



Communications
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of Kenya



UGANDA
COMMUNICATIONS
COMMISSION

ARCT

***EAST AFRICAN COMMUNICATIONS
ORAGNIZATIONS (EACO) GUIDELINES ON
MARKETING COMMUNICATIONS (DRAFT)***

**DRAFT MARKETING COMMUNICATIONS GUIDELINES FOR EACO NATIONAL
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Explanatory Note

THE GUIDELINES

Status

It is recommended to Member countries that they adhere to the principles set out in the Guidelines with a view to:

- a) Achieving acceptance by Member countries of certain minimum standards;
- b) Reducing differences between relevant domestic rules and practices of Member countries to minimum; and
- c) Ensuring that in protecting consumers they take into consideration the interests of other member countries and the need to avoid undue interference with investigations of other member countries.

However as is the case with international best practice, the Guidelines should not be applied in a mechanistic way. The framework provided by the Guidelines permits member countries to exercise their discretion with respect to the degree of stringency with which the Guidelines are to be implemented, and with respect to the scope of the measures to be taken. But, generally speaking, the Guidelines do not presuppose their uniform implementation by member countries with respect to details. For instance, different traditions and different attitudes by the general public in the various member states have to be taken into account.

It should also be borne in mind that member countries are presently at different stages of development with respect to consumer protection and National Regulatory Authorities. They will probably proceed at different paces, applying different strategies.

The Guidelines are minimum standards for adoption in domestic legislation and, capable of being supplemented by additional measures for the protection of consumers at the national, as well as, the international level.

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1.0 Introduction

These Guidelines are to be known as the "**EACO GUIDELINES ON MARKETING COMMUNICATIONS.**" They are developed as part of the EACO ICT Consumer Protection Guidelines, to provide mechanisms through which member states and their National Regulatory Authorities can effectively ensure transparency and accuracy of Service provider (Marketer) marketing communications that go out to the public.

In these guidelines, Marketing Communications have generally been defined to mean Advertising and Public Relations tools & information that go out to the public.

1.1 Definitions

For the purposes of these Guidelines:

"Advertisement" means any message, whose content is controlled directly or indirectly by the advertiser, expressed in any language and communicated in any medium with the intention of influencing their choice, opinion or behavior.

"Consumer" means a person who acquires a communications service or product for the primary purpose of personal or domestic use.

"Fraudulent and deceptive commercial practices" refers to those fraudulent and deceptive commercial practices that cause actual harm to consumers, or that pose an imminent threat of such harm if not prevented, such as;

1. A practice of making misrepresentations of material fact, including implied or factual misrepresentations that cause significant detriment to the economic interests of misled consumers,
2. A practice of failing to deliver products or provide services to consumers after the consumers have been charged, and
3. A practice of charging or debiting consumers' accounts without authorisation.

"National Regulatory Authority" means any national public body, as determined by each member country, which is specifically responsible for regulation, monitoring, and development of the Communications Sector.

"Service provider" means any one that offers services to end users, either by using the basic service and infrastructure provided by network operators on a re-sale

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basis, or by providing services through the service provider's own infrastructure where it forms part of a network operation;

"Promotion" means any message, whose content is controlled directly or indirectly by the advertiser, expressed in any language and communicated in any medium with the intent to influence their choice, opinion or behavior in order to receive a reward or benefit .

Abbreviations

EAC - East African Community

EACO - East African Communications Organization

NRA - National Regulatory Authority

NRA's - National Regulatory Authorities

1.2 What is the issue?

Communication plays an indispensable information role in consumer protection and effective communication as part and parcel of any successful consumer protection strategy. Therefore, for consumers to effectively engage in the communications sector, and use their ability to "vote with their wallet", they need to fully participate in the markets through accessing adequate and appropriate information that is communicated by service providers within the sector.

The East African Community region has in recent years experienced huge promotions of products and services, which many consumers have indicated to often match the claims made through the various marketing communications. This has led to the purchase of goods and services that do not adequately serve the intended purpose.

This scenario points to the need in the market for the means of ensuring that the information provided to consumers in the EACO market by providers of ICT goods and services are accurate, reliable, and not of a misleading nature to enable consumers make better informed choices.

1.3 Objectives of these guidelines:

The main goal here is, therefore, to guide member states in the region on how they can effectively ensure that marketing communications by service providers to consumers are clear and accurate to enable them act as discriminating consumers, capable of making informed choices, able to seek redress, and conscious of their rights and obligations;

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- To ensure that service providers and other communications marketers in the region conform to minimum basic standards in their advertising and public relations communications to the public, and
- To harmonize regulators' guidelines on dealing with corporate and marketing communications of service providers to the public.
- To ensure ethical conduct and acceptable standards for marketing.
- To protect and promote consumer interests.

2.0 Proposed Guidelines

In order to address the challenges faced by consumers in the region with regard to marketing communications, service providers should adhere to the following guidelines:

2.1 General Provisions concerning Style and Content of Marketing Communications;

2.1.0 Marketing communications should be legal, decent, honest and truthful,

2.1.1. Marketing communications should be prepared with a sense of responsibility to the consumers and should in no way offend prevailing community standards,

2.1.2. Marketing communications should clearly promote the value offered in promotions and games and not suggest that winning the prizes is anything other than a matter of chance,

2.1.3. Marketing communications should clearly present the odds of winning and prizes on offer and in no way, implicitly or explicitly, misrepresent the probability of winning a prize,

2.1.4. Before putting out marketing and advertising communications , an ICT service provider or its agent should obtain consent prior to publishing or causing to be published anything which identifies or may be used to identify a consumer who has won a prize, except, where marketing communications and advertising related material prior to the promotion expressly and clearly stated to the consumers/participants the conditions pegged to the promotion including ALL terms and conditions related to that specific communication,

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- 2.1.5. No game or promotion should be presented as an alternative to work, or as a way out of financial difficulties,
- 2.1.6. Marketing communications should specify how customers can subscribe or unsubscribe from their subscription based services and should at a minimum provide telephone and email contacts that customers can use to have issues related to the service attended to and resolved,
- 2.1.7. Marketing & corporate communications delivered by SMS or e-mail must not be sent before consent is first obtained from the customer, and
- 2.1.8. Marketing communications delivered by SMS or e-mail must be sent within such timeframes as the NRAs determine.

2.2 Vulnerable consumers.

Marketing & corporate communications should not exploit vulnerable groups such as, young, immature, people with special needs or, mental or social incapacity.

2.3 Promotion Information;

- 2.3.0 All advertising material (in press, television, cinema, radio, outdoor billboards and general promotional material) must identify the responsible service provider (marketer) by name and/or logo.
- 2.3.1 All advertising materials must specify where additional details about the particular product or promotion, including terms and conditions, can be accessed with ease by customers. Such details shall include contact details for the providers' 'Helpline',
- 2.3.2 All information must be correct, clear, complete, accurate and up to date. It must be capable of independent verification. In particular, information as to chances of winning and the amount or nature of prizes must not be misleading in any way, and
- 2.3.3 The cost of participating in particular promotions or games shall be clear in all advertising material and related marketing communications.
- 2.3.4

2.4 Advertising with Third Parties;

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Where sponsorships or merchandising arrangements, co-promotions, and any other advertising with any third parties are conducted, a service provider shall take particular care to ensure that:

- 2.4.0 The provisions of these guidelines are adhered to when dealing with third parties; and
- 2.4.1 These guidelines are applied in accordance with the relevant legislation and industry codes, which apply to advertising in respective jurisdictions.

2.5 Privacy

- 2.5.1 The names, addresses, and any other details that may lead to the identification of winners (whether as individuals or as part of a group) and their families must be kept strictly confidential and must not be made available by a Licensee or its contractors, suppliers or retailers to any third party without the consent of the relevant winner,
- 2.5.2 No marketing or corporate communication should feature or make any reference whatsoever to actual named individual winners of prizes without first obtaining the written consent of that winner,
- 2.5.3 When requesting consent it will be made clear to the winner what will be involved in the Advertising or Public Relations activity, for example, by means of sketches, scripts, earlier examples of advertising, or draft press releases, and
- 2.5.4 In the event that a winner subsequently decides that he or she does not wish to be featured in Advertising or Public Relations, this request will be honoured as far as is reasonably possible, notwithstanding that approval has been obtained.

2.6 Consumer Education and Awareness

It recognized that where consumers are not aware of what is available to them they are not likely to benefit fully. To ensure that this does not happen, member countries:

- 2.6.1 Should co-operate with service providers, and consumer groups in furthering consumer and business understanding of redress mechanisms available to consumers, and where consumers can file complaints.

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- 2.6.2 In designing education and awareness initiatives, special consideration should be given to the needs of disadvantaged or vulnerable consumers.
- 2.6.3 Consumers should be provided with clear, comprehensible, and accurate information on the procedure, including the process for initiating a complaint, expected costs and duration of the procedure, possible outcomes and avenues for appeal.

3.0 Evaluation

Member countries and their National Regulatory Authorities should have in place a continuous monitoring and evaluation mechanisms such as consumer satisfaction/awareness surveys, complaints analysis etc in order to evaluate the effectiveness of these guidelines.