

Broadcasting Code Review: Commercial Communications in Radio Programming

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1. BACKGROUND TO RADIOCENTRE

- 1.1. RadioCentre is the industry body for commercial radio, formed in July 2006 from the merger of the Radio Advertising Bureau (RAB) and the commercial radio Companies Association (CRCA).
- 1.2. The role of RadioCentre is to maintain and build a strong and successful commercial radio industry - in terms of both listening hours and revenues. RadioCentre operates in a number of areas including working with advertisers and their agencies, representing commercial radio companies to Government, Ofcom, copyright societies and other organisations concerned with radio. RadioCentre also provides a forum for industry discussion, is a source of advice to members on all aspects of radio, jointly owns Radio Joint Audience Research Ltd (RAJAR) with the BBC, and includes copy clearance services for the industry through the Radio Advertising Clearance Centre (RACC).
- 1.3. RadioCentre members account for 90% of commercial radio listening and 86% of industry revenue. The membership of made up of 267 radio stations of all types – including the major commercial radio groups, small local radio groups, independent local stations and digital-only services.

2. EXECUTIVE SUMMARY

2.1. Introduction

- 2.1.1. We welcome the 2010 Ofcom Broadcasting Code consultation and acknowledge that it represents a significant shift in Ofcom's attitude towards the regulation of commercial communications in radio programming. Whereas the 2009 consultation proposed to continue to prohibit commercial communications in radio programming, with the exception of certain highly restrictive carve-outs, the 2010 consultation raises the possibility that commercial communications and programming can be integrated, subject to the principle of transparency. This places the creativity (and responsibility) around such references in the hands of the broadcaster.
- 2.1.2. This approach reflects the one advocated by the commercial radio industry in its response to the 2009 Broadcasting Code Review. At that time, the industry advocated fundamental revision of the regulatory principles governing the current Section 10, arguing that the current regulatory regime is out of line with industry, advertiser and listener expectations. We are pleased therefore that Ofcom and the industry are now much more closely aligned.
- 2.1.3. We believe that, should the industry's preferred policy option be implemented, it will represent a hugely significant commercial and creative opportunity for the commercial radio industry, whilst continuing to provide our listeners with appropriate protection. We therefore hope to see these regulatory changes implemented as soon as possible and welcome Ofcom's indication that they hope to publish the revised Code Section 10 before the end of this year.

2.2. Ofcom's four policy options

- 2.2.1. Of the four policy options outlined in Ofcom's consultation, the industry opposes strongly Option A, the retention of the status quo, and Option B, which closely represents the regulatory approach proposed in Ofcom's 2009 Broadcasting Code Review consultation.
- 2.2.2. Option D would represent a logical extension of the industry's favoured approach to the regulation of commercial communications in radio programming. However, we agree with Ofcom's assessment that it would be most appropriate to allow for the concept of integrated commercial references within radio programming to bed down within a familiar regulatory framework. In addition, despite an ever growing demand for innovative S&P activity, advertisers still value spot advertisements. We therefore believe that, for the foreseeable future, there will be a demand for spot ads on the majority of commercial stations.
- 2.2.3. However, we believe the possibility of moving towards Option D should be explored after a suitable period of time has lapsed following the introduction of Option C. Ofcom suggests a potential period of up to two years; we would certainly not wish for it to be any longer than this.
- 2.2.4. We therefore support the immediate implementation of Option C, which would allow for the integration of commercial communications in programming (with the exception of spot advertising), subject to the transparency principle. We believe that this would provide the industry and advertisers with optimal creative and commercial flexibility, whilst securing appropriate consumer protection.
- 2.2.5. As far as RadioCentre is aware, the entire commercial radio industry endorses the

immediate implementation of Option C¹.

2.3. **Detailed consideration of Option C**

2.3.1. Ofcom makes a number of proposals regarding the detail of Option C. We largely agree with these (see below), but disagree on two matters – the sponsorship of news bulletins, and the use of integrated commercial references within children’s radio programming. These latter two issues are dealt with below.

- **Additional prohibitions/restrictions** - We welcome Ofcom’s statement: *‘We do not consider it currently necessary to include additional consumer protections with regard to specific products and/or services in commercial references to radio²’*. We believe that this is the appropriate approach, as sufficient prohibitions and restrictions exist in the BCAP Code. We agree with Ofcom’s proposal to keep a watching brief on the matter.
- **Consumer affairs, political/controversial matters, religious programming** - We agree with Ofcom that no further safeguards are required related to political or controversial matters, religious programming and consumer affairs programming.
- **Public Information Programming** - We suggest that programming funded by a non-commercial entity should be subject to a lesser degree of transparency. Ofcom has indicated that this is their intention.
- **Selection/rotation of music** - We agree that, when a commercial arrangement has influenced the selection or rotation of music, this must be made transparent to listeners. However, we also agree that it is appropriate that these commercial arrangements should be subject to a lesser degree of transparency. We endorse Ofcom’s suggested approach to securing this transparency, via broadcast messages and a station’s public file.
- **Charity appeals** - As currently drafted, charity appeals regulated by Option C would not be allowed to contain commercial communications. We are reassured by clarification from Ofcom that it was not their intention to prohibit any and all third party involvement in charity appeals, and the wording within the Charity Appeals section of Option C’s Section 10 will therefore be revised.

2.4. **The sponsorship of news bulletins**

2.4.1. Ofcom proposes prohibiting the integration of commercial communications in news (except to the extent that it is already permitted - e.g. the sponsorship of integrated sports news, or weather bulletins). Specifically, no commercial reference, or material that implies a commercial arrangement between the broadcaster or third party would be permitted in or around news bulletins or news desk presentations.

2.4.2. We recognise the absolute importance of safeguarding the impartiality and editorial independence of commercial radio’s news bulletins and note that section 319 of the 2003 Communications Act requires news included in television and radio services to be presented with due impartiality and due accuracy.

2.4.3. To test listener tolerance to commercial references in and around news bulletins, we commissioned some audience research. The research found that, if the sponsor of a news bulletin exercised no influence over the bulletin’s content, listeners deemed sponsorship to be acceptable. Only when a commercial reference was integrated within the news bulletin was this considered questionable.

¹ We understand that Absolute Radio also support the immediate implementation of Option C, but believe that Ofcom and industry should consider the implementation of Option D immediately after the introduction of Option C, rather than allowing for a period of transition.

² Broadcasting Code Review: Commercial Communications in Radio Programming, p. 66.

- 2.4.4. We also believe that the sponsorship of commercial radio news bulletins could represent a significant commercial opportunity for the industry – around £10million per annum.
- 2.4.5. We therefore believe that the revised Code Section 10 should allow for the opportunity to place sponsorship credits around news bulletins, but not integrated within them. We believe that this would be compliant with Ofcom's statutory duties in this regard.
- 2.5. **Programming primarily aimed at children**
- 2.5.1. We believe that commercial references integrated within programming primarily at children should be allowed in some circumstances, as the proposed revised regulatory regime will contain sufficient safeguards to protect children, and the proposed prohibition would unnecessarily restrict the creative and commercial opportunities of children's radio.
- 2.5.2. However, we recognise the concerns related to the commercialisation of children, and acknowledge the suggestion that children may find it more difficult to distinguish commercial content in programming than adults. We therefore propose that commercial references should be permitted within programming aimed at children, subject to more stringent transparency requirements than those required of other commercial radio programming. In addition, we propose that a more targeted prohibition on commercial communications promoting certain products (i.e. HFSS goods, alcohol, gambling etc.) is applied to children's radio programming.
- 2.6. **Conclusion**
- 2.6.1. We believe that the implementation of Option C could potentially transform commercial radio's creative and commercial offering and, in turn, provide the industry with a much needed economic boost. It is therefore widely welcomed and anticipated within the industry.
- 2.6.2. We recognise that Ofcom's proposals represent significant de-regulation, and welcome and commend Ofcom's decision to adopt such a liberalising approach. We recognise that the industry must now adopt a highly responsible attitude to the use of commercial references in radio programming, to accompany the proposed liberalised regulatory framework. Stations will have a duty to ensure that all relevant staff are aware of the revised Code Section 10, and fully understand what is and isn't permissible under it, in addition to following revised clearance procedures. The industry will also have a duty to inform and educate advertisers and agencies as to revised rules. RadioCentre, and its constituent parts, including the Radio Advertising Bureau and the Radio Advertising Clearance Centre, will have a key role to play in this.
- 2.6.3. We believe strongly that the revised Code Section 10 will be adopted smoothly, and will lead to an enhancement of commercial radio's output, to the benefit of the industry, advertisers and, most importantly, listeners.

3. INTRODUCTION

3.1. Ofcom's revised regulatory approach

- 3.1.1. We welcome the 2010 Ofcom Broadcasting Code consultation and acknowledge that it represents a significant shift in Ofcom's attitude towards the regulation of commercial communications in radio programming.
- 3.1.2. Whereas Ofcom's 2009 consultation proposed continuing to prohibit commercial communications in radio programming, with the exception of certain highly restrictive carve-outs, the 2010 consultation raises the possibility that commercial communications and programming can be integrated, subject to the principle of transparency. We acknowledge that this shift in positioning was prompted primarily by the Government's revised attitude towards the use of product placement on television, and the industry's outright rejection of the regulatory framework proposed in the 2009 consultation.
- 3.1.3. We welcome the indication within the 2010 consultation document that Ofcom favours the adoption of Option C. The regulatory approach behind Option C reflects closely the approach advocated by the commercial radio industry in its response to the 2009 Broadcasting Code Review. At that time, the industry advocated fundamental revision of the regulatory principles governing the current Section 10, arguing that the current regulatory regime is out of line with industry, advertiser and listener expectations. We are therefore pleased that the positions of industry and Ofcom are now much more closely aligned.

3.2. The benefits of liberalisation

- 3.2.1. The implementation of Option C would represent a hugely significant commercial and creative opportunity for the commercial radio industry, whilst continuing to provide our listeners with appropriate protection.
- 3.2.2. We address each of these benefits in turn:
- a) Benefits for industry;
 - b) Benefits for advertisers;
 - c) Benefits for listeners.

3.3. Industry benefits

- 3.3.1. Both the industry and Ofcom have acknowledged that commercial radio's current revenue model is under considerable strain. It is critical therefore that the industry finds new revenue streams to engage advertisers, who are increasingly able to find creative and interactive means of reaching consumers via other media.
- 3.3.2. The radio advertising model is shifting naturally from an emphasis on spot advertising towards sponsorship and promotions (S&P) activity. S&P currently represents 20% of industry revenue (equating to an annual figure of £101.7m) compared to 10% in 2000³.
- 3.3.3. Revision of Code Section 10 would enable commercial radio to do more to drive advertiser and agency interest in S&P activity and to develop new and innovative means of delivering commercial messages in radio programming. It would also allow commercial radio to develop a competitive advantage over other traditional advertising media; retaining radio's unique characteristics of ubiquity, intimacy and immediacy whilst competing more equally with forms of new media, particularly the internet, which are much less onerously regulated.

³ RAB Q1 2010.

3.3.4. As Ofcom acknowledges⁴, it is naturally difficult to assess and substantiate the scale of revenue opportunities that will flow from a revised Section 10. However, we believe that permitting commercial references within radio programming will create incremental revenue growth, in addition to locking in revenue. We have no reason to revise the estimate that we included in our response to the 2009 Broadcasting Code consultation. Namely, discussions within the industry allow us to estimate that, should Option C be implemented, this would allow for a 20-50% uplift in S&P revenue, above that which would occur organically, dependent on market conditions⁵.

3.4. **Advertiser benefits**

3.4.1. There is clear demand amongst advertisers (and their agencies) to expand communication with listeners beyond traditional display advertising. Ofcom-commissioned commercial research, conducted by Change Agency, found that radio advertisers are increasingly favouring S&P activity, for the following reasons:

- Its greater scope for creative content;
- The ability for advertisers/agencies to have greater creative input;
- Its greater proximity to the station's brand;
- Its (potential) greater effectiveness and return on investment.

3.4.2. Greater relaxation of regulation around commercial references in radio programming will provide advertisers with a real opportunity to creatively engage with their target audiences, and reinvigorate advertiser confidence in commercial radio.

3.5. **Listener benefits**

3.5.1. A reinvigorated radio advertising revenue model would have the potential to increase substantially commercial radio's content budgets, thereby contributing to better choice and quality for listeners.

3.5.2. In addition, an important additional benefit for listeners of permitting commercial references within programming is the potential for the advertisers' involvement to enhance that particular element of the output.

3.5.3. The Ofcom-commissioned consumer research, conducted by Essential Research to inform the 2009 Broadcasting Code consultation, reveals a '*clear appetite for some relaxation of Ofcom's rules*'⁶ surrounding commercial references in radio programming. This appetite is not limited to a preference for S&P over traditional spot advertising; amongst the research participants, there was also clear recognition that creative S&P activity could enhance the listening experience (for example, through the use of outside broadcasts and public information programming).

3.5.4. The consumer research conducted by Essential Research also established that commercial radio is a medium through which most listeners expect to be 'sold to', or receive commercial messages, whether by spot ads or within programming⁷. The research found that most participants "*felt that their own common sense was sufficient to protect them from commercial deception or misinformation*"⁸ and "*on the whole, respondents were confident in their own ability to detect and – if desired – deflect advertising messages*"⁹.

⁴ Broadcasting Code Review: Commercial Communications in Radio Programming, p. 62.

⁵ Calculated following consultation with RadioCentre members

⁶ Essential Research, p. 2

⁷ Essential Research, p. 2

⁸ *Ibid.*, p. 18

⁹ *Ibid.*, p. 22

4. OFCOM'S FOUR POLICY OPTIONS

4.1. Option A

- 4.1.1. Option A represents the retention of the regulatory status quo, which requires that all commercial communications, other than sponsorship credits, are separated from radio programming.
- 4.1.2. As we set out in our response to the 2009 Broadcasting Code consultation, RadioCentre believes that the status quo no longer meets industry, advertiser or listeners needs. We believe that the regulatory principles that currently govern Code Sections 9 and 10 (other than transparency) – separation and editorial independence – are both redundant and undesirable. We therefore welcome Ofcom's recognition that the current restrictions '*may be out of line with listener expectations*'¹⁰ and may constrain advertisers' ability to exploit the full potential of radio as an advertising medium.
- 4.1.3. The adoption of Option A would also unfairly disadvantage radio in relation to television, which will be permitted (subject to limitations) to broadcast non-promotional references to products or services within programming, in return for payment.
- 4.1.4. We therefore oppose the adoption of Option A.

4.2. Option B

- 4.2.1. Option B closely represents the regulatory approach proposed in Ofcom's 2009 Broadcasting Code Review consultation - although we recognise that Ofcom proposes to allow a wider range of carve outs to the separation principle. The result is a Code Section 10 which, as a point of policy, continues to prohibit commercial references in radio programming but which allows for certain exceptions to that policy.
- 4.2.2. As we set out in our response to the 2009 Broadcasting Code consultation, RadioCentre believes that the regulatory approach represented by Option B is not fit for purpose. We also agree with Ofcom that '*the case for limiting liberalisation is arguably harder to make now that the Government has allowed product placement on television in significant broadcasting genres*'¹¹.
- 4.2.3. We therefore oppose the adoption of Option B.

4.3. Option D

- 4.3.1. Option D would allow for the full integration of commercial communications and radio programming, meaning that traditional spot advertisements would no longer be distinct from other forms of commercial communications (although broadcasters could continue to broadcast spot ads).
- 4.3.2. Option D would represent a logical extension of the industry's favoured approach to the regulation of commercial communications in radio programming. However, we do not believe that it would be appropriate to implement Option D at this stage, for the following reasons:
 - a) We recognise that the decision to implement Option D would require further consultation, and would therefore delay the implementation of a revised Code Section 10;
 - b) The immediate implementation of Option D would not grant industry, advertisers or listeners a period of transition in which to get used to Code liberalisation;
 - c) There is currently limited demand within the industry to immediately remove the

¹⁰ Broadcasting Code Review: Commercial Communications in Radio Programming, p. 29.

¹¹ Broadcasting Code Review: Commercial Communications in Radio Programming, p. 44.

distinction between spot advertising and other forms of commercial communication.

- 4.3.3. As Ofcom states, from a regulatory perspective under Option D there would be no difference between a spot ad and any other type of commercial message. It would therefore raise questions of which regulatory body (Ofcom and/or the ASA) would regulate what and with reference to which Code (the Ofcom Broadcasting Code and/or the BCAP Code). We agree with Ofcom that this is a complex matter, and accept that it would require further consultation as a result.
- 4.3.4. We agree with Ofcom's assessment that it would be most appropriate – and in the interests of industry, advertisers and listeners - to allow for the concept of integrated commercial references within radio programming to bed down within a familiar regulatory framework, rather than seeking to also implement structural regulatory change at the same time.
- 4.3.5. In addition, despite an ever growing demand for S&P activity, advertisers still value spot advertisements. We therefore believe that, for the foreseeable future, there will be a place for spot ads on the majority of commercial stations.
- 4.3.6. We note that Ofcom states that the adoption of Option D would require Ofcom to re-consult and would therefore necessitate a delay in the introduction of the revised Code Section 10. The industry is keen to see these regulatory relaxations implemented as soon as possible (especially as it has been pushing for them for a number of years now) and would therefore not welcome a further consultation period at this time.
- 4.3.7. We believe that the possibility of moving towards Option D should be explored after a suitable period of time has lapsed following the introduction of Option C, and believe that this should happen in conjunction with the conclusion of the potential two-year review period mentioned in the consultation (we would not wish to see this review take place any later than two years after the implementation of the revised Code Section 10).
- 4.4. **Option C – the industry's preferred option**
- 4.4.1. Option C would allow for the integration of commercial communications in programming (with the exception of spot advertising), subject to the transparency principle. We believe that Option C would provide the industry and advertisers with optimal creative and commercial flexibility, whilst also securing appropriate consumer protection. We welcome Ofcom's recognition that '*we might expect consumers to be comfortable with Option C*'¹².
- 4.4.2. We support the regulatory principle that underpins Option C's Section 10: '*To ensure the transparency of commercial communications as a means to secure consumer protection*'¹³. We believe this addresses the legislative requirement contained within the Consumer Protection From Unfair Trading Regulations 2008. Our thoughts on securing transparency are discussed in greater detail below, in the 'transparency requirements' section.
- 4.4.3. We welcome Ofcom's statement that '*Under Option C it would be for broadcasters to decide how they retain listener trust, loyalty and interest in programming*'¹⁴. We believe that stations ultimately know and understand their listeners best, and it should therefore be their responsibility to retain their trust, loyalty and interest. The industry is fully aware that the ultimate sanction against a station is a listener turning off their radio. Radio is trusted to control its advertising minutage (unlike television, which is restricted by statute), and is therefore used to managing the balance between listener satisfaction and commercial content.

¹² Broadcasting Code Review: Commercial Communications in Radio Programming, p. 61.

¹³ Broadcasting Code Review: Commercial Communications in Radio Programming, p. 71.

¹⁴ Broadcasting Code Review: Commercial Communications in Radio Programming, p. 61.

- 4.4.4. We recognise that Option C will necessitate Ofcom acquiring regulatory responsibility for a greater degree of commercial references, and will create a situation in which both Ofcom and the ASA regulate commercial references with reference to the BCAP Code.
- 4.4.5. There is therefore a risk of regulatory confusion arising. However, we are reassured by the fact that this is simply a continuation of the current practice. This is acknowledged within the consultation document which states that: *'Ofcom would refer to the BCAP Code as it currently does with regard to the clearance, content and scheduling of sponsorship credits ... recognising ASA/BCAP's expertise in the area of advertising regulation, we would therefore intend to seek advice from it, as required, with regard to the interpretation of the BCAP Code.'*¹⁵
- 4.4.6. In addition, we understand why Ofcom raises the possibility of compliance risks that could potentially occur with Option C, at least in the short term. We agree with Ofcom's statement that *'such risks could be managed'*¹⁶ and do not believe that such risks will be as great as has been estimated.
- 4.4.7. We discuss in greater depth below the proposed detail of Option C, including consideration of:
- a) Additional prohibitions/restrictions;
 - b) Consumer affairs, political/controversial matters, religious programming;
 - c) Public Information Programming;
 - d) The selection/rotation of music;
 - e) Charity appeals.
- 4.4.8. In addition, we set out below why we believe that Ofcom's proposed approach to the following programming areas is unduly restrictive:
- The use of commercial references in relation to news bulletins;
 - The use of integrated commercial references within programming primarily aimed at children.
- 4.4.2. However, **overall we are satisfied by the detail of the proposed Option C regulatory approach, and urge Ofcom to implement it as soon as possible.** As far as RadioCentre is aware, the entire commercial radio industry endorses this position.

¹⁵ Broadcasting Code Review: Commercial Communications in Radio Programming, p. 60.

¹⁶ Broadcasting Code Review: Commercial Communications in Radio Programming, p. 62.

DETAILED CONSIDERATION OF OPTION C

5. ADDITIONAL PROHIBITIONS/RESTRICTIONS

- 5.4.1. We welcome Ofcom's statement: *'We do not consider it currently necessary to include additional consumer protections with regard to specific products and/or services in commercial references to radio¹⁷'*.
- 5.4.2. We believe that this is the appropriate approach, as sufficient prohibitions and restrictions exist in the BCAP Code. In addition, we welcome Ofcom's frequent acknowledgment of the fundamental differences between the nature of radio and television output, audiences and statutory and regulatory framework.
- 5.4.3. We acknowledge that Ofcom proposes keeping a watching brief on this matter, via a targeted monitoring exercise to assess levels of compliance, and a review of the appropriateness and effectiveness of these regulations after a period of up to two years (or sooner if required). We agree that this approach, and the criteria that might determine such a review, are appropriate. We suggest that Ofcom involve the industry at an early stage in the scoping and timing of this review process.
- 5.4.4. We therefore believe that Ofcom's decision not to impose additional prohibitions/restrictions on the use of integrated commercial references in radio programming is appropriate.

6. CONSUMER AFFAIRS, POLITICAL/CONTROVERSIAL MATTERS, RELIGIOUS PROGRAMMING

6.4. Consumer affairs

- 6.4.1. We welcome Ofcom's statement: *'We do not ... consider it necessary to place additional safeguards in relation to consumer affairs programming'*. We recognise that there are particular sensitivities around the need to safeguard the independence of observations and comments made within consumer affairs programming, but agree with Ofcom that the BCAP Code and the proposed signalling arrangements under Option C offer appropriate consumer protection.
- 6.4.2. We note that Ofcom proposes making it clear in accompanying guidance that broadcasters should take particular care to make it clear to listeners when an assessment of a product or service is genuinely independent and when it is not. We support this proposal, provided that it is not unduly prescriptive and allows broadcasters appropriate flexibility in its implementation.
- 6.4.3. We therefore believe that Ofcom's decision not to impose additional safeguards in relation to consumer affairs programming is appropriate.

6.5. Political/controversial matters

- 6.5.1. We agree with Ofcom that no further safeguards are required related to political or controversial matters, as the Broadcasting Code and the BCAP Code contains sufficient protections.

6.6. Religious programming

- 6.6.1. We agree with Ofcom that no further safeguards are required related to religious programming, as the Broadcasting Code and BCAP Code already contain sufficient safeguards.

7. PUBLIC INFORMATION PROGRAMMING

- 7.4.1. Ofcom proposes that, under Option C, *'no distinction is made between different*

¹⁷ Broadcasting Code Review: Commercial Communications in Radio Programming, p. 66.

*funders*¹⁸, whether or not the funder is a commercial or non-commercial entity.

- 7.4.2. We note Ofcom states that '*transparency of a commercial arrangement should be achieved through the appropriate signalling of a brand, trademark, product and/or service of a third party (or third parties) that has paid for broadcast exposure*'¹⁹. We believe that what is classed as 'appropriate signalling' may differ depending on whether the funder is a commercial or non-commercial entity. For example, in the instance of non-commercial funders, it may be important to draw a distinction between the cause (i.e. the Drive Safe campaign) and the funder (Avon and Somerset Safety Camera Partnership); a greater degree of transparency and clarity may be achieved through broadcasting the cause, rather than the third-party funder, and believe that the transparency guidance should be worded so as to allow stations to make this judgement call.
- 7.4.3. We therefore suggest that programming funded by a non-commercial entity should be subject to a lesser degree of transparency. Ofcom has indicated that this is its intention, and we welcome this.

8. SELECTION/ROTATION OF MUSIC

- 8.4.1. We welcome Ofcom's proposal that commercial arrangements might be introduced in relation to the selection and rotation of music for broadcast. We agree that this is a logical approach, reflecting the fact that Option C will also allow for commercial references to be integrated in speech programming.
- 8.4.2. We agree that, when a commercial arrangement has influenced the selection or rotation of music, this must be made transparent to listeners. However, we also agree that it is appropriate that these commercial arrangements should be subject to a lesser degree of transparency. We endorse Ofcom's suggested approach to securing this transparency, via broadcast messages and a station's public file.
- 8.4.3. In addition, we believe that the revised Code Section 10 should allow for commercial arrangements to influence the scheduling and rotation of music used on children's radio (Ofcom's consultation document implies that this practice will not be permitted). The revised regulatory regime being proposed by Ofcom will contain sufficient safeguards to protect children, and this additional prohibition would unnecessarily restrict the creative and commercial opportunities of children's radio.

9. CHARITY APPEALS

- 9.4.1. As currently drafted, charity appeals regulated by Option C would not be allowed to contain commercial communications. This represents a significant issue for the industry; it is difficult to think of a charity appeals and activity which exists without some kind of corporate sponsor or commercial involvement.
- 9.4.2. We recognise that, as charity appeals are not paid for, they should not be included in the definition of a commercial communication. However, we also understand that it is important that commercial communications linked to a charity are still subject to transparency requirements.
- 9.4.3. However, we are reassured by clarification from Ofcom that it was not their intention to prohibit all third party activity which involves charitable giving, and that references to third parties as the providers of prizes for charitable competitions and auctions, for example, are not likely to be caught by the rules, as those references will not constitute charitable appeals themselves. We understand that the wording of this section of the proposed new Code will be revised.

¹⁸ Broadcasting Code Review: Commercial Communications in Radio Programming, p. 69.

¹⁹ Broadcasting Code Review: Commercial Communications in Radio Programming, p. 73.

10. SPECIALIST FACTUAL STRANDS

- 10.4.1. We welcome Ofcom's proposal that bulletins for specialist factual strands (which include, but are not limited to, travel, sport, finance and weather) may include integrated commercial references.
- 10.4.2. However, we recognise that travel, sports, finance and weather bulletins would still be subject to the same transparency requirements required of programming which is subject to a commercial arrangement.

PROGRAMMING AREAS IN WHICH WE INVITE OFCOM TO CONSIDER AN ALTERNATIVE APPROACH

11. THE SPONSORSHIP OF NEWS BULLETINS

11.4. Background

- 11.4.1. Under Option C, Ofcom proposes prohibiting the integration of commercial communications in current affairs news (as opposed to the specialist strands mentioned previously - e.g. the sponsorship of integrated sports news, or weather bulletins). Specifically, Ofcom suggests that no commercial reference, or material that implies a commercial arrangement between the broadcaster or third party should be permitted **in or around** news bulletins or news desk presentations.
- 11.4.2. We acknowledge that commercial references in or around news broadcasting was not discussed in detail in Ofcom's pre-consultation discussions with the industry. However, having since canvassed the opinions of RadioCentre members, we believe that the revised Code Section 10 **should** allow for the sponsorship of news bulletins - i.e. the opportunity to place sponsorship credits **around** news bulletins, but **not integrated within them**. We believe that this could represent a significant commercial opportunity for the industry, whilst continuing to safeguard the impartiality and editorial independence of its news bulletins and listeners' trust in them.

11.5. Legislative and regulatory considerations

- 11.5.1. Section 319 of the 2003 Communications Act requires news included in television and radio services to be presented with due impartiality and due accuracy, in addition to requiring Ofcom to have regard to the desirability of maintaining the independence of editorial control over programme content:
- 2) (c) that news included in television and radio services is presented with due impartiality and that the impartiality requirements of section 320 are complied with;*
2) (d) that news included in television and radio services is reported with due accuracy;
4) (f) the desirability of maintaining the independence of editorial control over programme content.
- 11.5.2. To reflect these legislative requirements, Section Five of the Broadcasting Code safeguards the impartiality and accuracy of news. This section of the Code is what currently safeguards news bulletins that are provided by an external news agency, where that news agency could potentially have acknowledged political affiliations (a national newspaper, for example).
- 11.5.3. We believe that, should Ofcom grant the industry the opportunity to place sponsorship credits around news bulletins, this would be consistent with Ofcom's statutory duties in this regard, and therefore compliant with the relevant sections of the Broadcasting Code. In addition, the industry is absolutely committed to preserving the accuracy and impartiality of its news bulletins, and would not wish to do anything to diminish its listeners' trust in these bulletins.

11.6. RadioCentre commissioned consumer research

- 11.6.1. The consumer research which Ofcom commissioned to inform the 2009 Broadcasting Code consultation did not test listener reaction to the sponsorship of news bulletins, as this did not form part of the consultation's scope. RadioCentre therefore commissioned its own independent audience research, conducted by Work Research, to test listener tolerance to commercial references in and around news bulletins.
- 11.6.2. The research consisted of two focus groups, of eight people each, representing a representative spread of commercial radio listeners. Both focus groups were played seven audio clips, representing varying degrees of commercial involvement with news

bulletins.

Clip	Description	Notes
1	An unsponsored news bulletin.	<u>Representative of what is currently acceptable under the Broadcasting Code.</u> Stations are currently allowed to credit commercial organisations that supply news content to stations, and will continue to be able to do so under the proposed Option C.
2	A unsponsored news bulletin, where the news provider is a commercial organisation (Sky) and is credited as such.	
3	A sponsored news bulletin (in which the sponsor, <i>The Telegraph</i> , is a news organisation, but is not the news provider)	<u>Examples of what the sponsorship of news bulletins could sound like,</u> should this proposed regulatory relaxation be introduced.
4	A sponsored news bulletin (<i>comparethemarket.com</i>).	
5	A sponsored news bulletin, where the nature of the sponsoring organisation potentially conflicts with a news item (<i>British Gas</i> as the sponsor, and a news item on rising fuel bills).	Included to test listener reaction to potential conflicts between the interests of the sponsor and news content. <u>We would not expect such scenarios to arise,</u> should the industry's proposed deregulation be introduced. The example in Clip 6 would likely be prohibited under the BCAP Code (see 11.6.5), meaning that station personnel should be trained to withdraw it prior to broadcast. Clip 5 would likely be withdrawn in response to the client's request (or withdrawn on the station's own initiative).
6	A sponsored news bulletin, where harm/offence could be caused by an unfortunate association between the nature of the sponsoring organisation and a news item (i.e. <i>Easy Jet</i> as the sponsor, and a news item on a plane crash).	
7	An unsponsored news bulletin, where a commercial reference (promotion for a new BMW car) has been integrated within the editorial content.	Included to test listener reaction, but it is important to stress that it <u>does not represent the type of regulatory relaxation that the industry wishes to see introduced.</u>

11.6.3. The research demonstrates that:

- Listeners would be tolerant and accepting of the use of commercial references around news bulletins (but not integrated within them);
- If the sponsor of the news bulletin had had no influence over the content, sponsorship was considered acceptable;
- Only when the sponsor directly affected the news content, and when the commercial reference was not made transparent to the listener, (i.e. clip seven), was this considered unacceptable.

11.6.4. Listener reaction to a scenario in which the interests of a sponsor of a news bulletin relate to one of the news items was tested in clips five and six. These were considered acceptable (if the sponsor had not placed the story), but were largely deemed inappropriate.

11.6.5. However, we note that the revised BCAP Radio Code states that: '*32.1: Broadcasters must exercise responsible judgement on the scheduling of advertisements and operate*

*internal systems capable of identifying and avoiding unsuitable juxtapositions between advertising material and programmes, especially those that could distress or offend viewers or listeners.'*²⁰ Therefore, if a news story breaks that renders a sponsorship arrangements potentially insensitive, station staff should have been trained to make a decision as to whether that sponsorship should be withdrawn. In addition, the sponsor is also likely to be sensitive to potential negative consequences on their brand image – and may therefore also request for the sponsorship to be withdrawn on a temporary or permanent basis. This principle is well established already; programme sponsors choose, from time to time, to withdraw their sponsorship when there are stories being reported that may reflect badly upon their business – for example, a major airline withdrawing sponsorship when industrial action by their staff is being reported in the news.

11.6.6. A full summary of the research findings, written by Work Research, is attached an annex to this response.

11.6.7. It is worth noting that sponsorship credits around travel or weather bulletins are a well accepted commercial practice. Listeners respect the integrity of the editorial content of weather bulletins on commercial radio, regardless of whether a manufacturer of sunglasses or umbrellas is credited with the sponsorship. Likewise, listeners expect and receive accurate and impartial reports of train delays, even if a rail service sponsors the travel bulletin.

11.7. **The size of the commercial opportunity**

11.7.1. As noted above, it is difficult to assess and substantiate the substantial revenue opportunities that will flow from a revised Code Section 10. However, given the relatively traditional nature of the sponsorship of news bulletins, in comparison to more integrated commercial references, it is easier to estimate how much this could potentially be worth to the industry. Consultation with members suggests that it could equate to in excess of £10m p.a. This would represent a significant proportion of current S&P revenue, although it is equally difficult to estimate how much of this might be replaced value.

11.7.2. Even when harnessing digital technology and new methods of delivery, news provision will continue to represent a significant investment for commercial radio - but an investment to which the industry remains hugely committed. The opportunity to place sponsorship credits around news bulletins will contribute towards improving the economic viability of the industry, and could therefore indirectly help to safeguard the future of local news provision on commercial radio.

11.8. **RadioCentre's proposal**

11.8.1. We believe that the revised Code Section 10 should allow for the sponsorship of news bulletins - i.e. the opportunity to place sponsorship credits **around** news bulletins, **not integrated within them**.

11.8.2. We believe that this could represent a significant commercial opportunity for the industry, whilst continuing to safeguard the impartiality and editorial independence of our news bulletins and listeners' trust in them (and would therefore comply with Ofcom's statutory duties in this regard).

11.8.3. We acknowledge that, should Ofcom agree with the industry's proposal, it is still likely to have to consult stakeholders further on the proposal. We hope that Ofcom will engage closely with the industry on this matter, and believe that any consultation should take place immediately, and certainly prior to the proposed review of the appropriateness and effectiveness of the revised Code Section 10.

²⁰ BCAP Code, September 2010.

PROGRAMMING PRIMARILY AIMED AT CHILDREN

11.9. Background

- 11.9.1. Ofcom proposes that, under Option C, the use of commercial communications integrated within programming primarily aimed at children would be prohibited. However, 'specific programming (i.e. identifiable programmes or features)' primarily aimed at children could be sponsored, as long as no commercial references are integrated within such programming.
- 11.9.2. Discussions with Ofcom have emphasised that it means only to prohibit integrated commercial references in children's radio programming, not all forms of commercial communications. We understand then that, even when there is an obvious link between the funder and subject matter of a radio programme aimed at children (such as a feature on architecture, sponsored by an estate agent), that programme could still be sponsored, as long as it does not contain integrated commercial references. In addition, programming funded by a third party (but not containing a commercial reference), such as serialisations of children's literature, would be permitted, although the funding arrangement would have to be signalled clearly to listeners.
- 11.9.3. We acknowledge public policy concerns about the particular vulnerabilities of children, and in particular the need to safeguard their health and welfare. We note that these concerns are reflected in broadcasting legislation; in particular, the requirement within the 2003 Communications Act to ensure that '*persons under the age of eighteen are protected*'²¹. We also acknowledge the suggestion that children may find it more difficult to distinguish commercial content in programming than adults (although we believe that, in many cases, children are more media savvy than their parents).
- 11.9.4. To address Ofcom's concern around the diminished ability of children to distinguish between programming and commercial content, it is worth stressing that Fun Kids' overarching principle is that commercial messages carried on the station are focused more on parents and carers, not children. In addition, those responsible for radio programming primarily aimed at children have pledged to adopt a highly responsible attitude towards the use of integrated commercial communications in children's radio programming. For example, Fun Kids would retain complete control over all output including promotional scripts, as it does now.
- 11.9.5. We recognise that Ofcom cannot rely on pledges of good will from commercial operators, in order to guarantee that listeners are not harmed. However, we believe that these factors should still form part of their considerations, especially when underpinned by the protections of the BCAP Code. The BCAP Code already includes a rule making clear that adverts must avoid anything likely to condone or encourage poor nutritional habits or an unhealthy lifestyle, especially to children. As it is proposed that any commercial communication included in radio programming must comply with all the relevant requirements of the BCAP Code, we believe that this requirement will provide children with sufficient protection and would ensure compliance with the requirement within the 2003 Communications Act '*that persons under the age of eighteen are protected*'²².
- 11.9.6. In 2007, when the advertising of HFSS foods and drinks around children's TV programming was prohibited, it was felt to be unnecessary to extend the same restriction to children's radio programming, given radio's audience profile and the nature of radio output and listening. The same factors behind this decision remain. As Ofcom states, the '*immediate nature of the signalling of commercial communications on radio provides additional protections for listeners*'²³. Commercial communications in radio programming exist in a very different manner to product placement on TV (which is

²¹ 2003 Communications Act.

²² 2003 Communications Act.

²³ Broadcasting Code Review: Commercial Communications in Radio Programming, p. 67.

more subtle and surreptitious, and therefore potentially more harmful), and should therefore not be considered comparable. We believe that this should be an important consideration in this matter.

11.9.7. In addition, it is worth noting that the prohibition on commercial communications within programming primarily aimed at children would unfairly impact one commercial operator over all others - Fun Kids. This is due to Fun Kids' higher than average reliance upon sponsorship and promotion, as opposed to traditional spot ads (which it believes would be a negative for both children and parents), in addition to the nature of the station's audience. This proposal would therefore create an uneven playing field within commercial radio in regards to the regulation of integrated commercial references. It could also threaten the commercial provision of children's radio programming, at a time when there is already limited provision from both the commercial sector and the BBC.

11.10. **Definition of 'programming primarily aimed at children'**

11.10.1. Ofcom states in its consultation document that 'programming primarily aimed at children' is any programming that '*is primarily listened to by persons under the age of sixteen*' or '*actively solicits the participation of persons under the age of sixteen*²⁴'. We were therefore concerned that competitions within programming aimed at families (such as breakfast shows), which are designed to appeal to both parents and children, could fall within the latter half of this definition.

11.10.2. However, conversations with Ofcom suggest that it is not its intention to stray into 'family' programming, or to include sponsored competitions within the definition of 'programming primarily aimed at children'. We welcome this clarification, and look forward to the inclusion of revised wording once the Broadcasting Code is reissued.

11.11. **RadioCentre's proposal**

11.11.1. We believe that commercial communications within programming primarily at children should be allowed under Option C. The revised regulatory regime being proposed by Ofcom will contain sufficient safeguards to protect children already. In contrast, the proposed prohibition would unnecessarily restrict the creative and commercial opportunities of companies providing children's radio.

11.11.2. In addition, we believe that the revised Code Section 10 should allow for commercial arrangements to influence the scheduling and rotation of music used on children's radio.

11.11.3. However, in recognition of the concerns around the vulnerability and commercialisation of childhood, we propose that programming aimed at children should be subject to more stringent transparency requirements than those that will be required of other commercial radio programming. In addition, we propose that a more targeted prohibition on commercial communications promoting certain products (i.e. HFSS goods, alcohol, gambling etc.) is applied to children's radio programming.

11.11.4. We believe that these additional restrictions should take the following form (as also outlined in Fun Kid's response to this consultation):

- A prohibition on commercial messages on HFSS goods, alcohol, gambling, and communications promoting unhealthy lifestyle (a position already undertaken by Fun Kids);
- Commercial placements must always appear within a sponsored feature, either presenter read or pre-produced, and must never appear randomly in general programming;

²⁴ Broadcasting Code Review: Commercial Communications in Radio Programming, p. 66.

- There must always be a station ident and a commercial message at the start and end of each feature, in order to separate it from general programming and identify that it is commercial in nature;
- Editorial and production must always remain under the control of the licensee;
- The station's public file would contain information on its commercial placement policy.

DETAILED CONSIDERATION OF CODE SECTION 10

12. THE DEFINITION OF COMMERCIAL REFERENCES

12.4. The definitions of commercial arrangement/commercial reference

12.4.1. We note that Ofcom's definitions of 'commercial arrangement' and 'commercial reference' refer to each other.

- A commercial arrangement is described as '*a contract or other formal understanding between a broadcaster (or any agent or employee of the broadcaster), and a third party (or third parties). It will generally include payment and/or the provision of some other valuable consideration ... in return for a commercial reference*²⁵.
- A commercial reference is defined as '*a reference in programming to a brand, trademark, product and/or service that is ... subject to a commercial arrangement*²⁶.

12.4.2. We believe this cyclical definition is potentially confusing, and therefore welcome Ofcom's indication that they intend to address it in the revised Code Section 10. We propose that the definition of 'commercial arrangement' is limited to:

'A commercial arrangement is a contract or any other formal understanding between a broadcaster (or any agent or employee of the broadcaster), and a third party (or third parties). It will generally include payment and/or the provision of some other valuable consideration'.

12.5. Stations' products/services

12.5.1. We note that the definition of a commercial reference in Option C's proposed new Section 10 includes references which '*promote the station/broadcaster's own products or services*²⁷.

12.5.2. We believe that it is important to draw a distinction between a) a commercial reference which a third party pays a station to broadcast, in order to promote a brand, trademark, product and/or service belonging to that third party, and b) the promotion of a station's own products or services. In the instance of a station's own products or services, a third party has not paid for their promotion but has instead been involved in the acquisition/production of that product or service. We therefore believe that a clear distinction should be drawn between the two types of commercial reference.

12.5.3. Ofcom has confirmed that it is its intention to include a station's own products/services in their definition of a commercial reference, but they acknowledge that a station's own products/services should not be subject to the same transparency requirements as other commercial references. We welcome this clarification, and expect that it will be reflected in the revised Code Section 10.

13. TRANSPARENCY REQUIREMENTS

13.4.1. We support the regulatory principle that underpins Option C's Section 10: '*To ensure the transparency of commercial communications as a means to secure consumer protection*'. We agree that it is important that '*listeners should know when material is broadcast in return for payment or other valuable consideration*²⁸, and we believe this addresses the legislative requirement contained within the Consumer Protection From Unfair Trading Regulations 2008.

13.4.2. Ofcom proposes that transparency of a commercial arrangement should be achieved through '*the appropriate signalling of a brand, trademark, product and/or service of a*

²⁵ Broadcasting Code Review: Commercial Communications in Radio Programming, p. 72.

²⁶ Broadcasting Code Review: Commercial Communications in Radio Programming, p. 73.

²⁷ Broadcasting Code Review: Commercial Communications in Radio Programming, p. 73.

²⁸ Broadcasting Code Review: Commercial Communications in Radio Programming, p. 73.

*third party (or third parties) that has paid for broadcast exposure*²⁹. Broadcasters will therefore be required *'to give, at appropriate times, clear information within programming to inform listeners of any commercial arrangement affecting that programming'*³⁰. We note that the guidance that will accompany this revised Code Section 10 will expand upon what Ofcom will consider *'appropriate'* and suggest some appropriate signalling phrases. In addition, a commercial reference made as part of a commercial arrangement may require further signalling.

- 13.4.3. We agree largely with Ofcom's proposed approach to securing transparency and welcome its statement that *'appropriate signalling would be likely to be established over time, as the scope and nature of commercial references becomes apparent'*³¹. Given the difficulty of predicting how the market for commercial communications will develop over time, it is important that the revised Code Section 10 is as future-proofed as possible, and this requires as flexible a regulatory framework as possible.
- 13.4.4. However, we feel that the requirement to place transparency statements *'at the outset'* of programming (i.e. *'at or near the start of'*³²) may be unduly restrictive. Under the current Section 10, sponsorship credits *'must be broadcast as the beginning and/or end of the programming'*, and at appropriate intervals for longer sponsored output. Whilst in many instances it might be appropriate to include a transparency statement at the outset of programming that is subject to, or associated with, a commercial arrangement, we believe that there are instances in which it may not be appropriate:
- A sponsored breakfast show, for example, may not have its first credit until the first ad break, which may be fifteen minutes or so into the show.
 - Most weather bulletins carry their sponsor strap at the end rather than the beginning, as to have it at the beginning of the bulletin (and after the news) would interrupt the flow of information to listeners.
- 13.4.5. We suggest therefore that Ofcom should consider amending its transparency requirements to ensure that they are not unnecessarily restrictive and are as flexible as the existing arrangements for sponsorship credits.

15. OFCOM'S IMPACT ASSESSMENT

- 15.1. We largely agree with Ofcom's assessment of the impact of Option C on listeners, the radio industry and any other interested party. Namely:
- We agree that listeners are likely to *'be receptive to liberalisation'*³³, and should be comfortable with the introduction of Option C;
 - We agree that Option C is likely to *'have the effect of securing additional revenue for the radio sector'*³⁴;
 - We agree that Option C would *'provide more opportunity for advertisers to experiment than is offered under Option B'*³⁵;
 - We acknowledge that Option C could, in the short term, generate a greater compliance risk than under either Option A or Option B³⁶. However, given the familiar framework and nature of the BCAP Code and the RACC clearance procedures (see Annex 1), plus the industry's commitment to informing and training staff of the revised Code Section 10, we believe that this risk will be limited;

²⁹ Broadcasting Code Review: Commercial Communications in Radio Programming, p. 7.

³⁰ Broadcasting Code Review: Commercial Communications in Radio Programming, p. 73.

³¹ Broadcasting Code Review: Commercial Communications in Radio Programming, p. 61.

³² Broadcasting Code Review: Commercial Communications in Radio Programming, p. 75.

³³ Broadcasting Code Review: Commercial Communications in Radio Programming, p. 61.

³⁴ Broadcasting Code Review: Commercial Communications in Radio Programming, p. 62.

³⁵ Broadcasting Code Review: Commercial Communications in Radio Programming, p. 62.

³⁶ Broadcasting Code Review: Commercial Communications in Radio Programming, p. 62.

- We agree that Option C is '*unlikely to involve any adverse effect*³⁷ on race, disability and gender equality. Radio stations serving diversity groups would hopefully benefit from fresh revenue streams. In regard to age, we believe that children would be sufficiently protected were children's radio to be allowed to broadcast integrated commercial references. We believe therefore that children may be unfairly impacted upon by Ofcom's proposal to prohibit the use of integrated commercial references in children's programming, as it will put the commercial provision of children's radio on an uneven footing with the rest of commercial radio.

16. CONCLUSION

- 16.1.1. We believe that the implementation of Option C could potentially transform commercial radio's creative and commercial offering and, in turn, provide the industry with a much needed economic boost. It is therefore widely welcomed and anticipated within the industry.
- 16.1.2. We recognise that Ofcom's proposals represent significant de-regulation, and welcome and commend Ofcom's decision to adopt such a liberalising approach. We recognise that the industry must now adopt a highly responsible attitude to the use of commercial references in radio programming, to accompany the proposed liberalised regulatory framework. Stations will have a duty to ensure that all relevant staff are aware of the revised Code Section 10, and fully understand what is and isn't permissible under it, in addition to following revised clearance procedures. The industry will also have a duty to inform and educate advertisers and agencies as to revised rules. RadioCentre, and its constituent parts, including the Radio Advertising Bureau and the Radio Advertising Clearance Centre, will have a key role to play in this.
- 16.1.3. We believe strongly that the revised Code Section 10 will be adopted smoothly, and will lead to an enhancement of commercial radio's output, to the benefit of the industry, advertisers and, most importantly, listeners.

³⁷ Broadcasting Code Review: Commercial Communications in Radio Programming, p. 62.