



**Australian  
Broadcasting  
Authority**

## Investigation Report No. 1466

<b>File No.</b>	2004/1958
<b>Licensee</b>	NBN Ltd
<b>Station</b>	NBN
<b>Type of Service</b>	Commercial television
<b>Name of Program</b>	Morisset Power Barn Advertisements
<b>Date of Broadcast</b>	16 July 2004
<b>Relevant Code</b>	Clauses 1.11 to 1.14 (loudness of advertisements) and clauses 7.10 and 7.12 (complaints handling) of the <i>Commercial Television Industry Code of Practice July 2004</i>

### Investigation Conclusion

The ABA has determined that the licensee, NBN Ltd, in relation to the broadcast of advertisements for the Morisset Power Barn on 16 July 2004:

- breached clause 1.14 of the Code, by not ensuring, prior to broadcast, that relevant requirements in relation to loudness of advertisements had been met;
- breached clause 7.10 of the Code, by not providing a response to a complaint within 30 working days after receipt of the complaint; and
- breached clause 7.12 of the Code, by not advising the complainant, in its response sent on 18 October 2004, that he might refer the matter to the ABA if dissatisfied.

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## **The Complaint**

On 15 October 2004, the Australian Broadcasting Authority (the ABA) received a complaint that advertisements broadcast on NBN were excessively loud.

The complainant also complained that he had written to the licensee about the matter on 26 July 2004, and received no reply.

## **Assessment**

The ABA has based its assessment on submissions and documentation provided by the complainant and the licensee. The ABA has also taken into account information in relation to loudness of advertisements posted on the Free TV Australia website, [www.ctva.com.au](http://www.ctva.com.au).<sup>1</sup>

## **Matters Considered by the ABA**

### ***Loudness of advertisements***

The complainant cited two advertisements specifically: one for Cardiff Toyota and another for the Morisset Power Barn. The complainant described the Cardiff Toyota advertisement as featuring ‘a little man with a loud hailer who trumpets the benefits of buying Toyotas’ and the Power Barn advertisement as featuring ‘a “Ma & Pa Kettle” type couple who scream the benefits of the Power Barn at Morisset’ in a manner intended to be humorous.<sup>2</sup>

On commencement of its investigation, the ABA sought details of these advertisements from the licensee. In response, the licensee advised that Cardiff Toyota advertisements broadcast on or around 16 July 2004 do not fit the description provided by the complainant. The ABA considers that, in the case of the Cardiff Toyota advertisement, the matter complained of has not been adequately identified for the purposes of proceeding with investigation.

In the case of the Morisset Power Barn, the licensee has advised that two advertisements fitting the description provided by the complainant, identified with the key numbers NEW15046G30PBA and NEW15046G30PBC respectively, were broadcast on 16 July 2004. The ABA has investigated the complaint concerning these advertisements in relation to clauses 1.11 – 1.14 of the *Commercial Television Industry Code of Practice July 2004* (the Code).

The complainant also expressed a general concern about the loudness of advertisements on all commercial television channels. The ABA has not investigated these aspects of the complaint for purposes of this report.

### ***Complaints handling***

On commencement of its investigation, the ABA sought information from the licensee in relation to the complainant’s allegation that the licensee had not replied to his

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<sup>1</sup> Date accessed: 1 December 2004. Free TV Australia is the industry body responsible for developing the *Commercial Television Industry Code of Practice July 2004* (the Code).

<sup>2</sup> Letter from the complainant to the Advertising Standards Bureau dated 16 July 2004, included as Attachment A to the complaint to the ABA. The complaint did not identify specific dates or times of broadcast.

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complaint. In response, the licensee provided a copy of a response sent to the complainant via email on 18 October 2004, ie three days after the ABA received the complainant's complaint. The ABA has investigated the complaint concerning complaints handling in relation to clauses 7.10 and 7.12 of the Code.

### **Issue 1: Whether the licensee ensured that relevant requirements in relation to loudness of advertisements were met**

#### ***Relevant sections of Code***

- 1.11 Commercials must not be excessively noisy or strident.
- 1.12 Licensees must do everything reasonably possible to ensure that commercials do not sound louder than adjacent programming.
- 1.13 Studio transmission must not be increased from normal levels during program breaks.
- 1.14 A licensee shall be deemed to have complied with Clauses 1.11 and 1.12 provided it ensures that the relevant requirements of Free TV Australia's Operational Practice Note on Loudness of Advertisements, as amended from time to time, have been met. This requirement is satisfied if a person submitting a commercial certifies to the licensee that all requirements of the Operational Practice Note on Loudness of Advertisements concerning compression, limiting and equalisation have been met.

#### ***Licensee's submission***

The licensee submits that advertisements NEW15046G30PBA and NEW15046G30PBC, for the Morisset Power Barn, were received on 6 July 2004 and were delivered without certification as required under clause 1.14 of the Code. However, the producer of the advertisements, Southern Cross TEN, subsequently provided this certification in a letter dated 5 November 2004 which states in part:

The commercials in question have been produced in accordance with Operational Practice 48<sup>3</sup> and Engineering Guideline 6 as they relate to 'loudness of commercials' under the Television Code of Practice.

#### ***Finding***

The ABA finds that the licensee did not ensure, before broadcasting advertisements for the Morisset Power Barn on 16 July 2004, that relevant requirements in relation to loudness of advertisements had been met. Accordingly, the licensee breached clause 1.14 of the Code.

#### ***Reasons***

The ABA notes that advertisements NEW15046G30PBA and NEW15046G30PBC were received by the licensee on 6 July 2004 and broadcast on 16 July 2004 and that

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<sup>3</sup> Free TV Australia Operational Practice OP-48 – Audio Levels and Loudness, Issue 1, July 2004 (OP-48) sets out the requirements for television advertisements (commercials) in relation to audio levels and loudness. [www.ctva.com.au](http://www.ctva.com.au) [Date accessed: 1 December 2004]

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at that time the person submitting the advertisements, that is, Southern Cross TEN,<sup>4</sup> had not certified that all requirements of Operational Practice 48 had been met.

The ABA notes that Southern Cross TEN has now provided a letter certifying that the advertisements were produced in accordance with Operational Practice 48. However, the ABA is of the view that the Code requirement is for certification to be provided before an advertisement is broadcast.<sup>5</sup>

The ABA notes further, however, that the *Commercial Television Industry Code of Practice July 2004* had come into effect on 1 July 2004, ie less than a week before advertisements NEW15046G30PBA and NEW15046G30PBC were submitted to the licensee. The ABA notes that requirements in relation to loudness of advertisements did not exist under the previous Code.

#### **Action Taken**

The ABA notes that in response to the breach finding, the licensee has taken the following steps:<sup>6</sup>

- it has made amendments to its operational practices by ensuring all staff engaged in the process of accepting, dubbing and playing of television commercial content had been made aware of the necessity of compliance with OP-48; and
- its training process now includes:
  - technical checks on every advertisement dubbed into its On Air playing system;
  - regular training and refreshers by ... a member of the Free TV Technical Committee involved with OP-48 and reliance on advertisements having Free TV Australia's CAD Acceptance Numbers. All advertisements produced by NBN Television are OP-48 compliant.

The ABA considers these actions address the compliance issues raised by the investigation and will continue to monitor the licensee's performance in this regard.

### **Issue 2: Whether the licensee provided a response to the complaint within 30 working days after receipt of the complaint**

#### **Relevant section of Code**

7.10 [A licensee's response to a Code complaint] must be made as soon as practicable, but in any case no longer than 30 working days after receipt of the complaint.

#### **Licensee's submission**

The licensee submits that its investigation of the complaint and reply to the complainant may have taken more time than allowed, but this was because the matter had been 'seriously and sensitively considered' and the intention was to give a reply which was 'as professional, helpful and thorough as possible'.

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<sup>4</sup> OP-48 specifies that it is producers who are required to certify that their commercials comply with the OP (para 2).

<sup>5</sup> Paragraph 2 of OP-48 states in part:

Producers will be required to certify that their commercials comply with this OP as a condition of acceptance for broadcast. This will require a declaration of compliance *when the commercial is submitted to the broadcaster* [emphasis added by ABA].

<sup>6</sup> As advised in its submission to the ABA dated 6 February 2005.

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The licensee submits that it received the complaint 'two or three days' after 26 July 2004.

**Finding**

The ABA finds that the licensee did not provide a response to the complaint within 30 working days after receipt of the complaint. Accordingly, the licensee breached clause 7.10 of the Code.

**Reasons**

The ABA notes that the licensee acknowledges that it did not provide a response within 30 working days of receipt of the complaint. The ABA considers that this should have been possible, even allowing for the need to investigate the complaint.

In response to the ABA's preliminary report, the licensee admitted that the response was not within the required time limit, but reiterated that it had carefully considered its response:

We again offer apologies to the ABA and the complainant.

**Action Taken**

The ABA notes that in response to the breach finding, the licensee has restructured its process of handling complaints. The ABA considers that this action addresses the compliance issues raised by the investigation and will continue to monitor the licensee's performance in this regard.

**Issue 3: Whether the licensee advised the complainant that he might refer the matter to the ABA**

**Relevant section of Code**

7.12 In all cases, a licensee's substantive reply will also advise the complainant that he or she may refer the matter to the Australian Broadcasting Authority if not satisfied with the licensee's response.

**Finding**

The ABA finds that the licensee's reply did not advise the complainant that he might refer the matter to the ABA if not satisfied with the licensee's response. Accordingly, the licensee breached clause 7.12 of the Code.

**Reasons**

Having examined the copy of the reply provided by the licensee, the ABA notes that the relevant information was not included.

In response to the ABA's preliminary report, the licensee:

- acknowledged that there had been an oversight in this regard;
- apologised; and
- advised that during the course of the investigation, it has restructured its process of handling complaints.

**Action Taken**

The ABA notes that in response to the breach finding, the licensee has restructured its process of handling complaints. The ABA considers that this action addresses the

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compliance issues raised by the investigation and will continue to monitor the licensee's performance in this regard.

## **Decision**

I, Andrée Wright, Director, Industry Performance and Review Branch, being the appropriate delegated officer of the Australian Broadcasting Authority, determine for the above reasons that the licensee, NBN Ltd, in relation to the broadcast of advertisements for the Morisset Power Barn on 16 July 2004:

- breached clause 1.14 of the *Commercial Television Industry Code of Practice July 2004*, by not ensuring, prior to broadcast, that relevant requirements in relation to loudness of advertisements had been met;
- breached clause 7.10 of the *Commercial Television Industry Code of Practice July 2004*, by not providing a response to a complaint within 30 working days after receipt of the complaint; and
- breached clause 7.12 of the *Commercial Television Industry Code of Practice July 2004*, by not advising the complainant, in its response sent on 18 October 2004, that he might refer the matter to the ABA if dissatisfied.

Signed: -----  
Andrée Wright

dated this        day of February 2005