THE REGULATION OF SALES PROMOTION IN THE UK

1. INTRODUCTION

In an increasingly competitive market environment, sales promotion is an essential marketing tool. Sales promotion can take many different forms; for example, free offers and gifts, discounts, prize draws and competitions, money off vouchers, loyalty schemes, instant wins and scratchcards. It is estimated that the industry is worth over £20 billion per annum in the UK alone and that it provides employment for 25,000 people. Recent statistics show that more money is now spent on direct marketing and sales promotion activity than on advertising in print and broadcast media.

The UK has a liberal attitude to sales promotion activity and many practices which are considered commonplace within the UK are heavily regulated in other EU member states. For example, free gifts are prohibited in some jurisdictions or may be subject to limitations on value which may be linked to the value of the product being sold. In Italy and Spain the permission of the Finance Ministry may be required before certain promotions can be undertaken.

Despite the introduction of the single market 10 years ago, cross border promotional activity remains the exception rather than the norm. This is hardly surprising given the difference in national legal provisions affecting sales promotions, reflecting the difference in attitude towards such activity within the different member states.

2. THE UK SELF-REGULATORY SYSTEM

Self-regulation plays an important and complementary role to the legal provisions which govern advertising and marketing communications, and any examination of the regulation of sales promotion in the UK must give due consideration to the self-regulatory system.

The system is administered by the Committee of Advertising Practice (CAP) and the Advertising Standards Authority (ASA). The rules are set out in the British Code of Advertising and Sales Promotion Practice, which is now in its eleventh edition, and CAP is responsible for its review and amendments. CAP also provides advice and investigates complaints about marketing communications. The ASA Council adjudicates on complaints and its adjudications are published weekly and are widely reported in the media.
The ASA/CAP system is recognised by the Government, the Office of Fair Trading (OFT) and the Courts as one of the “established means” of consumer protection in non-broadcast marketing communications for the purpose of the Control of Misleading Advertisements Regulations 1988. For these purposes an advertisement is defined as any form of representation which is made in connection with a trade, business, craft of profession in order to promote the supply or transfer of goods or services, immovable property rights or obligations. Under the Regulations the Director General of the OFT can take action when the established means of dealing with the advertisement have been exhausted, for example where the Advertising Standards Authority has upheld a complaint and the advertiser persists in issuing misleading advertisements. The OFT can then seek undertakings from all parties responsible for its dissemination that it will be stopped. If that is not forthcoming, the OFT can seek an injunction. In exceptional cases, where there is a particular urgency and insufficient time for a complaint to be dealt with by the ASA Council, the OFT may take action before the “established means” have been exhausted.

The ASA is a member of the European Advertising Standards Alliance (EASA) which acts as the European coordination point for advertising self-regulatory bodies and systems across Europe. All of these systems contain two essential elements: a set of rules (codes) and a procedure to handle complaints. Where a complaint is made about a marketing communications originating in a country other than the complaints country of origin, EASA will refer the complaint to the self-regulatory organisation in the country of origin for adjudication.

3. LEGAL REGULATION

There is a greater emphasis on consumer protection, as opposed to unfair competition, in the regulation of sales promotion in the UK. There is no single body of law dealing with marketing issues and one has to consider a variety of legal provisions to obtain the full picture.

The following all have a bearing on sales promotion activity:

- Contract law
- Consumer protection legislation
- Copyright and passing off
- Lotteries and Amusements Act 1976 as amended
4. CONTRACT LAW

Over the past few years a number of companies have found themselves the subject of widespread and adverse publicity as a result of sales promotions which have gone badly wrong, normally because the marketing people who devised the schemes did not attach sufficient importance to the fact that they could be creating binding contracts through the offer and subsequent acceptance of the scheme by members of the public. The Hoover fiasco of a few years ago cost that company a great deal of money because of the take up of the free flights offer by consumers who purchased more than £100 worth of goods. Unfortunately no-one thought to attach conditions to the scheme which would have limited the number of people who qualified. A more recent example is that of Thai Airways which offered free first class flights on its website, apparently by mistake. The offer was subsequently withdrawn but a number of angry consumers are reported to be considering bringing a claim for breach of contract as Thai Airways is refusing to issue the free flight tickets.

One of the earliest reported cases is one which will be familiar to all English lawyers *Carlill v Carbolic Smoke Ball Company* [1893] 1 QB 256. In this case the Carbolic Smoke Ball Company published an advertisement offering £100 to anyone who contracted influenza after using their smoke ball. The court considered that the advertisement amounted to an offer and clearly showed an intention to create legal relations as the advertisement claimed that £1000 had been deposited in a bank as a sign of sincerity on the part of the company. Mrs Carlill was entitled to claim her £100 after using the smoke ball and contracting influenza. There was a valid contract under English law.

5. CONSUMER PROTECTION

There are a number of statutory consumer protection provisions which impact on sales promotions. Particularly relevant in this respect are pricing claims.

5.1 Consumer Protection Act 1987

Section 20 (1) provides:

“Subject to the following provisions of this part, a person shall be guilty of an offence if, in the course of any business of his, he gives (by any means whatever) to any consumers an indication which is misleading as to the price at which any goods, services, accommodation or facilities are available (whether generally or from particular persons).
It is also an offence not to correct to a price indication which becomes misleading after it has been given.

Section 21 (1) provides that a price indication is misleading if it suggests:

(a) that the price is less than in fact it is;
(b) that the applicability of the price does not depend on facts or circumstances on which its applicability does in fact depend eg where conditions are imposed before the consumer can purchase at the price stated;
(c) that the price is all the consumer has to pay when in fact there are hidden charges eg the cost of putting a car “on the road”;
(d) that the price will be increased, reduced or maintained when the person giving the price indication has no such expectation eg where consumers are told that a lower price will be charged for goods until a certain date when in fact there is no intention to raise them after that date;
(e) that the facts or circumstances by reference to which consumers might reasonably be expected to judge the validity of any relevant comparison made or implied by the indication are not what in fact they are.

5.2 The Code of Practice for Traders on Price Indications

This Code was issued under powers given by Section 25 of the Consumer Protection Act 1987 for the purpose of giving practical guidance with respect to section 20 and promoting desirable practices with regard to the giving of price indications. Contravention of the Code’s provisions does not of itself give rise to any criminal or civil liability but may be relied upon to show that an offence has been committed under section 20 of the Act. Similarly compliance with the Code’s provisions may be relied upon for the purpose of showing that an offence has not been committed or that the person charged has a defence. The Code covers price comparisons, including comparisons with the traders’ previous price.

The Consumer Protection Act 1987 also provides for a number of statutory defences.

5.3 Money Off Coupons

The Trading Stamps Act 1964 covers schemes in which stamps, coupons, tokens, vouchers or similar devices are given in connection with the purchase of goods or services and are intended to be redeemable. The Act does not apply to coupons which are contained in newspapers or
periodicals nor to coupons which are issued as part of a direct mail initiative where there is no link to a previous purchase.

The Trading Stamps Act contains a number of requirements but while it is an offence for a company to issue coupons or other devices in breach of the Act’s provisions, prosecutions are rare and an overview of the legislation is long overdue.

Coupons are mentioned in the draft EU Regulation definition of “discount” as being:

“the temporary offer of 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”.

By bringing the definition of coupons within “discounts” the Regulation has failed to address those promotions that do not link the issue of a coupon to purchase or those that offer a money off coupon in relation to goods or services which are not identical to the one being purchased.

5.4 The Control of Misleading Advertisements (Comparative Advertisements) (Amendment) Regulations 2000 regulate promotions which contain a comparison with another product or service. A comparative claim in a promotion is one which in any way explicitly or by implication identifies a competitor or goods or services offered by a competitor and will only be permitted if eight conditions are satisfied:

(a) it is not misleading [ie it is deceptive and because of its deceptive nature is likely to affect economic behaviour or injure a competitor]
(b) it compares goods or services meeting the same needs or intended for the same purpose
(c) it objectively compares one or more material, relevant, verifiable and representative features of those goods and services, which may include price
(d) it does not create confusion in the market place between the advertiser and a competitor or between the advertiser’s trade marks, trade names, other distinguishing marks, goods or services and those of a competitor
(e) it does not discredit or denigrate the trade markets, trade names, other distinguishing marks, goods, services, activities, or circumstances of a competitor
for products with designation of origin [ie specific products referred to in a 1992 EEC Regulation], it relates in each case to products with the same designation

(g) it does not take unfair advantage of the reputation of a trade mark, trade name or other distinguishing marks of a competitor or of the designation of origin of competing products

(h) it does not present goods or services as imitations or replicas of goods or services bearing a protected trade mark or trade name

5.5 Stop Now Orders
Under the Stop Now (E.C. Directive) Regulations 2001, the Office of Fair Trading (OFT) and certain other specified bodies (qualified entities) can apply for an injunction against traders who breach or are threatening to breach a number of consumer protection laws (all of which implement EC directives) by harming the collective interests of consumers covered by those laws. The OFT is required to consult with companies or traders whom it believes are in breach of consumer laws before taking court action, and it can seek written undertakings in lieu of court action.

The Stop Now Regulations cover the following areas: doorstep selling, timeshare, unfair contract terms, consumer credit, distance selling, package travel, package holidays and package tours, misleading and comparative advertising, sale of goods rights, TV broadcasting activities and advertising of medicinal products.

6. PASSING OFF
In the absence of an unfair competition law, the law of passing off may assist companies in protecting their marketing activity against ambush by a competitor. Passing off developed in the 19th century to prevent unfair trading and arose out of the use by one trader of the trade name or trade mark of a rival trader to induce in potential purchasers the belief that the goods of the first trader were those of the rival. In 1979 the House of Lords in the case of Erven Warnink BV v J Townend & Sons [1979] 2All ER 927 identified five characteristics which must be present to establish passing off:

- a misrepresentation
- made by a trader in the course of trade
- to prospective customers of his or ultimate consumers of goods or services supplied by him
• which is calculated to injure the business or goodwill of another trader in the sense that this is a reasonably foreseeable consequence and
• which causes or is likely to cause actual damage to a business or goodwill of the trader by whom the action is brought.

The case of United Biscuits (UK) Ltd v Asda Stores Ltd [1997] RPC 513 concerned biscuit packaging. Asda produced a chocolate biscuit called Puffin which was intended to rival the brand leader Penguin. As was said in evidence the new product was required to have “brand beater characteristics”. The Puffin was launched in a special promotion away from the normal shelving but after six weeks was moved to the ordinary shelves next to the Penguin displays. Asda also used the slogan P.P…P….pick up a Puffin.

United Biscuits, the manufacturers of Penguin moved quickly and issued a writ for passing off and trade mark infringement. The Judge considered that the name Puffin and the prominent picture of an upright dark coloured bird with a white front gave the expectation as a matter of first impression that a substantial part of the public who shop in supermarkets would see an association between the Asda product and the Penguin. In coming to this conclusion the judge made the perceptive observation that had the Asda product been called Bison with a cartoon picture of a brown woolly bison on the packaging the claim could not possibly have succeeded. Although the judge did not consider that people would think that the Puffin was the Penguin he felt that many would believe that the two biscuits were made by the same manufacturer. He considered that the packaging was deceptively similar and the claim for passing off succeeded. The judge also found that the slogan p…pp…pick up a puffin was an infringement of the ppppick up a penguin mark.

Passing off was the issue in the case of Kimberly-Clarke v Fort Sterling [1997] FSR 877 where the Defendant company introduced a new brand of lavatory paper called Nouvelle Quilted. As part of the promotion for the new brand a flash was placed across the packaging stating “softness guaranteed or we’ll exchange it for Andrex.” There was a small notice under the word Andrew stating “Andrex is a registered trade mark of Kimberley-Clarke and at the foot of the promotional flash a statement explaining that Andrex was a competitor’s brand.

In another case Macdonald’s Hamburgers Ltd v Burger King (UK) Ltd [1986] FSR 45 Burger King’s advertising made the following claim about one of its burgers:
"It's not just big, Mac. Unlike some burgers its 100% pure beef, flame grilled never fried  with a choice of toppings".

MacDonalds claimed that the line "It's not just big, Mac" was passing off as it would mislead a substantial number of the buying public into thinking that they could buy Big Macs from Burger King outlets.

An injunction was granted as the judge was satisfied on the evidence before him that there was a risk that the public would be mistaken as to where they could buy Big Macs.

7. COPYRIGHT
Claims of copyright infringement are not uncommon in marketing activity. In the case of Express Newspapers plc and Liverpool Daily Post and Echo plc (1985) 3 All ER 680, Express Newspapers devised a scheme whereby cards were distributed to readers of The Daily Express containing letters. Readers were able to claim a prize if they were able to find their letters in a grid which was published in the Daily Express newspaper every day. The grid comprised a pattern of 5 letters across and 5 down. The grids were copied and published by a rival newspaper the Liverpool Daily Post and Echo.

The Daily Express applied to the court for an injunction restraining the Daily Post and Echo from copying the grids claiming copyright infringement. The court held that the grids qualified for copyright protection as literary works and that copyright had been infringed by the Daily Post and Echo.

8. GAMES AND COMPETITIONS
8.1 The legal framework in which games and competitions operate in the UK has shown itself to be largely resistant to change, despite technological advances and the increasing sophistication of such schemes. The first statute governing lotteries was passed in the seventeenth century and about three hundred years later came the Lotteries and Amusements Act 1976 which is the principal statutory provision governing lotteries and competitions today, as amended by the National Lottery Etc Act 1993.

The underlying thread of the legislation for has been that all lotteries are unlawful except those that are permitted by statute eg:
• Small lotteries incidental to certain entertainments eg tombolas and raffles.
• Private lotteries eg lotteries run by clubs for the benefit of members
• Society lotteries eg lotteries run for charitable purposes
• Local lotteries eg lotteries promoted by local authorities
• The National Lottery

8.2 What is a lottery?

The term “lottery” is not defined in the legislation but in the case of Readers Digest Association v Williams [1976] 3 All ER 737 Lord Widgery, the then Lord Chief Justice, came up with the following formula:

“a lottery is the distribution of prizes by chance where the persons taking part in the operation, or a substantial number of them, make a payment or consideration in return for obtaining their chance of a prize. There are really three points one must look for in deciding whether a lottery has been established: first of all, the distribution of prizes; secondly, the fact this was to be done by means of a chance; and thirdly, that there must be some actual contribution made by the participants in return for their obtaining a chance to take part in the lottery.”

In summary, the three elements that must be present are as follows:

• distribution of prizes
• by means of a chance
• contribution on the part of participants

It is important to remember that it is only the combination of these three elements that will render a scheme a lottery. If the scheme is a lottery and does not come within any of the permitted categories it will be unlawful.

Identifying an unlawful lottery is not always easy, partly because the different elements may not be immediately obvious and also because there are many well established schemes which appear to fall within the above definition but against which no action is taken (see paragraph 8.9 below).
8.3 The Prize
In order to come within the definition of lottery it is not necessary for the prize on offer to be a sum of money, and the courts will pay little attention to the term that is used to describe what will be given to participants. The use of terms like “gifts” or “awards” will not prevent a scheme from being a lottery. While in most schemes there will be an identifiable prize fund, this is not an essential feature of a lottery if the overall objective is the distribution of prizes by means of a chance. It is not necessary to prove that money paid by participants in return for obtaining a chance of winning is used to provide prizes or is paid into a fund out of which prizes are provided (See Imperial Tobacco Ltd and another v Attorney-General [1980] 1 All ER 866).

8.4 Distribution by means of a chance
While in some cases it may be very easy to determine that prizes have been distributed by means of a chance, for example in prize draws and instant wins, there may be some instances where it may not be obvious. By introducing an element of skill or effort on the part of participants it may be possible to circumvent the “chance” element of a scheme as the participants will be able to influence the outcome. It will depend on the degree of skill or effort involved and the way in which the scheme is structured as to whether it escapes the prohibition on lotteries - see Prize Competitions below.

8.5 What is a Contribution?
It is an essential ingredient of a lottery that participants should make a payment or contribution in order to obtain their chance to win. In the case of Whitbread & Co Ltd v Bell [1970] 2 All ER 64 the promoters, who were brewers and the owners of a pub, conducted a scheme called “win with Whitbread”. A sealed envelope containing a leaflet and three adhesive backed letters, together with a supply of coupons, was handed to customers as they entered the premises. Recipients would receive a prize if they received either an instant win coupon or they were able to use the letters in the envelopes to complete words printed on the coupons. A prosecution was brought on the grounds that the element of chance combined with the “win with Whitbread” sign outside the premises was sufficient to give rise to an unlawful lottery. The court dismissed the argument taking the view that customers had made no contribution in order to participate as entry had not been linked to the purchase of drinks inside the pub.

The contribution must be made in the knowledge or expectation of a chance to win. In the case of Minty v Sylvester [1915] 25 Cox CC 247 gold coins were thrown to a theatre audience on
successive nights. Although the audience on the first night would not have been aware that this would happen, it is possible that audiences for subsequent performances could have bought their tickets with the expectation of winning a prize, and that was sufficient to amount to a contribution in order to establish that the scheme was an unlawful lottery.

The fact that participants receive goods of an equivalent value to the contribution will not prevent a scheme being a lottery. In Taylor v Smetten [1883] 11 QBD 207 packets of tea were sold for 2s 6d each. In each packet there was a coupon which entitled the purchaser to a prize. The prizes varied in their value and description. Even though the price had not been loaded to take into account the prize, the fact remained that what the purchaser was buying was both the tea and the chance to win a prize. This made it an unlawful lottery.

This view was confirmed in the case of Imperial Tobacco Ltd v Attorney General where a tobacco company launched a scheme called Spot Cash to promote a brand of cigarettes. In every packet there was a scratchcard with prizes ranging from a free packet of cigarettes to £5,000. The scheme was advertised as being free and packets containing the cards were sold at their usual retail price. The company printed 262,250,000 cards. 262,000,000 were placed in packets of cigarettes and the rest were distributed without any purchase being necessary. In determining that the scheme constituted an unlawful lottery the court ignored the fact that some of the cards were distributed independently of the cigarettes as they formed a very small proportion of the total number.

It is generally accepted that the cost of a stamp or a standard telephone call does not amount to a contribution and is necessary incidental expenditure which should be discounted when deciding whether a scheme is an unlawful lottery.

8.6 Free entry routes

Many promoters use a free entry route as a way of circumventing the prohibition on lotteries. In 1985 the Director of Public Prosecutions provided this advice:

“In Imperial Tobacco, however, the number of chances freely available was predetermined and a small proportion of those available on payment. It would, in the Director’s view, be different, where, as in many schemes run by newspapers, there is a realistic alternative of entering the game, such as by telephoning the newspaper offices,
applying for a card, or by simply sending in one’s entry. In such schemes, there is no limit to the number of freely available chances and it would not be possible to discount such entries as de minimis.”

It is very common to see the words “no purchase necessary” used in connection with prize draws and instant win schemes to reinforce the message that no contribution is required on the part of participants. Where a free entry route is used it must be:

- genuine;
- realistic; and
- unlimited

The question of free entry routes was considered in the case of Russell v Fulling and Page. Mr Russell was claiming that his former partner, Mr Fulling, owed him money in relation to a scheme whereby scratchcards were sold to retailers for distribution to their customers. The retailer had discretion whether to link the provision of cards to purchase or whether they would give them away to their customers. Mr Russell argued that the cards were intended to be given away freely but the court found that it was necessary for the vast majority of customers to make a purchase and thus there was a contribution for the purpose of establishing an unlawful lottery. In this case the free entry route was at the discretion of the retailer and the customer did not have a genuine choice. Mr Russell was unable to recover the money owed to him because his agreement with Mr Fulling was unenforceable being for an illegal purpose, namely the unlawful lottery. This case illustrates that running an unlawful lottery may not only expose the promoter to the risk of prosecution but also to the possibility of being unable to recover money owed by suppliers in relation to the scheme.

8.7 Prize Competitions

Section 14(1) of the Lotteries and Amusements Act 1976 provides that:

“It shall be unlawful to conduct in or through any newspaper or in connection with any trade or business or the sale of any article to the public:

(a) a competition in which prizes are offered for forecasts of the result either:

(i) of a future event; or
(ii) of a past event the result of which is not yet ascertained or not yet generally known;
(b) any other competition in which success does not depend to a substantial degree on the exercise of skill.”

8.8 Forecasting a future event
The meaning of “forecasting a future event” was considered in the case of *The News of the World v Friend* [1973 1 All ER 422. In that case the News of the World ran a competition called Spot the Ball in which a photograph taken from a football match was reproduced with the ball removed. Readers were asked to mark the spot where they thought the ball was most likely to be. Entries were judged by a panel of experts who would select as a winner the entry which they considered placed the ball in the most logical position. The News of the World was prosecuted for running an unlawful competition on the grounds that the consideration of the entries by the panel of experts amounted to an “event” for the purpose of section 14. The result of the “event” was the decision of the experts and the submission of entries by participants were the forecasts of the result of that “event”. The court dismissed the argument. The words “result” “event” and “forecast” had to be given their ordinary and natural meanings.

8.9 Schemes involving both chance and skill
A number of schemes combine both skill and chance and in these cases it is necessary to be very clear how the mechanic will work to determine whether it will amount to an unlawful lottery. A skill element will not save a scheme where the distribution of prizes is still determined by chance.

In the case of *DPP v Bradfute and Associates Ltd* [1967] 2 QB 291 the promoter distributed tins of Kit-e-Kat food with a label stating “Play the World’s biggest £30,000 Bingo. Your card is inside the label.” On the inside of the label was a bingo card and a list of prizes. If players were able to complete a line of their bingo card - a matter of pure chance depending on the numbers printed on the label - they became eligible to enter a skill contest which would determine whether they could win a prize. The court held that this was an unlawful lottery because success at the first stage, for which payment was required, was completely dependent on chance and the prize was the opportunity to enter into the second stage.

In the unreported case of *R v Interactive Telephone Services Ltd* (the Telemillions case) television viewers were invited to participate in a competition by means of a premium rate
telephone number. It was intended that the income generated by use of this number would create a fund from which money prizes would be paid. Participants were asked a series of questions and the names of those who answered correctly were entered into a prize draw with a chance to win £250,000. Some skill was required to answer the questions and about 40% of those who entered failed to answer the questions correctly. There was also a free entry route although this was not promoted with any enthusiasm and only about 0.184% of the participants in any one month entered in this way.

The company argued that if the scheme were considered as a whole it should not be treated as a lottery as an exercise of skill was involved and success in winning the prize was dependant to a substantial degree on the exercise of such skill. The court rejected the argument. The draw was a matter of pure chance and had become so predominant in the scheme that any initial skill ceased to be operative and could have no effect in determining the result. Furthermore the free entry route was never intended to be used by more than a tiny proportion of participants.

Despite these decisions, there are numerous schemes being run today involving the use of premium rate telephone lines which would appear to fall foul of the reasoning in Bradley and Telemillions above against which no action is taken.

8.10 Government Review
In 1999 the Government set up the Gambling Review under the Chairmanship of Sir Alan Budd to advise on the entire range of gambling in Great Britain (other than the National Lottery). The Budd Report was published in 2001 and made a number of recommendations with regard to prize competitions including the following:

- that commercial lotteries should not be permitted;
- that there should be a category of prize competition that involves the “exercise of a substantial degree of skill” which may at some point in the competition involve a draw;
- that the restrictions contained in section 14(1)(a) of the Lotteries and Amusements Act 1976 should removed;
- that prize draws that are run only for commercial profit should be abolished.
While the Government accepts that there should continue to be a ban on commercial lotteries, its view is that there should be further consideration and consultation on the other recommendation. It seems unlikely that there will be any new legislation in this area until after the EU Regulations comes into force which is due to be in January 2005. It is worth noting that the Regulation appears to have adopted the free entry route requirement for games of chance by providing that:

“Participation in promotional games must not be linked to purchase in that a recipient who does not purchase the promoted product and service may participate in the game. No additional participation cost may be charged for such promotional game” (Article 5 ter).

There are however reservations about this wording. Some delegations have questioned the appropriateness of a free entry condition in all cases and others felt that the relationship to lotteries should be clarified and further amendments are possible.

9. DRAFT EU REGULATION

A common European approach to sales promotion is welcomed by the UK industry which has suffered increasing frustration over the restrictive nature of many EU member states in the area of promotional marketing.

The Regulation

There are, however, a number of issues in the draft which are giving rise to concern as follows:

- The Draft Regulation defines a sale promotion as “the offer of a discount, a free gift, a premium or an opportunity to participate in a promotional contest or game”. This definition is considered to be too restrictive and a more general definition is to be preferred eg the one used by the UK Institute of Sales Promotion: “a consumer or business directed action that enhances product appeal by offering an extra incentive to purchase or participate”.
- The possibility that “buy one get one free” promotions which are commonplace in the UK could be threatened as free gifts are not permitted to be dependant on purchase.
- The “commercial value” of prizes must be stated which may in some instances be difficult.
• The “commercial value” or cost of a prize must also be given and there is a cap on prizes of 100,000 euros. This would effectively rule out schemes like the Evening Standard “free flat promotion”.

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