



## The Advertising Standards Code

### Preamble

The Advertising Code lays down rules for advertisers, agencies and media owners.

The Advertising Code was prepared by the media and advertising industry and the Uganda Communications Commission. The Working Group consisted of members drawn from main industry bodies representing advertisers, agencies and media owners (including individual broadcasters), Telecommunications Sector; the Broadcast Media; the Uganda Consumer Protection Association; and the Uganda Communications Commission.

The Advertising Code contains wide-ranging rules designed to ensure that advertising does not mislead, harm or offend. Ads must also be socially responsible and prepared in line with the principles of fair competition. These broad principles apply regardless of the product/service/message being advertised.

In addition, the Advertising Codes contain specific rules for certain products and marketing techniques. These include rules for Telecommunication advertising; alcoholic drinks, health and beauty claims, children, medicines, financial products and prize promotions. These rules are complimentary to existing laws and are subject to such laws as exist and/or shall from time to time be enacted.

The following shall apply to the Code:

- (i) It shall be administered and enforced by the Uganda Communications Commission.
- (ii) It shall be reviewed regularly and amended from time to time to meet the changing needs of both the industry and of our society.
- (iii) It shall be supplemented by individual sector specific codes (e.g. rules related to drug use in the case of the health sector) that are determined by the various sector member organisations, regulatory bodies and negotiated with governmental institutions. In such cases, these individual codes shall be reflected in the Appendices to the Code. All such codes shall conform to the general principles laid down by this Code and differ only in detail where the individual needs are to be met.
- (iv) Advertisers (publicists and channels transmitting messages to the public), shall be bound by the code. The authority to interpret and pass judgement on matters relating to the Code shall be vested in the Commission in accordance

with its mandate to regulate content under Section 5 (x) of the Uganda Communications Act.

- (v) All advertisers and broadcasters shall adhere to the laws of republic of Uganda governing the subject.
  - (vi) Acknowledging that Advertising is a service to the public and, as such, should be informative, factual, honest, and decent and its content shall not violate any of the laws of the country. In this regard therefore, all entities bound by the Code shall neither prepare nor accept any advertising which conflicts with the Code, and shall withdraw, amend and/or implement any other decision deemed as directed by the Commission.
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# **SECTION I**

## THE CODE

Advertisers, Advertising Agencies and Broadcasters shall be obliged under their respective licenses and authorizations by subscription to this Code to adhere to the provisions of the Code.

### 1) OUTLINE FOR ADVERTISING CONDUCT

- (a) All advertisements shall abide with the law.
- (b) All advertisements shall be prepared with a sense of responsibility to the consumer and shall be decent, honest and truthful.
- (c) All advertisements shall conform to the principles of fair competition in business.
- (d) No advertisement shall bring advertising into disrepute or reduce confidence in advertising as a service to the industry and to the public.
- (e) Advertisers, broadcasters and Advertising service agencies are responsible for ensuring that advertisements prepared and carried by them comply with all the relevant legal and regulatory requirements. Broadcasters may seek legal advice from the Commission if an advertiser claims an advertisement shall be considered:

### 2) SCOPE

#### 1) *Commercial advertising*

The primary object of this Code is the regulation of commercial advertising, it applies therefore (except as expressly provided further on) to all advertisements for the supply of goods or services or the provision of facilities by way of trade, and also to advertisements other than those for specific products which are placed in the course of trade by or on behalf of any trader.

#### 2) *Non-commercial advertising*

In addition the Code applies, so far as is appropriate, to advertisements by government departments and agencies and to those by other non-commercial organizations and individuals.

#### 3) *Political advertising*

As in the case of any advertisement the individual medium shall determine whether any political advertisement presented to it is acceptable within the provisions of this code and any existing laws.

#### 4) *Controversial subjects/Advocacy advertising*

Where a complaint is made against any advertisement which:

- Expresses an opinion on a matter which is the subject of controversy; and
- That controversy involves issues within the areas, broadly defined, of public policy and practice; then that opinion shall first be subjected to the Commission for interpretation as to determine whether it is subject to the provisions of the Code relating to misleading claims.

All advertisements which contain such controversial statements shall:

- be readily recognizable as advertisements;
- cause no confusion as to the identity or status of advertiser;
- Whenever such information is not readily available state the advertiser's address and telephone number.

### 3) INTERPRETATION

- 1) This Code shall be applied in the spirit, as well as in the letter.
- 2) In assessing an advertisement's conformity to the terms of this Code, the primary test applied shall be that of the probable impact of the advertisement as a whole upon those who are likely to see or hear it. Due regard shall be paid to each part of its contents, visual and aural, and to the nature of the mediums through which it is conveyed.
- 3) In assessing the impact of an advertisement, the Commission may consider, *inter alia* the following-
  - (a) the surrounding circumstances;
  - (b) that the language used in the advertisement and its interpretation as a whole in the context in which it has been used may justify departure from the literal meaning thereof;
  - (c) survey data, conforming to the requirements of indicating the probable impact as a whole upon those who are likely to see or hear it.
- 4) The Commission shall consider public sensitivity and social concern in interpreting advertising.
- 5) Clauses specific to advertising to children where applicable be differentiated from and/or include "young people".
- 6) When objections in respect of advertisements that were amended resulting from the Commission's ruling are received, both the original and amended version shall be taken into consideration.

- 7) Where the overall impression of the advertisement as a whole is in doubt, the Commission may, at the cost of the advertiser concerned, call for a consumer reaction test by independent research, acceptable to both parties and the Commission.
- 8) This Code shall bind advertisers, advertising practitioners and media owners, but the principal responsibility for observing its terms shall rest with the advertiser.
- 9) In determining whether an advertisement is in breach of the provisions of this Code, it shall not be the quantity of complaints that shall be determinative, but the validity of the complaints.
- 10) The Code shall be subject to the provisions of the Constitution of the Republic of Uganda 1995 and any such laws made thereunder.

#### 4) DEFINITIONS

In this Code, unless the context otherwise indicates –

- (a) "Advertisement" shall mean any visual or aural communication, representation, reference or notification of any kind –
  - (i) which is intended to promote the sale, leasing or use of any goods or services; or
  - (ii) which appeals for or promotes the support of any cause.
- (iii) Promotional content of display material, menus, labels, and packaging shall also fall within the definition. Editorial material shall however not be an advertisement, unless it is editorial for which consideration has been given or received.
- (iv) The word "Advertisement" shall apply to published advertising wherever it may appear. It shall however not apply to editorial or programming publicity.
- (b) "Act" means the Uganda Communications Act 2013;
- (c) "Commission" means the Uganda Communications Commission as established under section 4 of the Uganda Communications Act 2013;
- (d) "Advertiser" means the commercial entity, at whose instance the advertising licence appears;
- (e) "Broadcast medium" means the holder of a broadcasting license in accordance with Part IV of the Act;
- (f) "Children" means persons who are under the age of 18 years;
- (g) "Young People" means children between the ages of 13 – 17 years
- (h) "Minors" mean children of the age below thirteen years.
- (i) "The Code" means the Advertising Standards Code, as shall be amended from time to time, and shall include all appendices to the Code and the Procedural Guide.
- (j) "Competitor complaints" means complaints lodged by, or on behalf of, a commercial entity or individual with a commercial interest concerning compliance with the Code by another commercial entity.
- (k) "Consumer" means any person who is likely to be reached by or who is actually exposed to an advertisement. This includes an end consumer, user or trade customer.

- (l) "Consumer complaints" means complaints lodged by members of the public or by entities or organizations regarding consumer related matters, concerning compliance with the Code by an advertisement or advertiser.
- (m) "Day" means any day but excludes Saturdays, Sundays and national holidays as well as the period from 25 December to 1 January in respect of the working days of the Commission
- (n) "Discrimination" means any act or omission, including a policy, law, rule, practice, condition or situation which directly or indirectly -
  - imposes burdens, obligations or disadvantage on; or
  - withholds benefits, opportunities or advantages from, any person on one or more of the following grounds:
    - race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth, or
    - any other analogous ground;
 and "discriminate" and "discriminatory" shall have corresponding meanings.
- (o) "Electronic media" means all media as described and interpreted in the Electronic Media Act or other Act that may succeed it but shall at all times include advertising published by way of electronic means, and includes, inter alia, broadcast media.
- (p) "Product" means goods, services, activities and facilities.
- (q) "Retailer" means an entity carrying services, and acts as an intermediary between the public and service providers.
- (r) "Testimonial" means any formal statement of truth or fact presented in or in support of an advertisement.

## 5) CONFIDENTIALITY

The Commission shall make available to any person requesting some or all records, documents and other information in its possession, subject to the following:

- 1) The Commission shall refuse to disclose any record, document or other information, whether in respect of its own proceedings or otherwise in its possession, where such record, document or information contains:
  - (a) trade secrets of a third party;
  - (b) financial, commercial, or technical information, other than trade secrets, of a third party, the disclosure of which would be likely to cause harm to the commercial or financial interests of that third party; or
  - (c) information supplied in confidence by a third party, the disclosure of which could reasonably be expected -
    - i) to put that third party at a disadvantage in contractual or other negotiations; or
    - ii) to prejudice that third party in commercial competition.

- 2) The Commission shall refuse a request for access to a record, document or other information if its disclosure would constitute an action for breach of a duty of confidence owed to a third party in terms of an agreement.

## 6) PRINCIPLES

### 1) **Offensive advertising**

- (a) No advertising shall offend against good taste or decency or be offensive to public or sectoral values and sensitivities, unless the advertising is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.
- (b) Advertisements shall contain nothing that is likely to cause serious or widespread or sectarian offence.

### 2) **Honesty**

Advertisements shall not be so framed as to abuse the trust of the consumer or exploit his lack of experience or knowledge or his credulity.

### 3) **Unacceptable advertising**

#### (a) *Fear*

Advertisements shall not without justifiable reason play on the fear of the consumers.

#### (b) *Violence*

Advertisements shall not contain anything which might lead or lend support to acts of violence.

#### (c) *Legality*

Advertisements shall not contain anything which might lead or lend support to criminal or illegal activities, nor shall they appear to condone such activities.

#### (d) *Discrimination*

No advertisements shall contain content of any description that is discriminatory in nature.

### 4) **Truthful presentation**

#### (a) Substantiation

- i) Before advertising is published, advertisers shall hold in their possession documentary evidence to support all claims, whether direct or implied,
- ii) Documentary evidence, whether in the form of survey data or any other documentation, shall be up to date and current, and shall have market relevance.
- iii) The accuracy of the claims based on the survey shall be evaluated and confirmed by an entity approved by, or acceptable to the Commission.
- iv) The advertiser shall bear the costs of such evaluation.
- v) Documentary evidence, other than survey data, shall emanate from or be evaluated by a person/entity, which is independent, credible, and an expert in the particular field to which the claims relate and be acceptable to the Commission.
- vi) Before making a ruling on documentary evidence, the Commission shall be entitled to:
  - i. Require the advertiser to engage the services of a person/entity which is independent, credible, and an expert in the particular field to which the claims relate, to confirm the accuracy of the claims,
  - ii. Require the advertiser, at the discretion of the Commission, to submit supporting documentation in order to determine the independence, credibility and expertise of the persons/entities from which the documentary evidence emanates.
- vii) Claims based on research conducted by publications must clearly state the source in advertising.
- viii) The Commission may consider new substantiation submitted after a ruling has been made by the Commission rejecting substantiation or upholding a complaint based on substantiation.

(b) Claims

- i) Misleading claims

Advertisements shall not contain any statement or visual presentation which, directly or by implication, omission, ambiguity, inaccuracy, exaggerated claim or otherwise, is likely to mislead the consumer.

- ii) Puffery

Value judgments, matters of opinion or subjective assessments are permissible provided that:



- i. it is clear what is being expressed is an opinion;
- ii. there is no likelihood of the opinion or the way it is expressed, misleading consumers
- iii. The guiding principle is that puffery is acceptable when an expression of opinion, but false and unacceptable when viewed as an expression of fact.

iii) Hyperbole

Obvious untruths, harmless parody or exaggerations, intended to catch the eye or to amuse, may be permissible provided that they are clearly to be seen as humorous or hyperbolic and are not likely to be understood as making literal claims for the advertised product.

PROVIDED that such advertisements shall be shown with caution to minors.

iv) Expert opinion

Where informed opinion is claimed in support of a product, such opinion shall be substantiated by independent evidence.

v) Statistics and scientific information

Advertisements shall not misuse and/or abuse research results or quotations from technical and scientific literature.

vi) Headlines

- i. Headlines to advertising shall not be misleading in any way;
- ii. When a statement contained in a headline is highlighted to refer to an explanatory footnote, the footnote shall be in similar prominence as the headline and/or advert.

vii) Truthful presentation

Where material information is superimposed on screen, the print shall be clearly visible and remain on screen long enough to be easily read by the hypothetical reasonable viewer.

(c) The value of goods

- i) Consumers shall not be led to overestimate the value of goods whether by exaggeration or through unrealistic comparisons with other goods or other prices.
- ii) The advertiser shall be ready to substantiate any claim he makes as to the value in cash terms of goods offered by him at a lower price or free; and any saving

to the consumer claimed to result from the offer of goods at a price lower than their actual value.

(d) Use of the word “free”

- i) Products shall not be described as “free” where there is any cost to the consumer, other than the actual cost of any delivery, freight or postage.
- ii) A trial may be described as “free”, although the consumer shall be expected to pay the cost of returning the goods, provided that the advertiser has made clear his obligation to do so.
- iii) Advertisements offering “free” goods shall indicate that such goods are only received subject to ‘terms and conditions’ clearly defined as such.

(e) “Up to . . .” and “from . . .” claims

Claims as to prices or performance, which use formulas such as “up to 10 kilometres per litre” or “prices from as low as xxUGX” shall not be acceptable unless a clear substantiation is made as to the range of prices or prizes available and distinctly separated.

(f) Direct supply

Except in the case of a service provider who distributes to the public directly, claims that goods are available “direct from the service provider” and the like shall not be acceptable where the advertiser cannot substantiate the implication that the consumer shall benefit, in terms of cash or otherwise, from the elimination of one stage or more in the normal process of distribution.

(g) Wholesale

No advertisement shall state or imply that goods offered for retail sale are being offered at wholesale prices unless the advertiser can prove that the prices in question are not higher than those at which goods are currently sold to retailers or other classes of trade buyers.

(h) Fresh

The word “fresh” shall not be used in advertising in such a manner as to mislead or confuse the consumer.

5) **Price comparisons**

(a) By service providers

An advertiser may claim that his prices are lower than those of his competitors PROVIDED that the claim can be substantiated.

(b) Co-operative advertising

Where a service provider inserts the name of a retailer the advertisement shall be deemed to be a "retail" advertisement and not that of a service provider and shall need to comply with the conditions contained herein governing retail advertisements.

(c) By retailers

Retailers shall be permitted to quote price comparisons/or specific discounts in advertising provided that the following conditions are complied with-

- i) Satisfactory documentary evidence of the price reduction is held available and can be provided on request.
- ii) A single price reduction, price comparison or discount may be advertised for a maximum period of 3 months.

(d) Sale advertising

Special sale prices shall be advertised only in the following circumstances:-

- i) Sale advertising with price comparisons shall be restricted to a maximum of period of 6 weeks per calendar quarter, and with a minimum of 3 months between any sale campaigns for the same product.
- ii) Satisfactory documentary evidence of all the claimed price reductions shall be made available to be furnished on request.

(e) Corporate slogans

The provisions of Clauses 5(d)(i) to 5(d)(ii) above shall not apply to corporate slogans, themes and statements relating to pricing.

**6) Disparagement**

- (a) Advertisements shall not attack, discredit or disparage other products, services, advertisers or advertisements directly or indirectly.
- (b) Comparisons highlighting a weakness in an industry shall not necessarily be regarded as disparaging when the information is factual and in the public interest.

- (c) In considering complaints under this Clause, the Commission shall take cognisance of what it considers to be the intention of the advertiser.

## 7) Comparative advertising

- (a) Advertisements in which factual comparisons are made between products and/or services may be permitted provided that-

- i) All legal requirements have been adhered to;
- ii) only facts capable of substantiation have been used as governed by Clause 4(a) above;
- iii) one or more material, relevant, objectively determinable and verifiable claims have been made;
- iv) the claims are not misleading or confusing as governed by Clause 4(b)(i) above;
- v) no infringement of advertising good shall take place as governed by Section Clause 9 below;
- vi) no disparagement takes place as governed by Clause 7 above;
- vii) the facts or criteria used are fairly chosen. In this assessment the following shall, inter alia, be taken into account-
  - the significance of the facts or criteria used;
  - the relevance and representativeness of the facts or criteria used; and
  - whether the basis of the comparison is the same.
- viii) products or services compared shall have the same or similar characteristics and must be intended for the same, or similar, purpose;
- ix) the contextual implication shall be strictly limited to the facts;
- x) where claims are based on substantiated research, the express consent as to the accuracy and scope of such claims shall be obtained from the relevant research body;
- xi) the advertiser has accepted responsibility for the accuracy of the research and claims.

- (b) Reference to the claims above shall be deemed to include all visuals and aural representations.

- (c) Group comparisons and comparisons which identify competitors by implication shall be acceptable subject to the criteria contained in this clause.

- (d) The guiding principle in all comparisons shall be that products and/or services shall be promoted on their own merits and not on the demerits of competitive products.

- (e) In considering matters raised under this clause, cognisance shall be taken of the intention of the advertiser.

## 8) Exploitation of advertising good shall

- (a) Advertisements shall not take advantage of the advertising goodshall relating to the trade name or symbol of the product or service of another or advertising goodshall relating to another party's advertising campaign or advertising property.
- (b) In considering matters raised under this clause consideration shall be given to, *inter alia*, the likelihood of confusion, deception and the diminution of advertising goodshall. Furthermore, whether the device or concept constitutes the "signature" of the product or service, is consistently used, expended throughout media and is prominent in the mind of the consumer.

## 9) Imitation

- (a) An advertiser shall not copy an existing advertisement, local or international, or any part thereof in a manner that clearly evokes the existing concept and which may result in the likely loss of potential advertising value.
- (b) The provisions of Clause 10(a) above shall apply for a period of 5 years from the date of last usage of the advertising, packaging or labelling concerned.

## 10) Testimonials

### (a) *To be genuine*

Advertisements shall not contain or refer to any testimonial or endorsement unless it is genuine and related to the personal experience over a reasonable period of the person giving it.

### (b) *Conformance to the Code*

Testimonials themselves shall not contain any statement or implication contravening the provisions of this Code and shall not be used in a manner likely to mislead.

### (c) *Efficacy claims*

Testimonials shall not contain any claims to efficacy which cannot justifiably be attributed to the use of the product, and any specific or measurable results claimed shall be fairly presented.

### (d) *Amendment*

Where any testimonial contains an expression which conflicts with this Code, the advertiser may, with the written approval of the person giving the testimonial, amend it so as to remove the source of conflict.

### (e) *Fictitious characters*

Particular care shall be taken to ensure that advertisements based on fictitious characters are not so framed as to give the impression that real people are involved.

*(f) Copies for inspection*

Advertisers and their agencies shall hold ready for inspection by the Commission, copies of any testimonials used in advertising.

**11) Protection of privacy and exploitation of the individual**

*(a)* Advertisements shall not, except in the circumstances noted in 12(b) portray or refer to, by whatever shall mean, any living persons, unless their express prior permission has been obtained.

*(b)* This clause does not apply-

- i) to the use of crowd or background shots in which individuals are recognisable, provided that neither the portrayal, nor the context in which it appears is defamatory, offensive or humiliating.
- ii) to advertisements for books, films, radio or television programmes, press features and the like, in which there appear portrayals of, or references to, individuals who form part of their subject matter;
- iii) to police or other official notices;
- iv) to occasions when in the Commission's opinion the reference or portrayal in question is not inconsistent with the subject's right to a reasonable degree of privacy and does not constitute an unjustifiable commercial exploitation of the individual's fame or reputation.

**12) Identification of advertisements**

*(a)* Advertisements shall be clearly distinguishable as such whatever their form and whatever the medium used.

*(b)* In Electronic Media particular care shall be taken to clearly distinguish between programme content and advertising.

**13) Safety**

*(a)* Advertisements shall not without reason, justifiable on educational or social grounds, contain any visual presentation or any description of dangerous practices or of situations which show a disregard for safety.

*(b) Children and safety*

- i) General principle

- i. Advertisements addressed to or likely to influence children shall not contain any statement or visual presentation which might result in harming them, mentally, morally, physically or emotionally.
- ii. The aim of the general principle is that children shall not be brought under the impression that it is acceptable and safe to be in certain surroundings; and situations as indicated or produced in the advert where such advert displaying acceptable material under clause 4(b)(ii) & (iii).
- iii. Particular attention and care shall be taken in advertisement that are aimed at or are likely to be viewed by Minors.

(c) *Photosensitivity of viewers*

Advertisements that contain bright flashing and rapid moving images shall include a cautionary message to its viewers that **“the contents of the advert contains bright flashing and rapid moving images that shall be viewed with caution”**

#### 14) Guarantees

- (a) “Guarantee” and “warranty” shall be used by advertisers to describe a formal written undertaking with legal force.
- (b) Advertisements shall not contain any reference to “guarantee” or “warranty” which take away or diminish any rights.
- (c) There shall be no objection to the use of “guarantee” etc. in a colloquial sense **provided** that the sense in which it used is made clear in the advert.

#### 15) Money-back undertakings

- (a) Neither “guarantee” nor “warranty” nor any word derived from either, shall be used in an advertisement to describe or refer to an undertaking.
- (b) *Time limit on money-back offers*

Where an advertiser, in an advertisement, makes an offer to refund part of the purchase price of a product under certain conditions, the period and conditions for which the offer is valid shall be stipulated in the advertisement.

#### 16) Use of the word “new” in advertising

- (a) The word “new” or words implying “new” shall be used for only a 6 month period.
- (b) In electronic, print and outdoor media, the “new” message shall first be exposed no later than 180 calendar days after “date of proven first usage”

- (c) The word 'new' shall not be used to advertise any change or improvement to a product, service or package, provided that the change or improvement is material and can be substantiated and defined.

#### **17) Use of animals in advertising**

Advertisers shall satisfy the Commission that no animal is caused pain or distress in the course of making any advertisement.

The use of animals in circumstances other than their "natural" way of use shall be subject to independent supervision by the authorized personnel.

#### **18) Pricing policy**

When any indication of cost is given in an advertisement regard should be had for the following provisions:

(a) *Quotation*

The selling price at which the goods shall be sold to the purchaser against immediate payment must be quoted in full.

(b) *Inclusiveness*

Such selling price shall include all necessary or incidental costs without which the product cannot or may not be purchased.

(c) *Clarity*

If reference is made in an advertisement to more than one product, or more than one version of a single product, it shall be clear to which product or version any quoted price relates.

#### **19) Pseudo cheques**

When pseudo cheques are used for promotional purposes such cheques shall:-

- (a) have a warning notice printed, stating "Not valid for Bank Transactions";
- (b) not have fictitious codes printed in the space; and
- (c) the use thereof shall be subject to all Financial Institution and instrument regulations where applicable.

#### **20) Fair Competition**



All advertisements and advertising campaigns shall conform to existing and future fair competition laws and regulations.

### **21) Advertising for specific marketing practices**

Any advertising campaign or promotion that involves bi or multifaceted media for advertising that includes broadcasting shall be subject to this code and enforcement of any decisions affecting such promotion shall encompass all the media involved in the promotion.

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## **SECTION III**

### **COMPLAINTS RELATING TO ADVERTISEMENTS**

1. The Commission shall receive and resolve complaints lodged in respect to Advertisements that are run on any of the platforms that it regulates.
2. The Commission shall exercise disciplinary control over all advertising that shall be published on the Communications platform as defined in the Act.
3. The Commission shall exercise its mandate by interpreting and enforcing the advertising standards code contained herein in accordance with the Act.

#### **4. Simultaneous legal action**

The Commission shall not pursue complaints if the issue is the subject of simultaneous legal action in the Courts of law or in a separate arbitration process.

#### **5. Confidentiality**

- i) The Commission shall, subject to clause 4 above, on request treat in confidence any genuinely private or secret material supplied unless legislation, the Courts or officials acting within their statutory powers compel its disclosure.
- ii) The Commission may in adjudicating over a complaint send confidential evidence to external consultants for expert opinion and such consultants shall be obliged to ensure confidentiality of the said information.
- iii) The Commission shall make available to complainants and advertising parties the names of relevant external consultants.

#### **6. Fast Track cases**

The Commission may, where circumstances warrant, depart from standard processes and deadlines and impose shorter response deadlines, forward the summary of the complaint and the draft recommendation to advertising parties at the same time.