislative areas include the Television without Frontiers Directive, the General Product Safety Directive and the Misleading Advertising Directive. The recitals include reference to

the mutual recognition clause and explain its application to other cross-border barriers.

Article 1 – Object

According to this article, the aim of the Regulation is to ensure the proper functioning of the internal market by eliminating restrictions to free movement.

QUESTION

1. Do you have any general comments on the overall aim of the draft proposal?

Article 2 - Scope of the Regulation and key definitions

This article sets out the definitions of key terms and establishes their scope. The definitions will be important in determining the effect of other parts of the Regulation.

A number of issues arise out of the definitions which are dealt with as and where they arise in the text which follows. The definitions of ‘customer’, ‘child’, ‘alcoholic beverages’, ‘general prohibitions on the use and commercial communication of a sales promotion’, ‘sales below cost’ are explained later in the text.

The Regulation will apply to the use and commercial communication of sales promotions. It will impose obligations on member states, promoters and non-public regulatory bodies.

(a) **‘Commercial communication’** is defined as any form of communication designed to promote, directly or indirectly, the goods, services or image of a company, organisation or person pursuing a commercial, industrial or craft activity or exercising a regulated profession. As drafted “commercial communication” could cover not only television and radio advertising, internet and magazine advertising, and literature produced by a retailer or manufacturer, but also point of sale material, including packaging and shelf-edge price labels. The Regulation would apply to the advertising and use of in-store and on-premises sales promotions, including local advertising of promotions in small shops. It is unclear whether the scope would extend to product labelling.

(b) **‘Sales promotion’** is defined as a discount, free gift, premium, or an opportunity to participate in a promotional contest or promotional game.

(c) **‘Promoter’** is defined as “a user of a sales promotion, meaning a company, organisation or person by whom or on whose behalf a sales promotion is undertaken.”

(e) **‘Discount’** is defined as the temporary offer of -

- a price reduction

- an additional quantity of the identical good or service purchased which is offered at no additional cost to the purchaser

- a coupon or voucher entitling a purchase of a good or service to a reduction on the price of an identical good or service on a subsequent purchase.

It may need to be clarified whether loyalty schemes or points systems are specifically excluded as they are not ‘temporary’ in nature. Similarly the notion of cross promoting products, for example offering a free packet of Green Tea with every purchase of a Chinese meal may need to be clarified. It is not current UK practice to require a discount to cover identical goods or services.

(f) **‘Free gift’** is defined as the temporary offer to provide free of charge a good or service independently of an obligation to purchase a good or service of an identical type. The definition of “free gift” may need to be clarified to make clear that it excludes financial services involving, for example, the offer of free credit.

(g) **‘Premium’** is defined as the temporary offer to provide a good or service of a type which is not identical to the good or service with which it is offered for purchase.

(h) **‘Promotional contest’** is defined as a temporary offer to participate in a contest that may be subject to a prior obligation to purchase a good or service, in which the winner is designated by skill.

(i) **‘Promotional game’** is defined as a temporary offer to participate in a game in which the winner is designated primarily by chance and where no fee is required to participate but where participation may be subject to a prior obligation to purchase.

(m) **‘Non-public regulatory body’** is defined as an organisation or association. This could include self-regulatory bodies, trade associations and professional bodies

We consider that all the above definitions may require clarification in negotiations on the Regulation.

QUESTIONS

2. Are the definitions and their scope clear?

3. Are the definitions wide enough to cover all known sales promotions?

4. Is the scope flexible enough to allow for new types of promotions?

5. Any other comments?

Article 3 – The use and commercial communication of sales promotions (3.1 indent 1) – General restrictions on sales promotion

This would prevent member states and non-public regulatory bodies from imposing general prohibitions on the use and communication of sales promotions. A general prohibition on the use or commercial communication of a sales promotion is defined in article 2 of the Regulation as a prohibition which is not specific to a particular type of promoted good or service.

The UK has a less regulatory approach to sales promotions compared to a number of other member states. For example, France, Germany, Italy, Portugal, Greece and Spain operate a general ban on sales below cost and in Belgium there is a ban on seasonal sales outside certain months of the year.

Sectoral restrictions (i.e. prohibitions on sales promotions that are specific to a particular good or service) that have not been harmonised at EU level would continue to be permissible, for example, tobacco and pharmaceuticals. However, such restrictions would be subject to mutual recognition under article 3.2 of the Regulation.

General restrictions - promotional contests and promotional games

UK law on prize competitions which are run in connection with sales promotions does not impose any limits on the value of the prizes or any purchase or fee that may be required to enter. It does however require that the competition should not involve forecasting of any kind, and that winning must depend to a substantial degree on the exercise of skill or knowledge. Promotional prize competitions which simply involve a draw and include no element of skill or knowledge are not allowed.

The definitions of promotional contests and promotional games in the Regulation need to be clarified so we can properly understand the potential impact on UK law and the proposals in the Gambling Review.⁴

A competition that depended entirely on a draw and where a purchase or entry fee was needed to take part would be classed as an unlawful lottery. Current law on lotteries allows for the National Lottery, for charity and other ‘society’ lotteries, and for a range of private, local authority, and small-scale lotteries. The Government has said, in connection with its current plans for the reform of gambling legislation, that it intends to preserve this situation and in particular that commercial lotteries will continue to be disallowed. We will seek to ensure that this policy is not undermined by the Regulation.

(3.1 indent 2) – Limitations on the value of sales promotions except for discounts on books

The effect of this provision would be to prevent member states and non-public regulatory bodies from imposing any limitations on the value of sales promotions, such as limiting a free gift to 20% of the product value, which in the case of some newspapers, for example, would mean a free gift worth 8 pence. Member states and non-public regulatory bodies will no longer be able to prohibit sales below cost or put a ceiling on the value of free gifts offered as part of a sales promotion.

Unlike the member states mentioned above, the UK does not operate a general ban on sales below cost although where such sales amount to predatory pricing they are dealt with under competition law. Sales below cost are often used to avoid waste, for example in the case of bread and other perishable goods.

The exception for books in this article would have the effect of allowing restrictions on the value for promotions of books. This means that a book pricing regime could continue to be operated nationally, but could not be used to prevent the import of discounted books from other member states. The UK does not set rules on book pricing and unlimited discounting is possible. However, member states such as France prevent the resale of books at a discount greater than 5% of the retail price set by the publisher or importer. Such variations may lead to the same book being sold at a 50% discount in the UK but only a 5% discount in France.

⁴ ‘A Safe Bet for Success – Modernising Britain’s Gambling Laws’, published 26th March 2002 and available from the Department for Culture, Media and Sport’s website: http://www.culture.gov.uk/new_responsibilities/gambling_index.html and the Stationary Office.

The prohibition on the limitation of discounts applies both on a general and on a sectoral basis. That is to say that under the Regulation it would no longer be permissible to limit the value of discounts either generally or in relation to a specific product. This is in contrast to the first limb of article 3.1 which applies only to prohibitions which are not specific to a particular type of promoted product or service.

(3.1 indent 3) – Discounts preceding sales

Sales dates are not restricted in any way in the UK. This article would prevent other member states and non-public regulatory bodies from prohibiting discounts prior to seasonal sales. For example, in Germany sales are limited to 12 working days every six months and must start on the last Monday in January and on the last Monday in July. It is not clear whether this would affect the UK Code of Practice for Traders on Price Indications (1988) that a product must be sold at full price prior to sale.

(3.1 indent 4) – Prior authorisation of sales promotions

This would prevent member states and non-public regulatory bodies from imposing a requirement for prior authorisation of the use or commercial communication of a sales promotion. There is no legal requirement in the sectors covered by this Regulation for prior authorisation in the UK but registration is required in some member states such as Italy and Spain. In Portugal and Belgium, sales promotions are registered with a charity which charges a fee.

(3.2) - Mutual recognition

This paragraph applies the principle of “mutual recognition” to remaining national restrictions that are not harmonised under paragraph 3.1 (mostly sectoral restrictions).

This paragraph would mean that the UK and non-public regulatory bodies in the UK could not restrict incoming sales promotions even in the case of goods and services which are subject to restrictions on sales promotions in the UK. This paragraph is not subject to any exceptions or derogations.

The UK has, or is shortly expected to have, sectoral restrictions pertaining to free gifts in the area of financial services and tobacco⁵. Under the present wording of the draft Sales Promotion Regulation these restrictions would remain but could not be applied to incoming sales promotions from other member states.

⁵ Information about the Government’s proposals are available on the Department of Health website: <http://www.doh.gov.uk/tobacco/adtobacco.htm>

However, as Recital 27 points out, there is a proposed Directive on advertising and sponsorship of tobacco products. This is likely to propose a ban on all other forms of tobacco advertising, except direct mail or in-pack promotions which would remain subject to mutual recognition.

The Regulation is not intended to undermine additional national public health initiatives. Consequently, the UK Government is minded to press for the draft Regulation to be amended so that it reflects UK policy on tobacco and so that the principle of mutual recognition does not apply in relation to the communication of any promotion of tobacco products.

The use of sales promotions for alcoholic beverages is allowed in most member states, although it might be restricted for certain, notably strong alcoholic beverages. This Regulation would require mutual recognition of any promotions provided it was not linked to free gifts of alcohol for under age consumption.

QUESTIONS

6. Do you consider that the meaning and effect of this Article are clear?

7. How do you see the provisions working in practice?

8. What are the likely costs and benefits? Can you quantify these and provide estimations?

Article 4 – Information to be provided in respect of sales promotions

This Article requires the promoter to ensure that the commercial communication of a sales promotion complies with the information requirements set out in the Annex to the Regulation. The Annex sets out some general requirements for all sales promotions and some specific rules for each type of sales promotion (discounts, free gifts and premiums, promotional contests and games).

The obligation for meeting these transparency requirements rests with the ‘promoter’. The promoter is defined in article 2 of the Regulation as a user of a sales promotion, meaning a company, organisation or person by whom or on whose behalf a sales promotion is undertaken. The term applies jointly to manufacturers, intermediaries and retailers. This would mean that there could be more than one promoter responsible for complying with the Regulation in respect of a single sales promotion.

The requirements in the Annex appear to be generally in line with UK practice. However they do not exactly mirror it in all respects. As this

proposed Regulation would have the effect of law immediately on adoption, we want to be sure that any variation of present requirements in either direction would be justifiable, proportionate, and acceptable.

ALL SALES PROMOTIONS

Information to be provided in the commercial communication

- **Part 1.1 (1st indent) – ‘An indication of the discount, free gift, premium, promotional contest or promotional game’**

This would seem to reflect current UK practice– a sales promotion would naturally indicate the offer, although what constitutes an ‘indication’ may need to be clarified.

- **Part 1.1 (2nd indent) – ‘the price (inclusive of taxes) of the promoted good or service and any additional costs associated with freight, delivery or postage’**

This requires the VAT inclusive price to be given in all sales promotions. In the UK, under the British Codes of Advertising and Sales Promotion (BCASP) or the Price Marking Order (PMO) 1999, it is required that VAT is included for products sold by traders to consumers⁶. However, Article 4(2)(b) of the PMO makes clear that the requirement to indicate a selling price does not apply to ‘an advertisement for a product’. This seems to conflict with this proposal.

- **Part 1.1 (3rd indent) – ‘the promoter’s identity’**

This is standard practice in the UK – see however the discussion of the definition of “promoter” above.

- **Part 1.1 (4th indent) – ‘the duration of the offer including the start and end date’**

The current position in the UK allows for promotions such as ‘while stocks last’, hence there is no end date as such.

- **Part 1.1 (5th indent) – ‘where the offer is subject to conditions, an indication of where these conditions or any other information can be obtained’**

Information to be made available on request unconditional on purchase of the promoted product or service

- **Part 1.2 (1st & 2nd indent) – ‘the name and geographic address of the promoter and the terms and conditions of the promotion’**

This would seem to reflect standard UK practice.

⁶ Article 4(1) of the PMO 1999

DISCOUNTS

Information to be provided in the commercial communication

- **Part 2.1 (1st indent) – ‘the exact amount of the discount must be represented as either a percentage or a unit cost’**

Current UK practice is to use a variety of indications, including percentages, old prices crossed out, etc and could be described as going wider.

- **Part 2.1 (2nd indent) – ‘an indication of a sale below cost’**

“Sale below cost” is defined in the Regulation as a discount consisting of a sale of a product or service below the net invoice price of carriage, insurance, and other delivery costs as well as tax.

It is not UK practice to indicate where a product is being sold below cost.

Information to be made available on request

- **Part 2.2 (1st & 2nd indent) - ‘any conditions or limitations applicable to the discount; and**

- **the preceding price of the promoted good or service and the length of time (including dates) that this preceding price was applied’**

Section 1.2.2 & 1.2.3 of the UK Code of Practice for Traders on Price Indications (1988) state that the previous price should be the last price at which the product was available to consumers in the previous 6 months and should have been available at that price for at least 28 days. The previous price should have applied in the same shop where the reduction is being offered. If these requirements are not met then the comparison should be fair and meaningful and give a clear explanation of the period for which the higher price applied.

Information to be made available on a coupon or voucher

Part 2.3 (1st 2nd & 3rd indent) – ‘the cash value of the coupon or voucher;

- **any limitation on its use including its expiry date;**
- **the goods or services against which the coupon or voucher may be redeemed.’**

This requirement is similar to that imposed by the Trading Stamps Act 1964.

Information to be made available on request of a manufacturer or a service provider from whom goods or services have been purchased

- **Part 2.4. (1st indent) – ‘information of a sale below cost in conformity with prior contractual agreements.’**

This is not required in UK law or codes of practice.

FREE GIFTS AND PREMIUMS

Information to be provided in the commercial communication

– **Part 3.1 (1st & 2nd indent) –**

- **‘the actual value of the free gift or premium; and**
- **any costs associated with obtaining the free gift or premium’**

Stating the actual value of the free gift is not currently UK practice. Under the UK Consumer Protection Act 1987, claims as to the value of free gifts are limited to “recommended retail price” or “manufacturers recommended retail price”.

Information to be made available on request unconditional on purchase of the promoted product or service

– **Part 3.2 – ‘any conditions or limitations applicable to the free gift or premium’**

This would reflect standard UK practice.

Promotional contests and promotional games

Information to be provided in the commercial communication

– **Part 4.1 (1st indent) – ‘the value and nature of the prize’**

It is not mandatory in the UK to indicate the value of a prize.

- **Part 4.1 (2nd – 4th indent):**

- **‘the closing date for receipt of entries’**
- **‘any geographical or personal restrictions such as location or age’**
- **‘any requirements for proof of purchase’**

These seem to reflect current UK practice.

- **Part 4.1 (5th indent) – ‘the need to obtain permission to enter from an adult or employer’**

There is no UK equivalent rule.

- **Part 4.1 (6th indent) – ‘any associated costs other than the purchase of the promoted good or service in the participation in the promotional contest or promotional game’**

This seems to reflect current UK practice.

- **Part 4.1 (7th indent) – ‘in the case of a promotional game, the actual or estimated odds of winning the prize’.**

UK law and codes of practice⁷ prevent exaggerated or misleading claims of winning which may impact on the necessity to have actual odds represented.

⁷ The British Codes Of Advertising and Sales Promotions – such as the Control of Misleading advertisers (amendments) Regulations 2000 (SI 2000 no. 914)

Information to be made available on request unconditional on purchase of the promoted product or service

Part 4.2 (1st-4th Indent):

- ‘any conditions applicable to the promotional contest or game including any limitations on entries or prizes;
- the number of prizes which may be won and the number of prizes of any one type if more than one type of prize is on offer;
- the rules governing who is eligible to participate and the award of prizes;
- whether a cash alternative can be substituted for any prize’

This seems to reflect current UK practice.

– **Part 4.2 (5th & 6th indent):**

- ‘the criteria for judging entries;
- the selection procedure for the award of prizes and, where the selection is made by jury, the composition of the jury;’

This does not seem to reflect UK practice.

– **Part 4.2 (7th / 8th / 10th / 11th indent):**

- ‘the date of the results and the manner in which they are to be announced;
- the means by which prizes may be delivered or collected and any associated costs;
- any intention and conditions to use winners in post event publicity; and
- details of prize-winning entries subject to the agreement of prize winners and data protection rules’

This seems to reflect current UK practice

– **Part 4.2 (9th indent) – ‘the time period during which prizes must be collected’**

This requires inclusion of the time period in which prizes must be collected. This does not seem to reflect UK practice.

QUESTIONS

9. Do you consider that the effect of this Article is clear?

10. Do you have any views on the definition of ‘promoter’ and how it applies in the context of this Article?

11. Do you have any comments about the information to be provided, particularly where new requirements may be created?

12. How will the requirements work in practice? What benefits or costs might this entail for the consumer and business?

13. Are the information requirements suitable for all types of sales promotion such as on-premise announcements, radio, television and sms messaging?

14. Any other comments?

Article 5 – Protection of children and adolescents

This Article sets new rules for the protection of children and adolescents.

(5.1) – Protection against data collection

This requires that a promoter, when making a sales promotion, shall not collect personal data from a child of under 14 years of age without “verifiable” consent from that child’s legal guardian. The age limit conforms to the ICC Code on Market Research which sets 14 as the age below which children are not expected to understand the purpose of data collection. The provision aims to prevent children from unwittingly giving away personal data when participating in, say, an Internet game which might be being used to target them or their parents for marketing.

(5.2) – Distribution of free gifts

This prohibits the use of sales promotions that might harm the physical health of a child. Recital 26 points out that the provision is intended to be ‘consistent with’ the General Product Safety Directive (92/59), which establishes a regime whereby suppliers of all goods must have regard to their safety, including packaging and supply to minors.

Although this provision as drafted appears intended to augment Directive 92/59, the UK Government is concerned that it is not clear how the provision will work in practice. The UK Government therefore believes that the way in which the provision is supposed to apply, and the way in which it is intended to map onto Directive 92/59, needs to be made clearer.

(5.3) – Free gifts of alcoholic beverages

The Regulation would prohibit a promoter from providing a free gift consisting of an alcoholic beverage to individuals under the age of 18. The Commission’s proposals are aimed at increasing protection for minors (under 18’s) against the harmful effects of alcohol consumption.

“Alcoholic beverages” are defined in the Regulations as alcoholic beverages within the meaning of articles 2, 8, 12, 17 and 19 of Directive 92/83/EEC.

In the UK it is currently not unlawful in all circumstances to give a free gift of alcohol to a minor, although codes of practice establish rules whereby industry will not aim its products at minors.⁸

The British Codes of Advertising and Sales Promotion require that every effort should be made to avoid harming consumers when distributing product samples and requires promoters to make every effort to ensure that unsuitable or inappropriate material does not reach consumers.

QUESTION

15. How would these requirements work in practice?

16. Would the requirements provide adequate protection of children and adolescents against harmful sales promotions?

17. Any other comments?

Article 6 – Redress

This Article seeks to encourage low-cost, effective resolution of disputes concerning sales promotions. The Article requires clarification on a number of points in the course of negotiation. For example, as presently drafted, it might be interpreted as precluding consumers from complaining about a sales promotion by means of a telephone call yet Article 6.2 envisages that promoters will provide telephone advice services in connection with a sales promotion.

(6.1) – Burden of Proof

This paragraph requires clarification in negotiation. It is aimed at proceedings for breach of the requirements of Article 4 and appears to reverse the normal burden of proof so that, if a customer alleges that the information requirements in the Regulation have not been complied with, it will be for the promoter to prove that he did comply.

(6.2, 6.3) – Contact details and complaints handling

Paragraph 2 of Article 6 would require a promoter to provide, free of charge, an address to which complaints can be directed. Where a promoter provides a telephone advice service in connection with a sales promotion, the promoter is required to ensure that this is provided free of charge and that appropriate resources are dedicated to its operation.

⁸ The Portman Group Code of Practice on the naming, packaging and merchandising of alcoholic drinks.

Current practice in the UK⁹ is to provide either a contact address or telephone number in connection with a sales promotion. Charges are set at the prevailing rate in the market place – or in the case of telephone advice services, at the local rate. It is the UK practice for promotions on trade premises to display the name and address of the promoter. Clarification may be necessary as to whether such information is needed where the address is not different to that where the promotion is taking place.

Paragraph 3 requires a promoter to respond to a complaint about a sales promotion within six weeks, and in writing (which may be done electronically) in the language of the communication of the sales promotion. This may preclude complaining, or responding to an initial complaint, by telephone. Although the UK Government would want consumers to be advised to put serious complaints in writing/e-mail, it would not be desirable for promoters to be able to ignore telephone complaints. The UK Government would be inclined to avoid placing requirements on consumers in this way (particularly if it would disadvantage those with literacy problems).

(6.4) – Communication of subscription to codes and alternative dispute resolution schemes.

Paragraph 4 requires a promoter to –

- indicate in the commercial communication relating to the sales promotion any out of court dispute settlement system or code of conduct that he/she subscribes to; and
- make available upon request information concerning any such dispute settlement system or code of conduct.

QUESTIONS

18. What would be the effect of this Article in practice?

19. How would this relate to existing redress and complaints-handling mechanisms?

20. What are the costs and benefits - would this impact on some businesses more than others?

Article 7 – Revision Clause

This article requires the Commission to submit to the European Parliament and the Council a comprehensive report on the application of the Regulation, accompanied, if appropriate, with a proposal for its revision.

⁹ The British Codes Of Advertising and Sales Promotions (37.1)

Article 8

Article 8 provides that the Regulation shall enter into force a specified number of days following the day of its publication in the Official Journal of the European Communities.

QUESTION

21. Do you think that there should be an implementation period and, if so, for how long?

22. What would be the overall impact on business and consumers?

4. REGULATORY IMPACT ASSESSMENT

1. Purpose and Objectives of the Regulation

1.1 This Regulatory Impact Assessment (RIA) covers the proposal for a Regulation to create a harmonised regime in sales promotions involving offers of discounts, free gifts, premiums, and promotional competitions and games. This is to be achieved by a combination of an overall prohibition on general restrictions on the use and communication of these offers, a mutual recognition regime for cross-border sales promotions and new transparency requirements.

1.2 The diverging regulations on sales promotions in the EU affect a wide host of businesses. It affects those companies that use sales promotions as part of their business. It also affects those companies that provide sales promotion services, such as advertising agencies, direct marketing companies, public relations companies and design agencies.

1.3 This RIA will assess the likely costs and benefits to those affected in the UK as a result of the Regulation. The Regulation will be directly applicable in member states and will not need to be transposed into national legislation in the same way as a Directive. It is intended to establish uniform rules on targeted issues, strengthen legal security and ensure transparency. The Regulation will apply to member states, non-public regulatory bodies and at a business-to-business and business-to-consumer level.

1.4 There is an existing body of law, codes, and guidance in the sales promotion area in the UK, ranging from the Lotteries and Amusements Act 1976 to the UK Code of Practice for Traders on Price Indications (1988). In some areas the proposed Regulation goes further than existing law / codes. In particular it introduces:

- *A ban on free gifts of alcohol to minors*
- *Provisions to allow limitations on the value of a sales promotion of books*
- *Extended information requirements such as indicating the actual value and actual odds of winning prizes*

In other areas, the provisions conferred in the Regulation are already available in UK law or codes of practice such as:

- *Sales below the cost price are not subject to general restrictions*

- *There are no general prohibitions on sales promotions, for example, requirements of prior authorisation for a sales promotion*
- *There are no limitations on the value of prizes*
- *Many of the information requirements are already common practice*
- *The right of redress is commonplace in UK law*

1.5 The business-to-consumer aspect of the measure aims to prevent a consumer from being misled about the existence and the value of the offer. The business-to-business provisions cover protection of the manufacturers and retailers against unfair competition from competitors.

2. Risk Assessment

The European Commission states in its Communication on Commercial Communications that the sector employs in excess of 1 million Europeans. In 1996, the European Commission published a Green Paper on Commercial Communications which highlighted the existence of obstacles to the use of sales promotions across border. If these obstacles are not addressed, they will continue to hinder the development of cross border trade and its associated benefits, such as increased competition and consumer choice.

Certain aspects of the Regulation would extend the UK's existing consumer protection. For example, banning free gifts of alcohol to minors will reduce the risks to consumers, particularly vulnerable groups such as adolescents.

3. Options

The Regulation is directly applicable and as such does not allow for options of implementation, although some implementing measures will be required, principally to ensure that the Regulation, once adopted can be enforced.

4. Issues of Equity or Fairness

The Regulation will bring equity and fairness to the market place by ensuring that all member states comply with the same rules on an EU wide basis. This will create equity for business entering other EU markets and for consumers attempting to take advantage of cross border promotions.

5. Identifying the benefits

The aim of the Regulations is to encourage cross-border activity for the benefit of both business and the consumer:

5.1 BENEFITS TO BUSINESS

- Business will be able to conduct pan-EU sales promotions without incurring the cost and disincentive of different regulatory regimes. In a Commission survey for the 1996 Green Paper on Commercial

Communications, 99% of respondents identified specific regulatory difficulties as the major obstacle to cross border trade. Marketing costs may also be reduced to the extent that firms are able to standardise campaigns across the internal market and distribution costs may therefore fall.

- A legally secure environment encourages business to promote their goods / services cross-border, particularly SMEs.
- Protection against unfair competition would be achieved by imposing specific information requirements.
- Media and other carriers may experience a growth of media sales as a result of the internal market. In the Commission survey, 80% of respondents sold advertising space to users of commercial communications in other member states.

QUESTION:

1. What are the benefits of the Regulation to business - how can they be quantified?

5.2 BENEFITS TO CONSUMERS

- Consumers will benefit from increased choice and competition as more EU markets make use of sales promotions and UK consumers are able to access those markets more effectively.
- Transparency provisions aim to protect the consumer by ensuring that the consumer is able to make an informed decision about the value and nature of sales promotions.
- Increased protection specifically aimed at children such as a ban on the offer of free samples of alcohol to young people.
- Facilitation of European cross border out-of-court redress adding to consumer protection by minimising the costs and difficulties that consumers face when seeking redress.
- Consumers would gain as lower marketing costs and a more competitive business environment are likely to be passed on to the consumer through more competitive pricing. The consumer would also be able to make better informed decisions. In the Commission survey, consumer associations felt inaccurate translations could mislead consumers in the non-domestic market.

QUESTION:

2. What are the benefits of the Regulation to consumers - how can they be quantified?

5.3 BENEFITS TO E-COMMERCE

- Online users of commercial communications would benefit greatly by common rules EU wide.

6. COST IMPLICATIONS

There are no relevant available statistics or other published data to illustrate in quantitative terms the costs, as the range of affected parties is so wide. For example, there are currently 192,390 VAT-based retail enterprises in the UK ranging from companies with 1 employee to those with over 500. In particular, food products account for 6,735 enterprises: textiles, 4,810; wearing apparel, 4,905; leather, 815 and wood 7,805 in 2001 – 2002. As such we invite comments from industry on the cost implications of the measures. (The impact on consumers is covered in Part 11).

QUESTION:

3. In particular, what are the types of costs (e.g. new packaging material, information requirements, one-off or on-going) which these measures might generate? How large are these costs? Can they be quantified?

Highlighted below are Articles that may have a greater impact on cost than others.

Article 1

(a) ‘**Commercial communication**’ is defined as any form of communication designed to promote, directly or indirectly, the goods, services or image of a company, organisation or person pursuing a commercial, industrial or craft activity or exercising a regulated profession. As drafted “commercial communication” could cover not only television and radio advertising, internet and magazine advertising, and literature produced by a retailer or manufacturer, but also point of sale material, including packaging and shelf-edge price labels. The Regulation would apply to the advertising and use of in-store and on-premises sales promotion, including local advertising of promotions in small shops. It is unclear whether the scope would extend to product labelling.

(d) ‘**Customer**’

This includes business to business as well as business to consumer sales promotions. Extension of the scope to business-to-business promotions is likely to have cost implications when considering the information requirements.

(l) **‘General prohibition on the use or commercial communication of a sales promotion’**

This is defined as a prohibition that is not specific to a particular good or service. Under the Regulation, member states are not allowed to impose “general prohibitions” on certain sales promotions such as 3-for-2 offers. If member states were to retain these prohibitions on offers, there would be a missed opportunity to improve the ability of UK industry to enter and compete in other markets.

(n) **‘Sales below cost’**

This is defined as a discount involving the sale of a product or service below the net invoice price inclusive of tax, carriage, insurance and other delivery costs. The UK does not operate a general ban on sales below cost, although where such sales amount to predatory pricing they are dealt with under competition law. Sales below cost are often used to avoid waste for example in the sale of bread and other perishable goods.

We invite industry to state the extent of sales below costs used in their promotional activity.

Article 3

(3.1 indent 2) – Limitations on the value of sales promotions except for discounts on books

The effect of this provision would be to prevent member states and non-public regulatory bodies from imposing any limitations on the value of sales promotions. The exception for books in this article would have the effect of allowing restrictions on the value for promotions of books. The UK does not set rules on book pricing and unlimited discounting is possible. However, member states such as France prevent the resale of books at a discount greater than 5% of the retail price set by the publisher or importer. If member states were to retain these prohibitions on offers, there would be a missed opportunity to improve the ability of UK industry to enter and compete in other markets.

Article 6

(6.2 & 6.3) – Contact details and complaints handling

Paragraph 2 of article 6 would require a promoter to provide, free of charge, an address to which complaints can be directed. Where a promoter provides a telephone advice service in connection with a sales promotion, the promoter is required to ensure that this is provided free of charge and that appropriate resources are dedicated to its operation.

Current practice in the UK¹⁰ is to provide either a contact address or telephone number in connection with a sales promotion. Charges are set at the prevailing rate in the market place – or in the case of telephone advice services, at the local rate. It is the UK practice for promotions on trade premises to display the name and address of the promoter.

Clarification may be necessary as to whether such information is needed where the address is not different to that where the promotion is taking place.

Annex

The Annex sets out a range of information to be provided for all sales promotions and for specific sales promotions. Some of the requirements go beyond existing UK practice.

Where the information requirements would impose an obligation to show the actual value of a gift or the cost price of a sale below cost it may impact on the promoters arrangements with manufacturers or make the promotion appear less attractive – this could ultimately have the effect of the customer being drawn away from partaking. The requirements also apply jointly to manufacturers, intermediaries and retailers.

We invite respondents to comment on the costs and benefits of this and the other Articles of this Regulation.

7. Evaluation of Costs

A very wide range of businesses will be covered as there are no exceptions from the Regulation. The commercial communications industry (‘suppliers’) includes advertising agencies, direct marketing companies, sales promotion designers, media buyers, sponsorship agents, public relations companies. Other services are supplied by ‘specialist suppliers’ such as market research companies, advertising film producers, and mailing list brokers. A range of services are offered by carriers of commercial communications. The providers of these services cover a wide range of organisations including the media, organisers of sports and cultural events, postal and telecommunication service providers, billboard site operators etc. The prime area for potential increased costs to business would be in introducing extended information requirements.

8. Estimated Total Compliance Cost

The Regulation is at an early stage of development and as such we invite comments from industry as to their estimated total compliance costs.

¹⁰ The British Codes Of Advertising and Sales Promotions (37.1)

9. Consultation with Small Businesses

All sectors of small business are liable to be affected by this Regulation. It is difficult therefore to quantify typical costs and we invite comments from small business.

QUESTION:

4. How would SMEs be affected by the Regulation?

10. Impact on Enforcement / Advisory Bodies

There will be a small non-recurring transposition cost as local authorities and Citizen's Advice Bureaux train their staff in the new Regulations.

11. Impact on Consumers

The Regulation is intended to bring benefits to consumers through increased choice and competition as more businesses are able to make use of sales promotions within the EU. The information requirements in the Annex would aim to counter any new problems by requiring information on, for example, the identity and address of the promoter and any costs associated with the promotion. The Directive on Misleading and Comparative Advertising would also apply to such sales promotions. The European Commission has also published a Green Paper on EU Consumer Protection which considers the need for new rules in areas such as marketing.

For further information on the Green Paper, please consult the Commission's website at:

http://www.europa.eu.int/eur-ex/en/com/gpr/2001/com2001_0531en01.pdf

12. Competition assessment

The measures contained in this Regulation are expected to be broadly pro-competitive overall. Removing the general prohibitions on sales promotions, and adopting the principle of mutual recognition, should increase access to national markets for firms from across the member states, thus increasing competition and choice for consumers.

In addition, the information and redress requirements should also have a pro-competitive effect, by helping to ensure that consumers have as much and as accurate information as possible when making purchasing decisions. When consumers have incomplete or inaccurate information they often make sub-optimal purchasing decisions, distorting competition between firms. Measures such as these, which will improve the information available to consumers, should reduce this distortion. Similarly, improved systems of

redress will improve consumers' ability to demand high quality products, helping to drive competition between firms.

5. SUMMARY OF QUESTIONS

Article 1 – Object

1. Do you have any general comments on the overall aim of the draft proposal?

Article 2 – Definitions

2. Are the definitions and their scope clear?

3. Are the definitions wide enough to cover all known sales promotions?

4. Is the scope flexible enough to allow for new types of promotions?

5. Any other comments?

Article 3 - The use and commercial communication of sales promotions

6. Do you consider that the meaning and effect of this Article are clear?

7. How do you see the provisions working in practice?

8. What are the likely costs and benefits? Can you quantify these and provide estimations?

Article 4 & Annex - Information to be provided in respect of sales promotions

9. Do you consider that the effect of this Article is clear?

10. Do you have any views on the definition of ‘promoter’ and how it applies in the context of this Article?

11. Do you have any comments about the information to be provided, particularly where new requirements may be created?

12. How will the requirements work in practice? What benefits or costs might this entail for the consumer and business?

13. Are the information requirements suitable for all types of sales promotion such as on-premise announcements, radio, television and sms messaging?

14. Any other comments?

Article 5 - Protection of children and adolescents

15. How would these requirements work in practice?

16. Would the requirements provide adequate protection of children and adolescents against harmful sales promotions?

17. Any other comments?

Article 6 - Redress

18. What would be the effect of this Article in practice?

19. How would this relate to existing redress and complaints-handling mechanisms?

20. What are the costs and benefits - would this impact on some businesses more than others?

Article 8

21. Do you think that there should be an implementation period and, if so, for how long?

22. What is the overall impact on business and consumers?

Regulatory Impact Assessment

1. What are the benefits of the Regulation to business - how can they be quantified?

2. What are the benefits of the Regulation to consumers - how can they be quantified?

3. In particular, what are the types of costs (e.g. new packaging material, information requirements, one-off or on-going) which these measures might generate? How large are these costs? Can they be quantified?

4. How would SMEs be affected by the Regulation?

6. DRAFT REGULATION FOR A SALES PROMOTION

2001/0227 (COD)

Proposal for a EUROPEAN PARLIAMENT AND COUNCIL
REGULATION concerning sales promotions in the Internal Market

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE
EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95(1) thereof,

Having regard to the proposal from the Commission [6],

[6] OJ C [], [], p. [].

Having regard to the opinion of the Economic and Social Committee [7],

[7] OJ C [], [], p. [].

Having regard to the opinion of the Committee of the Regions [8],

[8] OJ C [], [], p. [].

Whereas:

(1) In accordance with Article 14(2) of the Treaty, the internal market comprises an area without internal frontiers in which the free movement of goods, services and the freedom of establishment are ensured; the development of the use and commercial communication of sales promotions within the area without internal frontiers is vital to promote the development of cross-border activities.

(2) The use and communication of sales promotions are key to the growth and development of all businesses in the Community; they are particularly important tools for small and medium-sized enterprises who rely on such affordable practices as inputs and outputs to develop their cross-border activities; such promotions therefore stimulate competitiveness in the European economy and accordingly allow consumers to benefit from greater choice and competitive prices.

(3) Community law and the characteristics of the Community legal order are a vital asset to enable European citizens and operators to take full advantage, without consideration of borders, of the opportunities offered by the use and communication of sales promotions; this Regulation therefore has the purpose of ensuring a high level of Community legal integration in order to establish a real area without internal borders for the use and communication of sales promotions.

(4) The use and communication of sales promotions within the Community is

hampered by numerous identified legal obstacles [9] to the proper functioning of the Internal Market which make less attractive the exercise of the freedom of establishment and the freedom to provide services; these obstacles arise from divergences in legislation and from the legal uncertainty as to which national rules apply to the use and communication of sales promotions; a relatively narrowly defined set of rules on sales promotions are giving rise to a multiplicity of Internal Market barriers affecting a wide range of businesses. The removal of these barriers will facilitate the free movement of goods associated with the sales promotion.

(5) [9] Green paper on "Commercial communications in the Internal Market": COM(96) 192 final. 18.05.96.

(6) In the absence of uniform rules at Community level, obstacles to cross-border services and goods or the freedom of establishment might be justified in the light of the case-law of the Court of Justice as long as they seek to protect recognised public interest objectives and are proportionate to those objectives; in the light of Community objectives, of the provisions of the Treaty relating to free movement, of secondary Community law, and in accordance with the Commission's policy on commercial communications [10], such obstacles can only be eliminated by establishing uniform rules at Community level and by clarifying certain legal concepts at Community level to the extent necessary for the proper functioning of the Internal Market; other restrictions have been identified as requiring replacement by less restrictive measures; remaining restrictions relating to the use and communication of sales promotions should be submitted to the principle of mutual recognition of national legislation.

(7) [10] "The follow-up to the Green paper on Commercial Communications in the Internal Market" Communication from the Commission. COM(1998) 121 final. 04.03.1998.

(8) Given the specific nature of the problems to be addressed, in particular, the need to tackle in a very targeted manner a small number of issues, which affect a wide variety of services, there is a need to establish through a Regulation a few precise, unconditional and uniform Community requirements. The use of a Regulation strengthens legal security, in particular, for customers and small and medium-sized companies.

(9) This Regulation covers promotional contests or games where the purpose is to encourage the sale of goods or services, other than gambling activities, and where payments, if they arise, serve only to acquire the promoted goods or services. This excludes gambling activities, such as games of chance,

lotteries and betting transactions, which involves wagering a stake with monetary value, from the scope of application.

(10) By dealing only with those specific identified matters which give rise to problems for the Internal Market, this Regulation is fully consistent with the need to respect the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality and the Commission's policy on commercial communications, which through the work of the Expert Group on commercial communications, has sought to apply this principle in as transparent and precise a manner as possible, the measures provided for in this Regulation are strictly limited to the minimum needed to achieve the objective of the proper functioning of the internal market; where action at Community level is necessary, and in order to guarantee an area which is truly without internal frontiers as far as sales promotions are concerned, the Regulation must ensure a high level of protection of objectives of general interest, in particular the protection of minors, consumer protection and in that context fair trading and the protection of public health.

(11) This Regulation complements the Community acquis, which is applicable to the use and communication of sales promotions, which covers, in particular, Council Directive 84/450/EEC concerning misleading advertising and comparative advertising [11], Council Directive 89/552/EEC concerning the pursuit of television broadcasting activities [12], Council Directive 92/59/EEC on general product safety [13], Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data [14], Directive 97/66/EC of the European Parliament and of the Council concerning the processing of personal data and the protection of privacy in the telecommunications sector [15], Directive 98/6/EC of the European Parliament and of the Council on consumer protection in the indication of prices of products offered to consumers [16], Directive 98/27/EC of the European Parliament and of the Council on injunctions for the protection of consumers' interests [17], Council Directive 92/28/EEC on the advertising of medicinal products [18], Directive 1999/44/EC of the European Parliament and of the Council on certain aspects of the sale of consumer goods and associated guarantees [19], Council Recommendation "Drinking of alcohol by children and adolescents [20] and Directive 2000/31/EC of the European Parliament and of the Council on electronic commerce [21].

(12) [11] OJ L 250, 19.9.1984, p.17. Directive as amended by Directive 97/55/EC of the European Parliament and of the Council (OJ L 290, 23.10.1997, p.18).

(13) [12] OJ L 298, 17.10.1989, p.23. Directive as amended by Directive 97/36/EC (OJ L 202, 30.7.1997, p. 60).

(14) [13] OJ L 228, 11.8.1992, p.24.

(15) [14] OJ L 281, 23.11.1995, p.31.

(16) [15] OJ L 24, 30.1.1998, p.1.

(17) [16] OJ L 80, 18.3.1998, p.27.

(18) [17] OJ L 166, 11.6.1998, p.51. Directive as amended by Directive 2000/31/EC (OJ L 178, 17.2.2000, p.1).

(19) [18] OJ L 113, 30.4.1992, p.13.

(20) [19] OJ L 171, 7.7.1999, p.12.

(21) [20] COM (2000) 736 final.

(22) [21] OJ L 178, 17.7.2000, p.1.

(23) For purposes of enforcement this Regulation has strong complementary links with Council Directive 84/450/EEC; non compliance with the information requirements of this Regulation shall be considered as breaches of the ban on misleading advertising established by Council Directive 84/450/EEC.

(24) This Regulation provides for a high level of consumer protection in order to enhance trust and confidence in the Internal Market for sales promotions by setting down a detailed number of information requirements; these provisions ensure that the commercial communications relating to sales promotions are transparent and that an individual interested in a communicated sales promotion will be able to easily obtain all the relevant information announced in that communication. In view of the need to protect minors and public health, it also makes the use and commercial communication of sales promotions subject to a number of harmonised targeted bans and precise restrictions;

(25) The heightened protection that the Regulation provides by the establishment of these uniform rules allows for the removal of certain national bans or limitations. This removal is necessary to eliminate the barriers to

establishment and the export of services as well as the substantial distortions of competition that they give rise to; other cross-border barriers to the use and commercial communication of sales promotions are submitted to the application of the principle of mutual recognition of national legislation; requirements at national level which are subject to mutual recognition cover only those relating to the use of sales promotions or references to them in commercial communications and not general requirements on advertising such as those relating to health and ethical claims, advertising for certain products and services, nor requirements relating to other marketing practices.

(26) Without verifiable prior consent this Regulation, in order to protect the physical health of children and consistent with Directive 92/59/EEC, prohibits promoters of free gifts or premiums from dispatching promotional products to children unless the promoters ensure that the products dispatched are not of a nature, in view of their intrinsic qualities or their packaging (notably through reliance on child-proof packaging), that they could harm a child's physical health.

(27) In view of the recognised need for reasons of public health to prevent inciting children and adolescents to drink alcoholic beverages; given the objective underlying the use of sales promotions which is to encourage consumption of promoted products and services, this Regulation bans the offer of free alcoholic beverages as promotional gifts to minors.

Commercial communications of sales promotions for tobacco products and restrictions thereon are addressed in the proposed Directive on advertising and sponsorship of tobacco products. [22](29) [22] COM (2001) 283 final

(30) This Regulation lays down a number of obligations on promoters to ensure that, in the event of them breaching obligations relating to the use and communication of sales promotions, complainants will be able to identify the promoter and have easy access to in-house redress systems; the provisions of this Regulation will also encourage best-practice in the field of in-house customer complaint schemes as well as promote and facilitate the access to affordable out-of-court redress schemes.

HAVE ADOPTED THIS REGULATION:

Article 1

Object

This Regulation establishes rules concerning the use and commercial communication of sales promotions in order to ensure the proper functioning of the internal market.

Article 2

Definitions

For the purposes of this Regulation:

(a) 'commercial communication': any form of communication designed to promote, directly or indirectly, the goods, services or image of a company, organisation or person pursuing a commercial, industrial or craft activity or exercising a regulated profession. The following do not constitute commercial communications:

- information allowing direct access to the activity of the company, organisation or person, in particular a domain name or an electronic-mail address; and
- communications relating to the goods, services or image of the company, organisation or person compiled in an independent manner, particularly when this is without financial consideration;

(b) 'sales promotion': a discount, a free gift, a premium or an opportunity to participate in a promotional contest or game;

(c) 'promoter': a user of a sales promotion, meaning a company, organisation or person by whom or on whose behalf a sales promotion is undertaken;

(d) 'customer' : a company, organisation or person who purchases the good or service promoted by the promoter;

(e) 'discount': the temporary offer of:

- a price reduction;
- an additional quantity of the identical good or service purchased which is offered at no additional cost to the purchaser;
- a coupon or voucher entitling a purchaser of a good or service to a reduction on the price of an identical good or service on a subsequent purchase;

(f) 'free gift': the temporary offer to provide free of charge a good or service independently of an obligation to purchase a good or service of an identical type;

(g) 'premium': the temporary offer to provide a good or service of a type which is not identical to the good or service with which it is offered for purchase;

(h) 'promotional contest': the temporary offer to participate in a contest which may be subject to a prior obligation to purchase a good or service, in which the winner is designated primarily by means of skill;

(i) 'promotional game': the temporary offer to participate in a game, in which the winner is designated primarily by chance and no fee is required to participate and where participation may be subject to a prior obligation to purchase. Such promotional games shall not include gambling activities which involve wagering a stake with monetary value in games of chance, including lotteries and betting transactions.

(j) 'child': a person under the age of 14 years;

(k) 'alcoholic beverages': alcoholic beverages within the meaning of Articles

2,8, 12,17 and 19 of Directive 92/83/EEC;

(l) 'general prohibition on the use or commercial communication of a sales promotion': a prohibition that is not specific to a particular type of promoted good or service.

(m) 'Non-public regulatory body": An organisation or association not governed by public law, exercising its legal autonomy to regulate in a collective manner economic activities; and

(n) 'sale below cost': a discount consisting of a sale of a product or service below the net invoice price inclusive of carriage, insurance and other delivery costs as well as tax.

Article 3

The use and commercial communication of sales promotions

1. Member States or non-public regulatory bodies shall not impose:

- a general prohibition on the use or commercial communication of a sales promotion unless required by Community law;
- a limitation on the value of a sales promotion except for discounts on books;
- a prohibition on discounts preceding seasonal sales; or
- a requirement to obtain prior authorisation, or any requirement having equivalent effect, for the use or commercial communication of a sales promotion.

2. Member States or non-public regulatory bodies shall neither restrict the freedom to provide services nor restrict the free movement of goods benefiting from the use of sales promotions on the grounds of the use of sales promotions and references to them in commercial communications;

Article 4

Information to be provided in respect of sales promotions

In addition to other information requirements deriving from Community law, the promoter shall ensure that the commercial communication of a sales promotion complies with the requirements set out at Annex to this Regulation. All the information requirements set out in Annex shall be provided in a clear and unambiguous manner. The information that the promoter must make available to the client on request must be available on the launch of the relevant sales promotion.

Article 5

Protection of children and adolescents

1. A promoter, when making a sales promotion, shall not collect personal data from a child without the verifiable prior consent from that child's legal guardian.

2. A promoter is prohibited from providing directly to a child a free gift or a premium if it is of a nature that could harm its physical health.

3. A promoter is prohibited from providing a free gift consisting of an alcoholic beverage to individuals under the age of 18.

Article 6

Redress

1. A promoter shall at the request of a court or administrative authority, provide evidence as to the accuracy of the information referred to in Article 4.

2. A promoter shall provide, free of charge, an address to which complaints can be directed to him. Where a promoter provides a telephone advice service in connection with a sales promotion, the promoter shall ensure that this is provided free of charge and that appropriate resources are dedicated to its operation.

3. A promoter shall respond to an initial complaint relating to a sales promotion, within six weeks of the promoter's receipt of that complaint. The initial complaint and the response shall be in writing, which may include by electronic means. The response shall be in the language of the communication of the sales promotion.

4. A promoter shall:

- indicate in the commercial communication relating to the sales promotion any out of court dispute settlement system or code of conduct that he/she subscribes to ; and
- make available upon request information concerning any such dispute settlement system or code of conduct.

Article 7

Revision clause

Before the end of [...], the Commission shall submit to the European Parliament and the Council a comprehensive report on the application of the Regulation, accompanied, if appropriate, with a proposal for its revision.

Article 8

This Regulation shall enter into force on the [] day following that of its publication in the Official Journal of the European Communities.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, []

For the European Parliament

The President []

For the Council

The President

[]

ANNEX

Information to be provided in respect to the use and the commercial communication of sales promotions

1. All sales promotions

1.1. Information to be provided in the commercial communication:

- an indication of the discount, free gift, premium, promotional contest or promotional game;
- the price (inclusive of taxes) of the promoted good or service and any additional costs associated with freight, delivery or postage;
- the promoter's identity;
- the duration of the offer including the start and end date; and
- where the offer is subject to conditions, an indication of where these conditions or any other information can be obtained.

1.2. Information to be made available on request unconditional on purchase of the promoted product or service:

- the name and geographic address of the promoter; and
- the terms and conditions relevant to the sales promotion.

2. Discounts

2.1. Information to be provided in the commercial communication:

- the exact amount of the discount represented as either a percentage or a unit cost; and
- an indication of a sale below cost.

2.2. Information to be made available on request unconditional on purchase of the promoted product or service:

- any conditions or limitations applicable to the discount; and
- the preceding price of the promoted good or service and the length of time (including dates) that this preceding price was applied.

2.3. Information to be made available on a coupon or voucher:

- the cash value of the coupon or voucher;
- any limitation on its use including its expiry date; and
- the goods or services against which the coupon or voucher may be redeemed.

2.4. Information to be made available on request of a manufacturer or a service provider from whom goods or services have been purchased:

- information of a sale below cost in conformity with prior contractual agreements.

3. Free gifts and Premiums

3.1. Information to be provided in the commercial communication:

- the actual value of the free gift or premium; and

- any costs associated with obtaining the free gift or premium.
- 3.2. Information to be made available on request unconditional on purchase of the promoted product or service:
- any conditions or limitations applicable to the free gift or premium.

4. Promotional contests and promotional games

4.1. Information to be provided in the commercial communication:

- the value and nature of the prize;
- the closing date for receipt of entries;
- any geographical or personal restrictions such as location or age;
- any requirements for proof of purchase;
- the need to obtain permission to enter from an adult or employer;
- any associated costs other than the purchase of the promoted good or service in the participation in the promotional contest or promotional game; and
- in the case of a promotional game, the actual or estimated odds of winning the prize.

4.2. Information to be made available on request unconditional on purchase of the promoted product or service:

- any conditions applicable to the promotional contest or game including any limitations on entries or prizes;
- the number of prizes which may be won and the number of prizes of any one type if more than one type of prize is on offer;
- the rules governing who is eligible to participate and the award of prizes;
- whether a cash alternative can be substituted for any prize;
- the criteria for judging entries;
- the selection procedure for the award of prizes and, where the selection is made by jury, the composition of the jury;
- the date of the results and the manner in which they are to be announced;
- the means by which prizes may be delivered or collected and any associated costs;
- the time period during which prizes must be collected;
- any intention and conditions to use winners in post event publicity; and
- details of prize-winning entries subject to the agreement of prize winners and data protection rules.

7. LIST OF CONSULTEES

The list of consultees includes:

365 Corporation PLC
AA
Aberdeenshire Council
Action on Smoking and Health
Jenny Adams
The Advertising Association
Amazon
American Express
Anglia Polytechnic University
AOL Bertelsmann Online
AOL UK
Argos Distributors Limited
ASLIB
Associated Newspapers Limited
Association for Payment & Clearing Services
Association of British Insurers
Association of British Travel Agents
Association of Chartered & Certified Accountants
Association of Convenience Stores
Association of Exhibition Organisers
Association of Independent Businesses
The Association of Private Client Investment Managers and Stockbrokers
Association of United Trusts & Investment Funds
Astra Zeneca
Barclays Bank PLC
BBC
BBC - Audiocall
Paul Beaumont
Berwin Leighton Paisner
The Booksellers Association of Great Britain
The Boots Company PLC
Bournemouth Borough Council
Brewers and Licensed Retailers Association
Bristows
British Association of Toy Retailers
British Bankers' Association
The British Brands Group
British Casino Association
The British Chambers of Commerce
British Computer Society
British Dentistry Association
The British Equestrian Trade Association
British Exhibition Contractors Association
British Frozen Food Federation
British Hardware and Housewares Manufacturers' Association

The British Institute of Inn Keeping
British Music Rights
The British Phonographic Industry Limited
British Printing Industries Federation
British Retail Consortium
British Service Providers Association
British Sky Broadcasting Group PLC
British Telecommunications PLC
BT Cellnet
O2 (BT Genie)
British Tourist Authority
The British Toy & Hobby Association
Broadcast Advertising Clearance Centre
Broadsystem Limited
Brodies
London Borough of Bromley
Business Connect IT Centre Bangor
Business Link Greater Nottingham
Business Link Leicestershire
Business Link North Yorkshire
Business Link Rochdale
Business Link Surrey
Business Services Association
Cable and Wireless Global
Cable Communications Corporation
Camelot Group PLC
Susan Campbell
Capital Radio
Carpet Foundation/BCMA
Channel 4
Channel 5
Charles Russell
Chartered Institute of Marketing
Clifford Chance LLP
Committee of Advertising Practice
Communication Managers' Association
Company Law Limited
Component Source Limited
Confederation of British Industry
Confederation of Information Communication Industries
Consumer Credit Trade Association
Consumers' Association
Consumers International
Corporation of London
Cosmetic Toiletry & Perfumery Association Limited
Coventry City Council
Coventry City Football Club
Covington & Burling
Marise Cremona
CTPA Limited

Cumbria County Council
Dechert
Demon Internet Limited
Denton Wilde Sapte
The Dialog Corporation PLC
Dibb Lupton Alsop
John Dickie
Direct Line
Direct Mail Services Standards Board
Direct Marketing Association (UK) Limited
Dixons Group PLC
DLA
Paul Dobson
Domestic Appliance Service Association
Dorling Kindersley
e centreUK
East Ayrshire Council
East Dunbartonshire Council
Electronic Investor Voting
Energis PLC
English Association of Self-Catering Operators
Cowan Ervine
Essex E Commerce Centre ISI
EURIM
European Cable Communications Association
European Federation of Producers and Applicators of Specialist Products for Structures
European Publishers Council
Eversheds
Everton Football Club
Faculty of Advocates
Farrer & Co
Federation of Bakers
The Federation of European Direct Marketing
Federation of Multiple DIY Retailers
Federation of Small Businesses
Federation of the Electronics Industry
Fidelity Investments Services Limited
Finance & Leasing Association
Financial Law Panel Limited
Financial Ombudsman Service
Financial Times Information Limited
The Forum of Private Business
Gam Care
Gamblers Anonymous (UK)
The Gambling Consultancy Limited
The Gaming Board for Great Britain
Gateshead Metropolitan Borough Council
GE Capital
General Consumer Council for Northern Ireland

The General Council of the Bar
Glasgow City Council
Goldman Sachs
Greenland Interactive
Guernsey Trading Standards Service
H Young Holdings PLC
Halfords Limited
London Borough of Hammersmith and Fulham
Hammond Suddards
Hampshire County Council
Health Food Manufacturers Association
Herbert Smith
Hobson Audley
House of Commons Library
Geraint Howells
IBM UK Limited
Incorporated Society of British Advertisers
Independent Committee for the Supervision of Standards of Telephone Information Services
Independent Committee for the Supervision of Standards of Telephone Information Services
Independent Television Commission
Information and Communications Industry Limited
Information Communications PLC
The Initiative for Software Compliance Limited
Institute of Chartered Accountants of England & Wales
Institute of Chartered Accountants Scotland
Institute of Consumer Affairs
Institute of Credit Management
Institute of Direct Marketing
Institute of Directors
Institute of Practitioners in Advertising
Institute of Sales Promotion
Institutional Fund Managers' Association
Interactive Media In Retail Group Limited
Interforum
International Consumer Policy Bureau
Internet Services Providers Association
Internet Watch Foundation
ITV Broadcasters
John Lewis Partnership
Kemp Little LLP
Kent County Council
Kingfisher PLC
Kuitsteinart Levy
Lancashire County Council
LAPADA: The Association of Art and Antique Dealers
The Law Centres Federation
The Law Commission
Law laboratories Limited

The Law Society
The Law Society of Northern Ireland
The Law Society of Scotland
Leeds City Council
Leeds United Football Club
Legal & General Direct Limited
Lincolnshire County Council
Linklaters & Paines
Littlewoods Leisure Limited
LLM Communications
Lloyd's
Local Authorities Co-ordinators of Regulatory Services
The London Internet Exchange Limited
London Investment Banking Association
The London Stock Exchange
Lord Chancellor's Department
The Lotteries Council
Mace & Jones
Macfarlanes
MacRoberts
Mail Order Traders' Association
Marks and Spencer PLC
Stephen Mason
Masons
Massive Limited
Merthyr Tydfil County Borough Council
Microsoft
Mills & Reeve
Milton Keynes Council
Morgan Cole
Morgan Stanley Dean Witter
MTV Networks International
National Association of Citizens Advice Bureaux
National Association of Master Bakers
National Consumer Council
The National Consumer Credit Federation
National Consumers Federation
National Federation of Enterprise Agencies
National Federation of Retail Newsagents
National Lottery Commission
National Magazines
National Market Traders Association
The National Newspapers Mail Order Protection Scheme Limited
The National Pharmaceutical Association
Network for Online Commerce
News International PLC
Newspaper Publishers Association Limited
Newspaper Society
Nicholson Graham & Jones
Norfolk County Council

North Lincolnshire Council
Northern Ireland Court Service
Northumberland County Council
Norton Rose
Norwich City Football Club
ntl Group Limited
Office of Telecommunications
E O'Neill
Orange
Osborne Clarke
Paid Attention
The Periodical Publishers Association
A F Phillips
Pinsent Curtis Biddle
Planit International Limited
The Portman Group
The Post Office
Premium Rate Association
The Proprietary Association of Great Britain
Prudential Corporation PLC
The Publishers Association
The Radio Advertising Bureau
The Radio Advertising Clearance Centre
The Radio Authority
Railway Industry Association
Rank Group
Chris Reed
The Restaurant Association
Reuters
The Reward Group
Rivers Consultancy
Rowe & Maw
Royal Bank of Scotland
Royal Horticultural Society
The Royal Institute for the Blind
Royal National Institute for the Blind
RS Group of Companies
Anne Ruff
Salans Hertzfeld & Heilbronn
Scottish Consumer Council
Scottish Council for Education Technology
Scottish Grocers Federation
Scottish Law Commission
Shop & Display Equipment Association
Simmons & Simmons
Society of Motor Manufacturers & Traders
Society of Public Teachers at Law
The Sockman Group
Somerville
Southampton Football Club

St Helens Metropolitan Borough Council
St John's Innovation Centre
Stafford Borough Council
Strategic Rail Authority
Strike Lucky Games Limited
Stringer Saul
Suffolk County Council
Sun Microsystems Limited
Supanet Limited
Surrey County Council
London Borough of Sutton
Swansea City Council
Swindon Borough Council
Tees Valley Joint Strategy Unit
Tesco PLC
Theodore Goddard
Thornton WS
T-Mobile
The Tobacco Manufacturers' Association
Torbay Council
Toyzone
TPC Telecoms Limited
Trading Standards Institute
Christian Twigg-Flesner
Unilever PLC
Union of Independent Companies
United Kingdom Permanent Representation to the European Union
Vernons Pools Limited
VISA International Service Association
Vodafone Limited
Wales Office
Warrington Borough Council
Weaver
Welsh Consumer Council
West Sussex County Council
Wiggin & Co
WIN PLC
Wine and Spirit Association of GB
Yahoo! Europe
Yellow Pages

8. THE CONSULTATION CRITERIA

- 1. Timing of consultation should be built into the planning process for a policy (including legislation) or service from the start, so that it has the best prospect of improving the proposals concerned, and so that sufficient time is left for it at each stage.*
- 2. It should be clear who is being consulted, about what questions, in what timescale and for what purpose.*
- 3. A consultation document should be as simple and concise as possible. It should include a summary, in two pages at most, of the main questions it seeks views on. It should make it as easy as possible for readers to respond, make contact or complain.*
- 4. Documents should be made widely available, with the fullest use of electronic means (though not to the exclusion of others) and effectively drawn to the attention of all interested groups and individuals.*
- 5. Sufficient time should be allowed for considered responses from all groups with an interest. Twelve weeks should be the standard minimum period for a consultation*
- 6. Responses should be carefully and open-mindedly analysed, and the results made widely available, with an account of the views expressed, and the reasons for decisions finally taken.*
- 7. 7. Departments should monitor and evaluate consultations, designating a consultation co-ordinator who will ensure the lessons are disseminated.*

The complete code is available on the Cabinet Office's web site, address <http://www.cabinet-office.gov.uk/servicefirst/index/consultation.htm>.

COMMENTS OR COMPLAINTS

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to Mr Philip Martin, DTI Consultation Co-ordinator, Room 564, 1 Victoria Street, London SW1H 0ET or telephone him on 020 7215 6206 or email philip.martin@dti.gsi.gov.uk