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Commissioner Dalli delivers a speech on regulatory challenges and solutions for responsible advertising at the conference "Advertising We Care!"

*Check Against Delivery
Seul le texte prononcé fait foi
Es gilt das gesprochene Wort*

John DALLI, European Commissioner for Health and Consumer Policy, attends the conference organised by the European Advertising Standards Alliance.

The Square, Brussels. 28 March 2012

Ladies and Gentlemen good afternoon,

I am very pleased to be here with you today to share with you my thoughts on this important issue of responsible advertising.

The title of this event is very appropriate and well chosen – it reflects the shared desire to see an industry showing responsibility and restraint where necessary, and reflecting the broad values of the society in which it operates.

Advertising directs and targets communication to consumers, and thus has considerable influence on their behaviours.

In addition to its commercial aims, when it is responsible, advertising can play a positive role in making consumer markets more transparent, encouraging competition. It is also a means for better informing consumers.

Advertising can also be a powerful tool to guide consumers towards more responsible, healthy and sustainable choices.

Preventing misleading advertising

Over recent years, the European Union has developed a solid body of rules that address key issues concerning advertising.

In particular, since 2007 EU legislation on unfair commercial practices has built a harmonised framework banning misleading advertising.

This requires that all advertising be truthful, accurate, that it does not mislead or deceive consumers. It also includes a ban on the most abusive practices.

However, despite these worthy aims and efforts, we have to recognise that the world is far from perfect.

Our co-operation with national authorities reveals that traditional scams – such as "bait advertising" and fake "free" offers – continue to occur and new deceptions emerge.

In June, the Commission will report on the application of the unfair commercial practices legislation, and will consider whether or not a review should be undertaken.

Responsible advertising and public health

Of course, not all marketing and advertising is misleading.

I believe responsible marketing and advertising have a positive role to play in enhancing people choices with an impact on health.

More and more Europeans suffer from chronic diseases which are linked to what they eat, to how much alcohol they drink, to whether or not they exercise. Many diseases could be prevented if people made healthy choices – and marketing can certainly contribute to this.

Take alcohol for example. There is broad consensus on the need to reduce underage drinking, and to change harmful drinking patterns.

This recognition inspired the creation of the EU strategy to support Member States in reducing alcohol-related harm – largely through the European Alcohol and Health Forum.

The members of this forum have launched more than 200 voluntary initiatives – with one in five of these aimed at fostering responsible commercial communication and sales.

Self-regulation of alcohol marketing has shown a steady improvement in recent years:

- Common standards and codes of conduct have been better developed and implemented; and
- Coverage has been increased by extending self-regulatory codes to new media and social networks.

Today, many major companies have comprehensive marketing codes which apply to all media.

The key point here, however, is the extent to which self-regulation has been able to reduce the exposure of children and young people to alcohol marketing, on which opinions will differ.

Now, allow me to turn to another example of self-regulation, in relation to responsible advertising and food.

The Commission steers a EU Platform for Action on Diet, Physical Activity and Health, whose members are European-level stakeholders from the food industry, the restaurant sector, advertisers and consumer NGOs. The platform members have delivered 300 commitments for action.

One of the most significant of these commitments is the EU Pledge whereby major food and drink companies have committed themselves not to target TV, print, or internet advertising at children under 12, and not to advertise in primary schools.

19 major companies, representing approximately 75% of food and beverage advertising spent in the EU, implement this pledge. Monitoring carried out in 2010 shows that these self-regulation commitments do have an impact.

I am pleased that the companies involved have scaled up this pledge, with a stricter audience definition, an increase in the market coverage and the extension to digital media.

In addition to self regulation, this is an area where there is fully-fledged regulation to be complied with. I am talking about EU rules applying to advertising of food – in particular the rules on nutrition and health claims which apply equally to advertising and labelling.

In addition, the Audiovisual Media Service Directive gives a clear steer regarding audiovisual commercial communications, concerning foods high in fat, salt and sugar and the protection of young people from exposure to alcohol marketing.

There is a groundswell of opinion that we need to move beyond an essentially protective approach – to actively promoting and supporting healthy behaviour.

Moving on, cosmetics is another area where responsible advertising is important.

Today's consumers are faced with a wide diversity of claims and advertising relating to the function, content and effects of cosmetics.

In the new EU Cosmetics Regulation, applicable from mid-2013, the provisions concerning product claims are reinforced. A list of common criteria for the justification of claims should be adopted in form of an EU Decision in the second half of this year.

Online advertising

Let me now turn to the relatively modern phenomenon of online advertising.

As digital technology becomes an ever bigger part of our daily lives, companies naturally focus increasingly on online advertising.

This differs substantially from other advertising due to the interactive nature of the internet. Online advertising is often more subtle and sophisticated compared to traditional advertising.

In recent years we have witnessed a boost in various forms of personalised online advertising based on "user profiling".

Profiling practices have become more and more sophisticated – monitoring and analysing consumers' online behaviour to a level of detail which would have been impossible just a few years ago.

Some advertisers argue that this enables them to deliver tailor-made information to consumers, which directly meets their individual needs.

Whilst that may be true, we cannot ignore the other side of the coin – the serious impact that this type of advertising has on consumer privacy.

A recent Eurobarometer survey showed that 72% of internet users are concerned about disclosing too much personal data online.

Consumers are often unsure about how their data is accessed and processed and do not always realise that it could be used by online advertisers.

This risks undermining consumer trust in the online environment as a whole.

It is vital, therefore, to ensure that consumers have control over their data online and to provide them with information that is easily accessible and easy to understand.

They should have an unambiguous right to object to any processing of their data for the purposes of direct marketing.

And where consent is required for the processing of consumers' data online, this consent should be explicitly given.

These are some of the key principles reflected in the ambitious proposal for the reform of the EU Data Protection Framework which the Commission presented in January.

Green advertising

The final issue I would like to mention is responsible "green" advertising.

Faced with growing concerns over the state and the future of our planet, consumers are increasingly willing to reward companies that conduct their business and provide products in ways that are more environmentally, and socially responsible.

Consumers can take direct action by buying products with lower environmental footprints from companies they trust.

This area is still in its early days, and debate will continue on how much emphasis the average consumer will put on environmental and social factors compared to traditional factors such as brand, convenience, price and performance.

However, the rise in the purchasing of products that are perceived to be more sustainable is undisputable. The "green and healthy lifestyle" market segment was, in the last decade, one of the fastest growing in many countries.

In parallel, green advertising, labels and claims on products have been increasing – some might say proliferating – in the marketplace.

A recent study carried out in the US found that many Americans believe products to be better for the environment than they actually are.

Consumers continue to misunderstand phrases commonly used in environmental marketing and advertising – such as “green” or “environmentally friendly” – thus giving a number of products a greater "green halo" than they might deserve.

Nearly one in four US consumers (23%) say they have “no way of knowing” if a product is green or actually does what it claims.

So where do consumers look to verify green marketing? They are most likely to turn to consumer reports (29%), certification seals or labels on products (28%) and the list of ingredients on products (27%), possibly signalling a degree of scepticism regarding company-driven marketing.

But is the situation in Europe different? According to consumer organisations, green claims are in most cases unsubstantiated and consumers are not well-equipped to take more sustainable choices.

Very recent results – from our forthcoming Consumer Eurobarometer – will show that one third of consumers in Europe encountered, in 2011, misleading information about the environmental impact of a product.

Consumer organisations have asked the Commission for an effective ban on misleading green claims – indeed; similar requests come from the business sector.

Truthfulness of environmental marketing is clearly important. Fair competition is essential to a level playing field for businesses, to ensure the proper functioning of the Single Market.

I believe that we need to do three things in Europe.

- First, we need to further study and monitor the use of green marketing and claims across different markets;
- Second, we need to identify best practices and the existing regulatory and self-regulatory tools; and
- Third, we need to examine whether additional measures are needed and if so, for which markets.

Ladies and Gentlemen,

A final word on self-regulation. I believe this can be a useful tool, amongst others, and one that can usefully complement the work of public enforcers.

I also recognise that self-regulation has a number of advantages over formal regulation, especially in terms of flexibility.

I believe that self regulation can serve as a best practice, but only if two core pre-conditions can be met. These are crucial to ensuring the credibility and effectiveness of self-regulatory systems.

First, self-regulation needs to be trusted in order to be effective, and in order to be trusted it needs to be participative and involve civil society;

Second, self-regulation needs to be based on adequate monitoring and control of its performance and outcomes.

Self-Regulatory Bodies need to set up user-friendly and effective complaint handling and provide transparency on sanctions for non-compliance.

Self-regulation in advertising can only fulfil its potential within a clear legislative framework that reinforces the effectiveness of codes of conducts.

This also applies to self-regulation for online advertising which, given the particular 'consumer privacy' challenges that we face in this area, can serve to re-affirm the principles laid down in EU legislation.

It is important to underline that data protection is a fundamental right and that EU rules in this area must be fully respected.

I recognise and welcome the efforts that EASA and the Self Regulatory Bodies have made in recent years to strengthen self-regulatory mechanisms in various Member States. And I very much hope that such efforts will continue in the years ahead.

Thank you very much.