

Domestic third party intermediaries: Confidence Code and wider issues

Internet Advertising Bureau UK submission – October 2014

Introduction

The Internet Advertising Bureau (IAB) is the trade body for digital advertising in the UK. It represents approximately 900 businesses engaged in all forms of online and mobile advertising, including advertisers, agencies, advertising technology businesses, media owners and publishers. The IAB's role is to help marketers find the best role for online and mobile advertising, promote understanding and good practice and to work to ensure a responsible medium.

The IAB's Affiliate Marketing Council – made up of agencies, network specialists and publishers – is the affiliate marketing industry's policy vehicle. Affiliate marketing offers advertisers a different way of paying for their commercial communications online; one that is based solely on the performance the advertisement itself is able to generate. This marketing discipline therefore works like a virtual sales team, paid only on commission. Publishers such as cashback, loyalty, reward or voucher code sites – often called 'affiliates' which provide the advertising inventory – constitute the consumer-facing element of the affiliate marketing ecosystem. In 2013, 4,000 advertisers spent £1bn across 12,000 publishers, bringing in a return of £14bn in sales.¹

The IAB welcomes the opportunity to share its views on third party intermediaries (TPIs) and commends Ofgem for taking an inclusive and forward-looking approach that recognises the dynamic nature of this market. As a point of principle, we firmly agree with Ofgem that TPIs such as affiliates make the energy market work better for consumers when operating within clear boundaries. The IAB also believes that any regulatory measure has to respect the concept of smart regulation – i.e. rules that enable the greatest possible benefits to people and businesses in the most pragmatic and effective way. Our response therefore assesses the relevant consultation questions for our sector in light of this understanding.

Answers to consultation questions

- 1. Do you agree with our summary of the current domestic TPI landscape? In light of recent developments in TPI services, are there other important factors we should be taking into account?**

The IAB agrees with the summary provided and shares Ofgem's vision that the trend towards a near ubiquitous availability of digital technology in all parts of the economy and society can bring enormous benefits to consumers, not least in terms of accessibility and energy efficiency. This development goes hand in hand with an ever evolving environment of products and services that will give an increasing

¹ IAB/PWC [The Value of Online Performance Marketing](#), January 2014

number of third parties the opportunity to positively engage with consumers. Importantly, this also means that rule setters such as legislators and regulators must ensure that any regulatory initiative allows maximum room for innovation within a principles-based and, therefore, flexible framework that gives consumers the safeguards and accountability they should reasonably expect from TPIs.

2. Does the definition exclude services you would expect to be covered? If so, how might it be adjusted to accommodate them?

The IAB generally agrees that having a single, overarching definition for domestic TPIs to cover a suite of services is sensible so as to avoid excessive fragmentation. However, Ofgem’s suggested definition suffers from woolly language which raises questions whether some rather obvious TPIs are within scope. In particular, its reference to “providing advice and assistance” could be interpreted to be inadequate in light of the services some TPIs such as cashback or reward sites offer. We equally question if the emphasis on “energy supply” is broad enough given that services such as boiler or home cover, to name but a few, already form a substantial part of the gas & electricity services that price comparison websites promote.

As such, we put forward the following suggestion for an amended definition of a TPI:

an intermediary between a domestic consumer and an energy supplier providing consumers with value added services in relation to their energy needs, in particular their energy supply.

- 4. Do you agree that domestic intermediaries should provide an independent, transparent, accurate and reliable service to their customers?**
- 5. Are you aware of potential challenges for particular types of TPI models in embedding any of the principles? How might these challenges be addressed?**
- 9. What are your views on our proposal to increase the transparency of sites’ commission arrangements with suppliers and the impact this has on the results a consumer will see?**
- 10. Do you agree that sites should direct consumers to the sources of independent advice identified? Are there other sources you would suggest?**
- 14. Do you agree with our proposal to increase consumer awareness of the availability of whole of market comparisons? Are there better alternatives?**

The four guiding principles of independence, transparency, accuracy and reliability are essential components to ensure consumer trust in the energy market. As such, we firmly believe that any third party intermediary should adhere to these standards to provide confidence in the services and products on offer for consumers as well as to create a level-playing field amongst TPIs. However, we would like to seek further clarification on the detailed provisions on independence and transparency as set out by Ofgem.

Commission arrangements

In its chapter on ‘principles for good intermediation’, the consultation document mentions that “the service should not reflect any bias in favour of a particular supplier(s).” We would like to seek clarification on how this statement correlates with the business model many TPIs employ in this sector.

As Ofgem helpfully recognises, commission arrangements are an essential funding mechanism for TPIs, allowing for innovation in the market, competition between energy companies and, ultimately, greater consumer engagement. It is encouraging that Ofgem understands the commercial imperatives of a commission-based model and that this means that many TPIs may not be in a position to list those energy suppliers with whom they have no commercial relationship. We think that this is justified and this policy should not be changed (more on that below under ‘whole of market comparison’).

Nevertheless – where a commercial relationship exists – the guiding principle of all TPIs should be to take all reasonable steps to avoid misleading the consumer with respect to the agreements they have in place. To this end we agree that filtering results requested by a consumer to serve their individual needs (e.g. monthly cost or contract type) should not favour one energy supplier over another to the potential detriment of the consumer based on the commercial relationship that exists between a TPI and the energy suppliers it works with.

We also firmly believe that – in line with Ofgem’s views – TPIs should be required to give clear disclosure as to the commission arrangements they have in place. Importantly, we suggest that this disclosure, in contrast to Ofgem’s two-click proposal, should be provided in a layered fashion, starting with a ‘just in time’ notification that links to more explanatory information which can be accessed if and when desired by the consumer. Ofgem’s plan to require TPIs to provide this notice within two-clicks appears to be arbitrary and may not be in the consumer’s best interest as it is unlikely to address the issue of prominence which is key to ensure openness and transparency. For example, under the proposal sites could obscure the list of suppliers from the consumer without necessarily falling foul of the two-click criterion. We therefore believe that the approach we set out above delivers a better and more future-proof solution for increasing consumer awareness, not least as services move to mobile devices where screen sizes are significantly smaller and information is more difficult to display.

Signposting to other sources of advice

The IAB concurs with Ofgem’s plan for sites to provide clearly identifiable signposting to other sources of advice under the Code. However, we would, again, question the proposed method by which this information would be provided no more than two clicks away from the energy homepage. Rather, we think it would be more beneficial to make other sources of advice available on transactional websites during the critical phase of purchasing so as to give consumers confidence at the time when they are faced with making a decision about their current or future energy supply.

Whole of market comparisons

The IAB agrees with Ofgem that whole of market comparisons are – in principle and where realistic – a very useful tool). However, as Ofgem recognises, there are significant difficulties that would arise for many TPIs if making a whole of market comparison available to users were to be introduced as a default

requirement under the Code. So as long as it is made clear (as applicable) that the view presented is not whole of market we think it is entirely fair and reasonable for TPIs to display only those energy suppliers with whom they have a commercial relationship so as not to compromise their business models.

26. Do you agree with our proposals to allow a broader range of comparison sites to become accredited under the Code?

Ofgem duly realises the benefits that a broadening of the Code could bring to consumers and businesses alike and that we welcome. Accreditation under the Confidence Code could result in having tangible benefits to a range of TPIs as they seek to strengthen consumer loyalty and confidence in the products and services they offer.

Experiences from other sectors and regulators, e.g. the Financial Conduct Authority (FCA), have shown the potential of innovative TPIs such as cashback sites to be embedded into an existing regulatory framework. Extending the opportunity of TPIs other than traditional price comparison websites to become accredited under a revised Confidence Code could therefore lead to a significant uptake in signatories and, by extension, awareness amongst consumers.

With this in mind, we strongly believe that the goal of allowing a broader range of TPIs to come within the scope of the Code ultimately requires a more principles-based approach to accommodate the various types of consumer offerings available in the marketplace. Rigid prescription of rules may be applicable in some (selected) areas although these would need to be well conceived so as to not cause unintended consequences.

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