PRICING PRACTICES IN THE GROCERIES MARKET

Response to a super-complaint made by Which? on 21 April 2015

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A: Stakeholder engagement

A.1. In the course of investigating the super-complaint, the CMA invited views from stakeholders and the general public. In addition, the CMA proactively contacted a wide range of stakeholders across the sector in order to update its understanding of the market and to explore the issues identified by Which? in the super-complaint.

A.2. The following stakeholders contributed to the CMA's investigation.

Stakeholders

Retailers

- Aldi Stores Ltd.
- Asda Stores Ltd.
- The Co-operative Group Ltd.
- Iceland Foods Ltd.
- John Lewis Partnership
- J Sainsbury plc.
- Lidl UK GmbH.
- Marks and Spencer plc.
- Musgrave Group plc (Budgens, Centra, SuperValu and other brands).
- Nisa Retail Ltd.
- Ocado Group plc.
- Spar (UK) Ltd (together with wholesalers A. F. Blakemore & Sons Ltd and Henderson Wholesale Ltd).
- Tesco Stores Ltd.
- Waitrose Ltd.
- Wm Morrison Supermarkets plc.

Trading Standards

- Chartered Trading Standards Institute (CTSI).
- National Trading Standards Board (NTSB).
- Primary Authority Supermarkets Group (PASG).
- Trading Standards Officers (TSOs).
- Trading Standards pricing experts, across England, Wales, Scotland and Northern Ireland.
- Trading Standards Scotland (TSScot).
- Trading Standards Service (TSS) National Fair Trading Expert Panel.
- Trading Standards Service for Northern Ireland.
- Individual Trading Standards Primary Authorities
- Individual TSS:
  - Aberdeen City Council Trading Standards.
  - Birmingham City Council Trading Standards.
  - Bracknell Forest Council Trading Standards.
  - Buckinghamshire and Surrey County Council Trading Standards.
  - Cambridgeshire County Council Trading Standards.
  - Cornwall Council Trading Standards.
  - Devon and Somerset Trading Standards.
  - Flintshire County Council Trading Standards.
  - Hertfordshire County Council Trading Standards.
  - Leicestershire County Council Trading Standards.
  - London Borough of Bexley Trading Standards.
  - Royal Borough of Kingston upon Thames Trading Standards.
  - London Boroughs of Merton and Richmond upon Thames Trading Standards.

- Manchester City Council Trading Standards.
- Newcastle City Council Trading Standards.
- North Yorkshire County Council Trading Standards.
- Oxfordshire County Council Trading Standards.
- Shropshire Council Trading Standards.
- Torfaen County Borough Council Trading Standards.
- Warwickshire County Council Trading Standards.
- Westminster City Council Trading Standards.
- West Yorkshire County Council Trading Standards.

Trade bodies

- Advertising Association.
- British Brands Group (BBG).
- British Retail Consortium (BRC).
- Food and Drink Federation (FDF).

Consumer bodies

- Citizens Advice (CitA).
- Citizens Advice Scotland (CAS).
- Consumer Advice Contact Service (CACS).
- Consumer Council for Northern Ireland (CCNI).
- Queensland Consumers Association, Australia.
- Which?

Manufacturers

- H.J. Heinz Foods UK Ltd.
- Muller UK & Ireland Group LLP.

- Premier Foods plc.
- Unilever UK Ltd.

Regulators

- Advertising Standards Authority (ASA) and Committees of Advertising Practice (CAP).
- Groceries Code Adjudicator.
- National Measurement and Regulation Office (NMRO).

Government departments

- Better Regulation Delivery Office (BDRO).
- Canada Competition Bureau.
- Department for Business, Innovation and Skills (BIS).
- Department of Enterprise, Trade and Investment, Northern Ireland (DETI).

Academic bodies

- Monash University, Australia.
- University of South, Australia.

Market researchers

- BDRC Continental.
- Kantar Worldpanel.
- mySupermarket.

Others

- Royal National Institute of Blind People.

B: Regulatory context

Regulatory framework

B.1. The regulatory framework relevant to groceries pricing comprises several pieces of primary and secondary legislation, codes of practice and regulatory guidance. These are outlined below.

The Consumer Protection from Unfair Trading Regulations 2008 (CPRs)[1]

B.2. The CPRs came into force on 26 May 2008 and implemented the Unfair Commercial Practices Directive (UCPD) 2005/29/EC into UK law.

B.3. The CPRs apply to 'commercial practices', that is any act, omission, course of conduct, representation or commercial communication (including advertising and marketing) by businesses which is directly connected to the promotion, sale or supply of a product to or from consumers (whether occurring before, during or after a commercial transaction (if any) in relation to a product).

B.4. The CPRs contain:

- a general prohibition of unfair commercial practices (regulation 3);
- prohibitions of misleading commercial practices, whether by action (regulation 5) or omission (regulation 6); and
- a prohibition of aggressive commercial practices (regulation 7).

B.5. Whether a commercial practice breaches these prohibitions will be judged by reference to the ‘average consumer’ whom the commercial practice reaches or to whom it is addressed. ‘Average’ does not mean a statistically average consumer. The concept does not refer to actual consumers, and there is no requirement to show evidence of actual consumers being affected by an unfair commercial practice. However, the 'average consumer' is considered to be reasonably well informed, observant and circumspect.

B.6. A commercial practice is unfair if it contravenes the requirements of ‘professional diligence’ and ‘materially distorts’ the economic behaviour of the average consumer with regard to the product, as a result.

[1] See *The Consumer Protection from Unfair Trading Regulations 2008*. See also the Office of Fair Trading’s (OFT) *Guidance on the CPRs*.

B.7. A commercial practice is a ‘misleading action’ if it contains false information or if its overall presentation in any way deceives or is likely to deceive the average consumer in relation to a range of matters, including the ‘main characteristics of the product’ (regulation 5(4)(b)), the ‘price or manner in which the price is calculated’ (regulation 5(4)(g)) and the ‘existence of a specific price advantage’ (regulation 5(4)(h)), and it causes or is likely to cause the average consumer to take a transactional decision that they would not have taken otherwise.

B.8. Regulation 5(3)(b) specifically prohibits, as a misleading action, the commercial practice whereby a business that has undertaken to be bound by a code of conduct (or code of practice), indicates that the business is bound by it in a commercial practice, and fails to comply with a firm and verifiable commitment in that code, and the average consumer takes, or is likely to take, a different transactional decision as a result. The business may indicate that it is bound by a code by, for example, including a statement on its receipts or letterheads that it has undertaken to comply with it, using a logo that entails compliance with a particular code of practice, or by any other public statement, issued as part of its commercial strategy to promote products, that it intends to comply with the code.

B.9. A commercial practice is a 'misleading omission' if, taking into account the features and circumstances of the practice, the limitations of the medium used to communicate it and any measures taken by the business to make the information available by other means, it omits or hides ‘material information’ or provides it in a manner which is unclear, unintelligible, ambiguous or untimely and, as a result, it causes or is likely to cause the average consumer to take a transactional decision they would not have taken otherwise (regulations 6(1) and 6(2)).

B.10. Material information means information that the average consumer needs, according to the context, to take an informed transactional decision (regulation 6(3)(a)). When a trader is making an invitation to purchase, any material information must be provided in a clear, unambiguous, intelligible and timely manner. ‘Transactional decision’ is a broad concept covering a range of decisions that may be taken by consumers. These include decisions to act or not to act concerning whether, how and on what terms to purchase, retain or dispose of a product, or whether, how and on what terms to exercise a contractual right in relation to a product. This is wide in chronological scope, covering decisions taken before, during and after a contract is formed, for example whether to go into a shop, whether to buy a product or whether to exercise a cancellation right having already bought a product.

B.11. The CPRs also contain outright prohibitions of 31 specific practices which are considered unfair and prohibited in all circumstances, ie there is no need to consider the likely effect of the commercial practice on the average consumer's decision-making (Schedule 1).

B.12. Whether or not a particular practice breaches the CPRs will depend on all the circumstances of the individual case. The CMA, TSS and the sectoral regulators can take enforcement action under the CPRs in line with their enforcement policies.

The Business Protection from Misleading Marketing Regulations 2008 (BPRs)[2]

B.13. The BPRs prohibit businesses from advertising products in a way that misleads traders, and set out conditions under which comparative advertising to consumers and businesses is permitted.

B.14. Advertising is defined broadly by the BPRs to cover any form of representation made in connection with a trade, business, craft or profession in order to promote the supply or transfer of a product (including goods and services).

B.15. The regulations therefore cover advertising as commonly understood, such as broadcast, billboards and print advertising. They also cover other marketing and promotional activities such as oral representations, details in catalogues or websites and descriptions on packaging.

B.16. An advertisement will be prohibited as misleading if:

- it deceives, or is likely to deceive the traders it addresses or reaches; and
- the deception is likely to affect the economic behaviour of those traders; or
- as a result of the above effect on traders, it injures or is likely to injure a competitor in some way.

B.17. An advertisement can be deceptive if it:

- contains a false statement of fact – this may be possible to prove or disprove by evidence;
- conceals or leaves out important facts;

[2] See *The Business Protection from Misleading Marketing Regulations 2008*.

- promises to do something but there is no intention of carrying it out; or
- creates a false impression, even if everything stated in it may be literally true.

B.18. The BPRs also regulate the use of comparative advertisements, whether addressed to consumers or businesses or both. A comparative advertisement is one that, in any way, identifies a competitor or products offered by a competitor, either explicitly or by implication. In summary, regulation 4 states that comparative advertising is permitted only when all of the following conditions of the advertisement are met:

- It is not misleading under the BPRs or the CPRs.
- It compares products that meet the same needs or are intended for the same purpose.
- It objectively compares one or more material, relevant, verifiable and representative feature(s) of those products (which may include price).
- It does not create confusion among traders, either between the advertiser and competitor, or between trade marks (or similar) of products of the advertiser and those of a competitor.
- It does not discredit, denigrate or take unfair advantage of a competitor's trade mark (or similar).
- For products with designation of origin, it relates in each case to products with the same designation.
- It does not take unfair advantage of the reputation of a trade mark (or similar) of a competitor or of the designation of origin of competing products.
- It does not present products as imitations or replicas of products bearing a protected trade mark or trade name.

The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (CCRs)[3]

B.19. The CCRs came into force on 13 June 2014, replacing certain other laws relating to distance selling and doorstep selling, and introducing new information provisions.

B.20. The CCRs require that certain relevant pre-contract information (including the total price of goods and, where applicable, all additional delivery charges) must be provided before the consumer becomes bound by a contract. They also provide consumers with cancellation rights in certain circumstances for contracts made at a distance or away from business premises (sometimes called 'doorstep contracts').

The Unfair Terms in Consumer Contracts Regulations 1999 (UTCCRs)[4]

B.21. The UTCCRs apply to terms in contracts made between businesses and consumers (with the exception of terms that reflect mandatory requirements of the law and individually negotiated terms). Broadly, the UTCCRs protect consumers against standard terms that could be used to give a business an unfair advantage. The UTCCRs highlight that standard consumer contract terms should be fair and should use clear language that consumers can understand.

B.22. The UTCCRs apply a test for fairness to standard contract terms (often referred to as 'small print'). A standard term is unfair if it creates a significant imbalance in the parties' rights and obligations under the contract, to the detriment of the consumer and contrary to the requirement of 'good faith'.

B.23. Good faith is based on the general principle of 'fair and open dealing', where terms are expressed fully, clearly and legibly, and with respect for the consumer's interests. Businesses should not take advantage of the consumer's weaker bargaining power or lack of experience in deciding what their rights and obligations should be.

B.24. A term is open to challenge if it is drafted so that it could cause consumer detriment. If a term is found to be unfair, it is not binding on the consumer, although the remainder of the contract shall continue in force if it is capable of doing so. The offending unfair term cannot be rewritten by the court to make it fair.

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[3] See *The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013*.
[4] See *The Unfair Terms in Consumer Contracts Regulations 1999*. See also CMA/OFT guidance on unfair terms.

B.25. Terms relating to the main subject matter of the contract or the adequacy of the price against the goods or services ('core terms') are outside the fairness test, provided that these terms meet the UTCCR's requirement to be expressed in plain, intelligible language. This means that consumers (not just lawyers) can understand not only the words used, but their effect. Unclear or ambiguous terms, and those with uncertain application, especially those which could be detrimental to the consumer, may be challenged.

B.26. Schedule 2 of the UTCCRs provides an indicative and non-exhaustive list of terms which may be regarded as unfair.

B.27. The Consumer Rights Bill received Royal Assent on 26 March 2015 and its main provisions are likely to come into force in October 2015. In summary, the Consumer Rights Act 2015 (the Act) brings together into one piece of legislation the unfair terms legislation which applies to consumers when dealing with businesses, repealing the UTCCRs. Unlike the UTCCRs, the Act covers consumer notices as well as terms, 'blacklists' certain terms and notices (so that they are never binding on consumers) and applies to negotiated as well as non-negotiated terms. The Act also adds the requirement of prominence to the UTCCRs' main exemption relating to core terms.

The Price Marking Order 2004 (PMO)[5]

B.28. The PMO implements Directive 98/6/EC and came into force on 22 July 2004. The PMO covers sales of products between traders and consumers and requires the trader to display, in a way which is unambiguous, easily identifiable and clearly legible:[6]

- the selling price in sterling[7] and inclusive of VAT and all other taxes; and
- where appropriate, the unit price.[8]

B.29. The unit price is required for:

- products sold loose from bulk (for example, fruit and vegetables); and

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[5] See *The Price Marking Order 2004*.
[6] The PMO is not prescriptive, but requires that the price is displayed in close proximity to the product and that consumers with normal sight should not have to request assistance in order to be able to see a price. Price indications given by telephone should be clearly audible and linked to the subject of the sales transaction.
[7] Where alternative currency may be accepted by a trader further specific information about exchange rates, commission, etc is required.
[8] The price per one kilogram, one litre, one metre, one square/cubic metre, and in some circumstances one hundred grams/millilitres of goods sold by quantity; or one item of goods sold by number.

- pre-packaged products which are required by or under the Weights and Measures Act 1985 to be marked with quantity or to be made up in a prescribed quantity.[9]

B.30. The PMO requires unit prices to be shown per kilogram or litre of the product. Schedule 1 to the PMO, however, lists a range of specific product categories by way of derogation from this requirement, setting out the required unit to be given in unit price information in respect of each (for example, spices may be sold per 10g and water per 100ml).

B.31. There are limited exceptions from the requirement to price mark. In addition, certain types of products fall outside the scope of the PMO:

- Products supplied only in the course of providing a service (other than delivery of the product in question).
- Bespoke products manufactured to order.[10]
- Works of art and antiques sold at auction.

Application of the PMO to general reductions and promotions

B.32. Where a trader wants to reduce the price of products that are **already priced** as required by the PMO, the PMO allows traders to indicate the final selling and/or unit price of the product by displaying a general notice (or other visible means) that the products are for sale at a reduction, provided that the details of the discount are prominently displayed, unambiguous, easily identifiable and clearly legible.

B.33. The Department of Trade and Industry (DTI, now BIS) Guidance on Unit Pricing explains that promotional offers (for example, '3 for the price of 2') must be unit priced to reflect the single standard product, so that consumers who do not wish to take advantage of the promotion are able to see the unit price of a single product. This does not preclude traders from providing additional unit price information relating to the promotion, as long as it is clear to which products it relates.

B.34. The DTI Guidance on Unit pricing states that limited period promotions, which relate to individual products (for example, 10% extra free), may retain the unit price of the standard product for the period of the promotion. The intention is

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[9] See Schedules 4-7 of the *Weights and Measures Act 1985* and Orders and Regulations (including the *Weights and Measures (Packaged Goods) Regulations 1986)* made under that Act.
[10] Not including products which may be individually manufactured to order from a limited range of options (such as three different patterns of material).

that consumers will not be misled by a lower unit price in the final days of the promotion when restocking results in standard products joining promotional products on the shelves in store.

BIS Expert Working Group on unit pricing

B.35. Unit pricing has been an area of focus for BIS over several years. In 2013 following an initiative by the then Minister for Employment Relations and Consumer Affairs, Jo Swinson, ten major supermarkets made commitments to improve unit pricing, namely:

- to display a consistent unit price across similar products; and
- to improve the visibility of the labels on supermarket shelves, such as with bigger fonts and stripping out unnecessary information.

In addition, six supermarkets committed to include the unit price on for multi-buy promotions of the same item.[11]

B.36. BIS also established an Expert Working Group (EWG) consisting of the main retailers, manufacturers, TSS, the British Retail Consortium, the Food and Drink Federation, the National Measurement and Regulation Office, and Which?. The objective of the EWG is to:

- explore the barriers to achieving greater consistency in unit pricing, in the legislation (primarily the PMO), and its guidance; and
- identify a simple and pragmatic solution that would help retailers to implement the legislation more effectively and therefore enable consumers to make comparisons across products more easily.[12]

B.37. In 2014 BIS sought views from the EWG on options for a consultation on legislative change.[13] Based on feedback and a lack of quantifiable evidence of consumer detriment, BIS decided to put the consultation on hold in favour of exploring, through the EWG, how guidance could be developed to address particular areas of inconsistency of approach to unit pricing in relation to the products identified in Schedule 1 to the PMO.

B.38. In January 2015 BIS presented new draft guidance on Schedule 1 of the PMO to the EWG and invited comments. Subsequent activity was put on hold in the

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[11] BIS (4 December 2013), *Progress on clearer pricing in supermarkets*.
[12] Expert Group on Unit Pricing, Terms of Reference.
[13] The options considered included: simplifying Schedule 1 to the PMO; developing guidance on Schedule 1 to facilitate consistency; and removing Schedule 1 altogether and requiring everything to be unit priced by the standard kilogram and litre.

run up to the General Election and, more recently, in light of the CMA's receipt of the Which? super-complaint.

Pricing legislation in Scotland and Northern Ireland

B.39. The provisions in Scotland and Northern Ireland are broadly comparable with those in England and Wales.

The Groceries (Supply Chain Practices) Market Investigation Order 2009[14]

B.40. Schedule 1 of The Groceries (Supply Chain Practices) Market Investigation Order 2009 contains the Groceries Supply Code of Practice[15] which was published in August 2009. The Code's principle is to require retailers at all times to deal with their suppliers fairly and lawfully. The retailer must conduct its trading relationships with suppliers in good faith, without distinction between formal or informal arrangements, without duress and in recognition of suppliers' need for certainty as regards the risks and costs of trading, particularly in relation to production, delivery and payment issues.

B.41. The Code is adjudicated by the Groceries Code Adjudicator.

Guidance and self-regulation

B.42. There are a number of pieces of guidance and suggested good practice. In relation to the issues under consideration, the most relevant are the BIS Pricing Practices Guide and the OFT Principles on food pricing display and promotional practices. In addition, there is self-regulation through the UK Advertising Codes.

The Pricing Practices Guide (PPG)[16]

B.43. The latest draft of the PPG was published BIS in November 2010. It has of itself no mandatory force and traders are not under any legal obligation to follow the practices recommended. However, it recommends to traders a set of good practices in giving consumers information about prices in various situations.

B.44. The PPG takes account of relevant legal obligations, in particular those provisions of the CPRs, which are relevant to the giving of information about prices. The practices recommended in the PPG are in general expected to be

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[14] CMA (4 August 2009), *The Groceries (Supply Chain Practices) Market Investigation Order, 2009*.
[15] BIS and Groceries Code Adjudicator (4 August 2009), *Groceries Supply Code of Practice*.
[16] BIS (30 November 2010), *Pricing practices: a guide for traders*.

compatible with the CPRs. But the circumstances of the particular case will always be relevant to determine whether there is a breach of the CPRs. Equally, a departure from the PPG will not of itself establish that there has been a breach of the law.

The Chartered Trading Standards Institute's review of the PPG

B.45. Responsibility for the PPG was transferred from BIS to the then Trading Standards Institute (TSI) in 2012.[17] In February 2014, the TSI issued a call for evidence on whether or not the current PPG should be reviewed. All of the responses suggested that change is required to the PPG. The PPG is therefore currently being reviewed by the Chartered Trading Standards Institute (CTSI).

B.46. The CTSI have stated that, after reviewing the submissions received in response to a call for evidence, it is minded to produce guidance that focuses on the principles of relevant legislation, particularly the CPRs. The CTSI has said that there would be a greater emphasis on businesses' assessment of the fairness of the pricing practice and its overall effect, or potential effect, on consumers.

B.47. In June 2015 the CTSI announced that following discussion with stakeholders, it had been decided that the review of the PPG and the publication of a draft for consultation would be put on hold until after publication of the CMA's response to the Which? super-complaint.

The Office of Fair Trading principles on food pricing display and promotional practices (OFT Principles)[18]

B.48. In January 2012, the OFT launched an investigation into the supermarket sector to consider concerns that shoppers could be confused by the way food and drink prices are displayed, advertised and promoted.

B.49. The OFT made no finding that the supermarkets investigated had breached the law or were engaging in misleading promotional practices. However, it did find that there was a variety of approaches to interpreting and applying relevant legislation across the food and drink retail sector.

B.50. Following the investigation, the OFT worked with a number of major UK supermarkets and developed a set of principles to establish a more consistent

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[17] CTSI, *Pricing Practices Guide Review*. Note: the TSI obtained chartered status in April 2015.
[18] OFT, *Supermarkets: retail food pricing and promotional practices*.

approach across the sector. The Principles built on the OFT's 2010 'Advertising of Prices' market study report[19] and were intended to capture the OFT's view on what constitutes clear, meaningful and principled activity relating to the advertising and promotion of prices. They were also intended to correspond to the OFT's approach to the use of its enforcement powers under the CPRs in relation to certain pricing display and promotional practices.

B.51. In summary, the OFT Principles cover two promotional practices applicable to food and drink (alcoholic and non-alcoholic) produce, for human consumption off the retail premises.

B.52. First, internal reference pricing (for example, 'Was £3, Now £2' or 'Half Price' labels). The OFT Principles recommend that:

- Prices should never be artificially inflated to make a later 'discount' look more attractive.
- Where prices are presented as discounts for longer than the higher price was initially charged, retailers should consider that the value of the product is now established at the lower price (described as the 1:1 ratio).
- Comparison between current and previous prices should be meaningful and relevant (based on such things as when and where the price was charged).

B.53. Second, pre-printed value claims on packs (for example, 'Bigger Pack, Better Value'). Such claims should be objectively accurate, and there should be no cheaper way of buying the same volume of the product elsewhere in the same store.

B.54. The OFT Principles were published in November 2012 and eight food and drink retailers agreed to use the principles within their businesses. These are Aldi, The Co-operative, Lidl, Marks & Spencer, Morrisons, Sainsbury's, Tesco and Waitrose.

B.55. While the OFT Principles were originally published by the OFT, they have been adopted and endorsed by the CMA. The OFT Principles serve as indicators of the CMA's interpretation of how the law applies in the food and drink retail sector and practices which may be more likely to breach the law and result in enforcement action.

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[19] OFT (15 October 2009), *Advertising of prices*.

The UK Advertising Codes

B.56. The UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing (CAP Code)[20] and the UK Code of Broadcast Advertising (BCAP Code)[21] are mandatory codes of practice for all advertisers, agencies and media which are designed to address misleading, harmful or offensive advertising. The Codes are non-statutory and self-regulatory.

B.57. The Codes are created, revised and enforced by the Committees of Advertising Practice (CAP)[22] and endorsed and administered by the Advertising Standards Authority (ASA). The ASA is the UK's independent regulator of advertising across all media. It regulates advertising by acting on complaints, proactively checking the media to take action against misleading, harmful or offensive advertising, and ensuring compliance across all sectors. The ASA administers the CAP Code and the BCAP Code.

B.58. The CAP Code applies to advertisements in, among other things, newspapers, magazines, brochures, leaflets, circulars, mailings, emails, text transmissions, fax transmissions, catalogues, posters, cinema, video, DVD and Blu-ray advertisements, non-broadcast electronic media, marketing databases, and traders' websites.

B.59. The CAP Code reflects various requirements in law, in particular the CPRs. However, it should be noted that, although they are both based on the same principles of transparency, the CAP Code has a narrower scope than the CPRs.

B.60. TSS act as the ASA's legal backstop. This means that the ASA can refer non-broadcast advertisers who persistently break the ASA's rules through misleading, aggressive or otherwise unfair advertising. TSS can consider taking enforcement action under the CPRs. The ASA states that it will look into complaints about any leaflets or brochures that can be taken away from a store and can consider complaints about sales promotions (such as special offers) wherever they appear. However, misleading claims on in store posters, shelves or till points are outside the ASA's remit and should be reported to local TSS.

B.61. Rule 3.1 of the CAP Code prohibits misleading advertising. It provides that the ASA will take the CPRs into account when ruling on complaints about alleged misleading marketing communications. In particular, the CAP Code stipulates

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[20] CAP, *UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing (CAP Code)*.
[21] CAP, *UK Code of Broadcast Advertising (BCAP Code)*.
[22] The CAP's members include organisations that represent the advertising, sales promotion, direct marketing and media businesses.

that marketing communications must not omit or hide material information, or present it in an unclear, unintelligible, ambiguous or untimely manner. In this context, material information includes the main characteristics of the product and the price, or the manner in which the price is calculated (rules 3.3 and 3.4).

B.62. In relation to price, the CAP Code states that price statements in marketing communications should take account of the PPG. It provides that, 'Price statements must not mislead by omission, undue emphasis or distortion.' (rule 3.17). Marketing communications must make clear the extent of the commitment the consumer must make to obtain the advertised price, where the price of one product depends on another, or to take advantage of a 'free' offer (rule 3.21 and 3.23). Marketing communications must also make the basis of any price comparison clear (rule 3.39).

B.63. In relation to comparisons with competitors' prices, the CAP Code provides that marketing communications must compare products meeting the same need or intended for the same purpose; and objectively compare one or more material, relevant, verifiable and representative feature of those products, which may include price (rules 3.34 and 3.35). Further, price comparisons must not mislead by falsely claiming a price advantage (rule 3.40).

B.64. Section 8 of the CAP Code governs sales promotions. Rule 8.17 requires that, 'All marketing communications or other material referring to sales promotions must communicate all applicable significant conditions or information where the omission of such conditions or information is likely to mislead'. Significant conditions may include the start and closing date. Closing dates are not necessary where comparisons refer to a special offer if the offer is and is stated to be 'subject to availability' (rule 8.17.4.a).

The Advertising Standards Authority

B.65. The ASA operates a stakeholder engagement programme, designed to help it to develop better relationships with the key organisations they come into contact with, including advertisers, trade bodies, regulatory partners and consumer groups. The ASA makes Stakeholder Engagement Managers available to those who participate in the programme. To date, five supermarkets have taken advantage of this.

B.66. Stakeholder Engagement Managers have a broad role which includes helping with the provision of pre-publication compliance advice; advice on developments in guidance; and providing information to the retailer on the number and nature of complaints received in relation to them. Meetings range in frequency from monthly to biannually.

B.67. Anyone can make a complaint to the ASA if, for example, they think there is something wrong with an advertisement they have seen or heard, a special offer has been unfairly run or if there is something wrong with the marketing on a business' website.

B.68. Upon receiving a complaint, the ASA will assess it against the Advertising Codes. In the first instance, the ASA will often try to resolve a complaint informally, for example, by working with the business to have the advertisement changed. However, if the business is unwilling to make changes or if the ASA thinks an ASA Council ruling is needed, they will open a formal investigation. In this case, the business must defend their advertisement in writing and/or provide evidence in support. The ASA then writes a recommendation that goes to the ASA Council for a final ruling. The ASA Council is the independent body that decides whether or not there has been a breach of the Advertising Codes.

B.69. The ASA publishes its final rulings every week on its website.[23] If rules have been breached, the advertisement must be changed or withdrawn. If the complaint is not upheld no further action will be taken.

B.70. In certain circumstances, advertisers or complainants may request a review of a ruling. Both sides have 21 days (from when they were informed of the ASA Council decision) to ask the Independent Reviewer of the Rulings of the ASA Council to review the case. They must be able to establish that a substantial flaw of process or ruling is apparent, or show that additional relevant evidence is available. If the Independent Reviewer accepts a request for a review he can ask the ASA Council to reconsider its ruling. More information about the Independent Review procedure can be found on the ASA's website.[24]

B.71. Advertising that is judged by the ASA to be in breach of the Codes, must be withdrawn or amended.

Consumer protection enforcement landscape

B.72. The following paragraphs provide an overview of the consumer protection enforcement landscape relevant to the issues covered by the super-complaint. Further detail on the CMA's role and interaction with the wider enforcement community can be found in the CMA publication *Consumer*

[23] See the ASA rulings webpage.
[24] ASA, *Independent Review process*.

Protection: Guidance on the CMA's approach to use of its consumer powers.[25]

The CMA

B.73. On 1 April 2014, the functions of the Competition Commission (CC) and many of the functions of the OFT were transferred to the CMA and those bodies were abolished. The consumer functions relevant to the issues concerned, which were transferred to the CMA include:

- using consumer enforcement powers. These enforcement powers include bringing criminal prosecutions in respect of certain breaches of the CPRs or taking civil action under Part 8 of the Enterprise Act 2002 (EA02) for breaches of a wide range of legislation, including the CPRs; and

- receiving notifications from enforcers who are required to notify the CMA before they apply for an enforcement order under section 214 of the EA02, and taking steps to ensure coordination of enforcement.

B.74. The CMA shares its consumer protection powers with a number of partner organisations. The CMA prioritises projects to tackle market-wide practices which affect consumers' ability to make choices where we can expect to achieve wider impact, for example, by developing the law or by having a deterrent effect. This role complements and reinforces the effects of our other work to improve markets and to support economic growth, by addressing problems where competition enforcement alone does not, or cannot, make a market work well for consumers.

Trading Standards organisations

Local Authority Trading Standards Services

B.75. Trading Standards Services (TSS) have enforcement powers under the CPRs alongside the CMA. The majority of local, regional and national enforcement action is carried out by TSS, while the CMA focuses on systemic problems in markets.

B.76. TSS in England, Wales and Scotland are funded by, and accountable to, local authorities. They are required to work to national priorities set by government departments and agencies, as well as local priorities set by elected councillors which focus on the particular needs of the local community. In Northern

[25] *Consumer protection – guidance on the CMA's approach to use of its consumer powers (CMA7)*.

Ireland, the Trading Standards Service is funded by and accountable to the Department of Enterprise, Trade and Investment (DETI). TSS also enforce a far broader range of legislation than the CMA. For the purposes of this response, we refer to those who carry out the work of TSS as Trading Standards Officers (TSOs).

The Chartered Trading Standards Institute

B.77. Following the reforms to the consumer landscape in April 2014, the then Trading Standards Institute (TSI) was given (in addition to the consumer codes approval scheme formerly administered by the OFT) responsibility for producing the majority of education and guidance aimed at businesses in relation to their responsibilities under consumer protection legislation.

National Trading Standards Board

B.78. Reforms to the consumer landscape in 2013 created the National Trading Standards Board (NTSB), which is responsible for prioritising national and cross-local authority boundary enforcement in England and Wales against unfair or unlawful practices. The Convention of Scottish Local Authorities (CoSLA) has created Trading Standards Scotland to perform the same role in Scotland.

Primary authorities

B.79. The Regulatory Enforcement and Sanctions Act 2008, established a statutory scheme in which a business can choose to form a partnership with a local authority in England and Wales, known as a 'primary authority'. This affects the way in which the business is regulated by all local authorities.[26]

B.80. The Better Regulation Delivery Office (BRDO) administers the Primary Authority scheme and provides the web-based Primary Authority Register that supports the scheme.

Role of primary authorities

B.81. A primary authority acts as a key point of contact for a business that it partners with, in relation to the business' interactions with local authorities that regulate it. The TSS within a local authority will manage the primary authority relationship with a business where it relates to fair trading, which will include pricing practices. All primary authority officers are therefore also TSOs. A

[26] BIS (September 2013), *Primary Authority Statutory Guidance*.

primary authority also leads regulation of the business on behalf of local authority regulators, including through the coordination of intelligence and of responses to specific issues that arise.

B.82. The primary authority is able to share compliance information with enforcing authorities, and may, with consent from the Secretary of State, publish an inspection plan[27] where this will be of benefit in guiding or co-ordinating the activities of enforcing authorities.

Primary Authority Advice

B.83. The primary authority is able to provide Primary Authority Advice to the partner business, which it can rely on. The primary authority is also able to provide advice and guidance to other local authorities in relation to how they exercise their regulatory functions in respect of the business.

B.84. Primary Authority Advice does not affect the responsibility that a business has to comply with legal requirements, but supports it in meeting its obligations by:

- helping it to understand what needs to be done to achieve and maintain compliance
- setting out a way of achieving and maintaining compliance, or
- providing confirmation that the method of compliance chosen by the business is acceptable.

Monitoring compliance and responding to non-compliance

B.85. The primary authority supports consistent interpretation of regulation, and informed and proportionate responses to non-compliance, by building a detailed picture of compliance across the business.

B.86. Where the business faces potential enforcement action by an enforcing authority, the primary authority will assess whether the proposed action is inconsistent with any Primary Authority Advice given.[28] If the action is inconsistent, the primary authority is able to direct the enforcing authority not to take the action.

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[27] Inspection plans can contain recommendations as to how local authorities should exercise their inspection function in relation to the business. In particular, the inspection plan may set out the frequency at which inspections should be carried out, or the circumstances which warrant inspection; and what an inspection should consist of.

[28] Better Regulation Delivery Office (22 January 2015), Primary Authority overview.

B.87. Where the primary authority directs the enforcing authority not to take the proposed action, the response should include:

- details of the advice previously given with which the proposed enforcement action would be inconsistent;
- details of how and when the advice was previously given; and
- an explanation of the primary authority's reasons for believing that the proposed enforcement action would be inconsistent with Primary Authority Advice previously given. This explanation should include sufficient detail to allow the enforcing authority to make an informed judgment as to whether it accepts the decision.

B.88. Critically, where the primary authority directs against proposed enforcement action, the enforcing authority cannot proceed with the proposed action. If, having considered the primary authority's reasons for its direction, the enforcing authority considers that the proposed enforcement action should be allowed to proceed, then it may apply to the Secretary of State for consent to refer the matter to the Secretary of State for determination, on the basis that:

- the Primary Authority Advice was not correct; or
- the Primary Authority Advice was not properly given; or
- the proposed enforcement action is not inconsistent with the Primary Authority Advice.

B.89. Where the primary authority does not direct against the proposed action within the relevant period, the enforcing authority should take account of any information provided by the primary authority in considering whether it still considers that the proposed action is appropriate. Where it decides to proceed with the proposed enforcement action it must first make a notification to the business of the proposed enforcement action. A copy of this notification should be sent to the primary authority.

B.90. On receiving notification of proposed enforcement action, the business may, if it considers that the proposed action is inconsistent with Primary Authority Advice previously given, apply for consent to refer the matter to the Secretary of State for determination. The enforcing authority cannot proceed with the proposed action until the BRDO confirms that consent has not been given or confirms the Secretary of State's determination.

Primary Authority Supermarkets Group

B.91. The Primary Authority Supermarkets Group (PASG) enables the primary authority officers for all of the supermarkets to meet and discuss issues which are common across the sector. The meeting is also attended by a representative of the ASA which is officially an observer and, in part, by representatives of the supermarkets.[29] The PASG holds four meetings a year but discussions are also held by email between these meetings.

B.92. Participation in the group enables all members to take part in informal discussions to work towards a consensus opinion of the group, where the issue is considered to require clarification, and to aid a more consistent approach. A consensus opinion is one which is shared by all or most of the members of the group, and should be reported by the primary authority officers to their supermarket partners, even if the officer does not necessarily agree with the opinion, so that their supermarket partner can consider the opinion and whether to adopt it. These opinions are based on consideration of the legislation, guidance and best practice and are one of the ways in which information can be shared.

B.93. In May 2015 BIS announced that it intends to extend and simplify the primary authority scheme in the context of the proposed Enterprise Bill.

Summary of recent and ongoing work on pricing

B.94. This section provides a summary of recent and ongoing work of relevance to the issues under consideration. The purpose of providing this summary is to illustrate the kind of enforcement and regulatory activity, and the level of scrutiny, which has already been applied to the issues which are the subject of the super-complaint, as well as to highlight certain ongoing work in this area.

Office of Fair Trading

B.95. In addition to the OFT Principles, and the investigation which led to their publication,[30] the OFT carried out other pieces of work relevant to the issues under consideration. Key examples are outlined below.

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[29] Aldi, Ocado, Waitrose, Lidl, Iceland, CK Supermarkets, Asda, Morrisons, Tesco, Costco, The Co-operative, Marks & Spencer, Netto, Sainsbury's and Nisa.
[30] See paragraphs B.48 to B.55.

Advertising of Prices Market Study[31]

B.96. In 2010 the OFT published a market study report into advertising of prices. The report developed a framework to help analyse which types of price advertisements were more likely to cause the OFT concern. It set out types of price frames with the potential to mislead consumers. These included (among other things) time limited offers, reference pricing and volume offers. It then defined a series of features of the price frames which, in the OFT's view, would help establish the extent of its concern and the types of promotion that would therefore be an enforcement priority. These were:

- frequency of purchase
- ease of cross-market comparisons
- ease with which the consumer can independently verify quality
- whether the item is expensive
- reasonable consumer expectations, and
- the size of the market.

B.97. The report discusses different types of price frame (for example, reference pricing, volume offers and free offers) and summarises the academic studies on customer decision making. The report also sets out specific considerations on the basis of which the OFT would prioritise enforcement action.

Investigations into the use of misleading reference pricing by certain furniture and carpet businesses[32]

B.98. In 2012, the OFT opened a number of formal investigations under Part 8 of the EA02 to consider whether six retailers within the furniture and carpet sectors were engaging in the use of misleading reference pricing.

B.99. The OFT considered that the specific reference prices used, displayed and advertised for some products were not genuine. It took the view that the use of misleading reference prices was likely to deceive the average consumer and influence their transactional decisions and could put other businesses at a competitive disadvantage.

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[31] OFT (15 October 2009), *Advertising of prices*.
[32] OFT (1 November 2012), *Furniture and carpet businesses: misleading reference pricing*.

B.100. In the course of the investigation the OFT identified the following non-exhaustive list of factors, which would lead it to question whether genuine reference prices were being used:

- **Relative volume of units sold** – whether the reference price is the price at which the retailer has sold a significant number of units of the product relative to the number of sales at the discounted prices. The greater the proportion of sales made at the higher price the less this will call into question whether that higher price was a genuine retail price.

- **Legitimate expectations** – whether the reference price is a retail price at which the retailer has a legitimate expectation of significant sales of units of the product relative to the number of sales at the discounted prices. The following practices suggest a lack of legitimate expectation:

  - **Repeated use** – whether the retailer repeatedly uses a reference price, when the retailer knew that it had not sold a significant number of units of the product at the reference price relative to the number of sales at the discounted prices.

  - **Duration** – whether a reference price is advertised to show a specific price advantage and/or discount, in circumstances where the sale price has been used for longer than the reference price, whereby the sale price has, in fact, become the usual retail price.

  - **Proportion of stores** – whether the reference price was used in all or a significant proportion of stores before and/or after the advertised discount.

  - **Online** – whether a reference price was available on a retailer's main online store or only through a secondary or lower profile business or website, before being used to promote savings and/or discounts in all its stores.

  - **Parallel discounts** – whether, during the time that the reference price is the current retail price, a retailer runs parallel discount offers to attract sales. For example, by offering money off vouchers, in store discounts and/or 'bundling' offers whereby discounts are offered for multiple purchases.

B.101. In August 2013, the OFT sent consultation letters outlining its concerns to the retailers and asked them to change their reference pricing practices. The OFT closed its investigation into one retailer in December 2013 and subsequently received commitments from the remaining retailers that they would use genuine reference prices and, without any admission of liability, make

changes to their reference pricing practices. On the basis of the commitments received, the OFT closed its investigations.

2008 Competition Commission UK Groceries Market Investigation

B.102. In 2008, the CC published its final report on the market investigation into the UK groceries market.[33] This investigation, although covering a large number of issues related to the state of competition in the UK grocery retailing, did not specifically address any of the four main issues identified by Which? in the super-complaint. However one of the main outcomes of the work was the Groceries (Supply Chain) Market Investigation Order 2009 and the establishment of the Groceries Supply Code of Practice, monitored and enforced by the Groceries Code Adjudicator.[34]

B.103. Overall, the investigation found that competition in the UK grocery market was effective, delivering good outcomes for consumers. However, two main areas of concern were identified:

- The strong position of several grocery retailers in a number of local markets in the UK and weak competition in some of those markets associated with barriers to entry.
- The transfer of excessive risk and unexpected costs by grocery retailers to their suppliers due to retailer buyer power, which may lessen suppliers' incentives to invest in new capacity, products and production processes.

B.104. A large number of remedies were imposed as a result. Among these:

- To address the concerns with respect to highly concentrated local markets and barriers to entry the CC issued remedies involving large retailers releasing restrictive covenants[35] – in order to help improve upon the amount of land available for grocery retailing – and avoiding the enforcement of exclusivity arrangements.[36]
- To address the concerns with respect to supply chain practices, the CC implemented remedies establishing a Groceries Supply Code Practice (GSCOP) based on the previous Supermarkets Code of Practice but with amendments such as including more grocery retailers within its scope and prohibiting grocery retailers from making retrospective adjustments to

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[33] *Groceries market investigation (CC)*.
[34] See paragraph B.40 above.
[35] Restrictions that limit the future use of land.
[36] Under an exclusivity arrangement, a landowner (or developer) grants exclusivity to a grocery retailer and agrees not to allow another grocery retailer to operate from site(s) owned by the landowner.

terms and conditions of supply. Also, the CC decided to seek undertakings from grocery retailers to establish a GSCOP Ombudsman to monitor and enforce compliance.

CPRs enforcement by Trading Standards

B.105. The CMA is aware of two prosecutions under the CPRs relating to the issues under consideration:

- **Birmingham City Council Trading Standards Service's prosecution of Tesco Stores Limited**[37] – in 2013 Birmingham City Council Trading Standards Service prosecuted Tesco for 12 offences of engaging in an unfair commercial practice which was a misleading action under the CPRs. The investigation was initiated following a consumer complaint. Tesco was fined £300,000 after pleading guilty to four misleading actions, including on the basis that to display strawberries as half-price at £1.99, with the previous prices of £2.99 and £3.99 crossed out, was misleading because they had not been sold at the full higher price for a sufficient length of time. As such it caused or it was likely to cause the average consumer to take a transactional decision they would not have taken otherwise. In considering the impact on consumers and consumer trust, the sentencing judge remarked that:

  > 'By its very nature reference pricing calls for a high level of trust… the retailer will know that it is most unlikely that the customer will have an accurate or indeed any record of the previous pricing…so as to be able to check whether what is being offered is a genuine bargain at half the normal established price.'

The sentencing judge noted the recommended 28 day period for reference pricing in the PPG and remarked that:

> 'If a product is offered at 'half-price', it is implicit, that the referable full price was the normal price for the product, ie it had been on offer at the full amount for a much longer and established period, so as to be fairly and properly characterised as the normal price, and so would be a genuine advantageous bargain at half that price…It was patently wrong and misleading, irrespective of whether or not it complied with any guidance.'

[37] *R v Tesco Stores Limited*, Case N: T20121039, Birmingham Crown Court, 19 August 2013.

- **Torfaen County Borough Council Trading Standards Service's investigation of Tesco Stores Limited**[38] – in 2014 Torfaen County Borough Council Trading Standards Service investigated Tesco after a consumer complained that peanuts were incorrectly labelled in store. The peanuts were reduced from £1.99 to £1.00. However, the shelf edge label incorrectly displayed the pack size as 165g (rather than 150g) and the promotional unit price as 60.6p per 100g (rather than 66.7p per 100g). Tesco pleaded guilty to five misleading actions under the CPRs for providing false information on the shelf edge label and was fined £21,000. The sentencing judge noted the seriousness of the fifth offence and increased the level of the fine because Tesco should have corrected the issue earlier and dealt with it more effectively, having received information that a problem was occurring.

[38] Newport Magistrates Court, 22 May 2015.

C: Efficiencies and theories of harm

Introduction

C.1. This Annex summarises the economic analysis and framework which underpins the CMA's response to Which?'s super-complaint. The Annex considers each of the four issues raised by Which? in turn before considering the possible cumulative impact.

Special offers, promotions and price frames

C.2. Special offers and promotions are marketing activities used in an attempt to profitably increase the sales of a product. Examples of promotions include a price reduction using a reference price (eg 'Was £3, Now £2') and volume promotions (eg '1 for £2 or 2 for £2.50' or '3 for the price of 2').

C.3. Price frames refer to the way in which prices and promotions are actually presented to consumers. The use of price frames means that the same offer or promotion can be presented to consumers in a variety of different ways. For example, the following price frames could all be used to communicate to consumers that the same product, which had previously been sold for £2, is now on sale for £1.50:

- '£1.50'.
- 'Was £2. Now £1.50'.
- 'Save 50p. Now £1.50'.
- 'Save 25%. Now £1.50'.

C.4. Different price frames can affect consumer behaviour in different ways meaning that consumers may react differently to the same offer depending on the price frame being used. This possibility arises because value is an abstract concept and so consumers rely on environmental cues to judge and to assess the relative value of an offer. Price frames such as those highlighted above are examples of one such environmental cue.

C.5. In its super-complaint Which? has highlighted a number of specific price frames and promotions. These are:

- **Reference prices** – where a higher 'reference' price is compared to the sales price. Examples include 'Was £2. Now £1.50' and '50% off';

- **Volume offers** – where a consumer is offered a discount from the single unit price if multiple units are purchased. For example, '3 for 2' or 'Buy 1 get 1 half price';

- **Value and free offers** – where it is suggested that a product is a 'value' product or that some part of the product is provided for free; and

- **Time-limited offers** – a promotional offer with an advertised end date.

C.6. The following sections outline how the use of promotions and price frames may affect consumer behaviour.

Price frames and promotions as an efficient signal of the value of an offer

C.7. Price frames and promotions may be a particularly simple and efficient means of signalling the value of a deal to a consumer. Thus, they may contribute to effective price competition. This may be especially true when consumers rely on mental shortcuts when making their product choice decisions. In such situations consumers can anchor[39] on environmental cues, such as the price frame, which provide valuable information.

C.8. For example, suppose that a retailer has successfully negotiated a reduced cost price with a manufacturer or that the retailer needs to clear some stock. As a result, the retailer may want to run a promotion and reduce its price in an attempt to increase sales. The retailer would also like to communicate this price reduction to consumers. In this case, a genuine reference price (one which reflects a previous selling price and the true value of the product) may quickly and efficiently signal the value of the price reduction to consumers.

C.9. Similarly, suppose that a retailer has negotiated a volume promotion with a manufacturer. In this case, a genuine volume promotion (one in which the promotion provides a genuine choice between buying a smaller volume at a 'normal' price or a larger volume at a lower, discounted price) may be an efficient means for the retailer to increase sales by signalling this lower cost to those consumers who might purchase an increased volume of the product. Additionally, the volume promotion may allow the retailer to pass on the benefits of this volume discount to consumers.

C.10. The simplicity of the signals which promotions and price frames can provide may be particularly valuable when the choice environment is complex. In such situations consumers may be more likely to develop and rely on mental

[39] For a discussion of anchoring see Tversky and Kahneman (1974), 'Judgement under uncertainty: Heuristics and biases', *Science*, 185 (4157), pp1124-1131.

shortcuts when making product choice decisions. Consequently, a price frame or a promotional offer may be a particularly simple means by which the existence of a price reduction can be conveyed to consumers.

C.11. In such situations promotions and price frames are a key feature of effective competition and provide pro-competitive benefits to consumers.

Promotions as a form of price discrimination

C.12. Price discrimination occurs when the same product is sold at different prices to different types or groups of consumers for reasons which are not related to costs. When price discrimination occurs price sensitive consumers will be charged a lower price for the same product than price insensitive consumers.

C.13. Price discrimination could occur at a given point in time. For example, a volume promotion is a form of price discrimination whereby consumers who purchase multiple units of a product are charged a lower price for each unit they purchase than those consumers who only buy a single unit of the product.

C.14. Alternatively, price discrimination could occur inter-temporally.[40] In this case, temporary price discounts (whether a reference price or time limited promotion) may be a means by which a retailer can charge low prices to price sensitive consumers some of the time, whilst charging higher prices aimed at price insensitive consumers the rest of the time (subject to price insensitive consumers not stocking up on the product during the price reduction).

C.15. The consumer welfare implications of such price discrimination are ambiguous. On the one hand it may be a means by which a retailer can tailor its offer to different groups of consumers in order to exploit market power to the detriment of consumers. On the other hand it may allow a retailer to profitably provide a product to a group of consumers who would not otherwise purchase that product, thus increasing welfare.

C.16. To understand why, suppose that consumers who are interested in purchasing larger volumes of a product are more price sensitive than those consumers purchasing smaller volumes of a product[41] and compare the likely outcomes in this market under the following two scenarios:

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[40] For example see Sobel (1984), 'The Timing of Sales', *The Review of Economic Studies*, Vol. 51, No.3, pp353-368 and Hendel and Nevo (2013), 'Intertemporal Price Discrimination in Storable Goods Markets', *American Economic Review,* Vol. 103, No.7 pp2722-2751 for discussions of how firms may price discriminate intertemporally and how a high-low pattern of prices might arise.

[41] This might be because those purchasing larger volumes are larger families with less disposable income and who tend to be more price sensitive.

(a) **Single pricing scenario** – where a firm is forced to charge a single unit price to all consumers.

(b) **Volume promotion scenario** – when a firm can use a volume promotion to charge different unit prices to consumers purchasing different volumes.

C.17. The single unit price charged by the firm when there is no volume promotion (scenario *(a)*) will be between the unit price faced by the consumers who purchase a single unit and those who purchase multiple units when the volume promotion is available (scenario *(b)*).[42] Thus, the introduction of the volume promotion leads to an increase in the price faced by the price insensitive consumers (those who purchase just a single unit) but a decrease in the prices faced by the price sensitive consumers (those who purchase multiple units). Therefore, relative to the single pricing scenario, the introduction of the volume promotion results in the following:

- There is an increase in the consumption of the product by price sensitive consumers and a decrease in the consumption of the product by the price insensitive consumers. Therefore, the effect on the overall consumption of the product depends on the relative size of these two effects.[43]

- These changes in consumption also shift consumption from price insensitive consumers who value the product highly to price sensitive consumers who value the product less. This effect decreases welfare.

- Consequently, the volume promotion will increase welfare if the increase in the overall consumption is sufficiently large to offset the effect of shifting consumption towards consumers who value the product less.

C.18. The above illustration demonstrates that the welfare effects of a volume promotion used as a form of price discrimination, and of price discrimination more generally, are ambiguous. However, in this case a necessary condition for a volume promotion to increase welfare is that output increases relative to the single pricing scenario. If this increase in output is sufficiently large (for example if new groups of consumers are provided with access to the product) then welfare will increase.

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[42] Additionally, since, in this example, the consumers who purchase multiple units are the more price sensitive consumers the volume promotion will also provide these consumers with a lower single unit price than those consumers who only purchase a single unit.

[43] The economic literature suggests that non-linear prices (of which volume promotions are an example) are particularly effective at increasing sales. Consequently, when such prices are used welfare is more likely to increase. See for example, Varian (1985), 'Price Discrimination and Social Welfare', *The American Economic Review*, Vol 74, No. 4, pp870-975 and McAfee (2008), 'Price Discrimination', *Issues in Competition Law and Policy 465*.

C.19. A particularly notable example of when such a volume promotion is likely to increase welfare is when, absent the promotion, price sensitive consumers do not purchase the product and the promotion makes the product sufficiently attractive to these consumers that they are brought into the market. In this case the volume promotion is a means by which the firm finds it profitable to provide the product to a group of consumers who might not otherwise have purchased the product.

C.20. A similar analysis and logic would apply if, for example, higher prices for a product interspersed with regular reference price promotions were used to price discriminate between price sensitive and price insensitive consumers inter-temporally.

Theories of harm

C.21. The previous sections have discussed how price frames and promotions can lead to pro-competitive effects. However, any efficiency benefits resulting from promotions and price frames may be lost if the promotion or the price frame in question is misleading, so that consumer decision making is distorted. This section summarises the theories of harm associated with the misleading and/or confusing use of promotions and price frames.

C.22. The overarching theory of harm suggested by Which? in the super-complaint is that the ways in which supermarkets use price frames is misleading, making it harder for consumers to make the best purchasing decision. As a result, consumers may suffer 'financial detriment and wasted time through shopping errors, over-buying, buying a product that is not of the value that is assumed and emotional detriment through frustration and annoyance'.[44]

C.23. The CMA has identified three theories of harm arising from the misleading and/or confusing use of promotions and price frames:

- Inflate consumer willingness to pay for a product by suggesting that a promotion is better value than it really is.
- Decrease the perceived benefits of further consumer search, by suggesting that a promotion is better value than it really is.
- Increase the complexity of making comparisons between products which increases the costs consumers face when comparing products and searching for the best offer.

[44] Super-complaint, p12.

C.24. The first two of these theories of harm may arise when different promotions and price frames exploit consumer behavioural biases and in particular the heuristics consumers use to make decisions.

C.25. For example, under the first theory of harm, consumers may anchor on a reference price when evaluating the value of a promotion.[45] If that reference price is misleading, perhaps because it does not reflect a genuine previous selling price, then consumer willingness to pay may be artificially increased.[46] This may lead consumers to purchase the product at a higher price than they would have done otherwise or to purchase the product when they would not have done so at all.

C.26. The second theory of harm is similar in that consumers may interpret a reference price as an indication of the prevailing price for that product elsewhere in the market, leading them to overestimate the prices available at other retailers and underestimate the value of further search.[47] Such effects may then soften competition between retailers because consumers are more reluctant to shop around and to compare prices across retailers. This may then lead consumers to face higher prices than they would otherwise.

C.27. These first two theories of harm arise because misleading promotions and price frames take advantage of the mental shortcuts consumers use when making decisions. Consumers may be especially likely to rely on such mental shortcuts when the choice environment is complex. Consequently, consumer detriment may be more likely to arise in such environments.

C.28. The third theory of harm relates to the effects that promotions and price frames have on the search costs consumers face when shopping and comparing products. These costs include the time required to compare and to evaluate the relative value of alternative products within a store using the information on the products and the shelf edge labels. Promotions and price frames may increase the complexity of a consumer's decision. For example, a complex volume promotion increases the amount of information needed and the complexity of making a comparison. This may particularly be the case if a significant number of price frames are used in combination with each other or there is a wide product range to choose from.

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[45] Tversky and Kahneman (1974), 'Judgement under uncertainty: Heuristics and biases', *Science*, 185 (4156) pp1124-1131 provide a detailed discussion of anchoring.
[46] See *Advertising of Prices* (OFT 1291) Annexe C for a more detailed discussion of this theory of harm and its application to each of the price frames of relevance to the super-complaint.
[47] See *Advertising of Prices* (OFT 1291) Annexe C for a more detailed discussion of this theory of harm and its application to each of the price frames of relevance to the super-complaint.

C.29. Accordingly, complex promotions and price frames may increase the search costs consumers face and the time costs involved in making a decision, imposing an additional burden on consumers. It may also then soften price competition between retailers by reducing the willingness of consumers to shop around and to compare prices across retailers.[48] As with the second theory of harm, this may result in consumers paying higher prices than they otherwise would.

C.30. Additionally, if a large number of promotions and price frames are used simultaneously then this may increase the complexity of the consumer's choice decision. If this is the case then consumers may become more reliant on environmental cues and mental shortcuts when making their decisions. Consequently, when confusing and/or misleading promotions and price frames are used in combination then it may be more likely that consumer detriment is realised.

C.31. Each of the specific promotions and price frames cited by Which?, and summarised at paragraph C.5, affect consumer behaviour in slightly different ways. As a result, each of these price frames may trigger one, or more, of the theories of harm outlined in this section. The precise means by which each promotion or price frame can affect consumer behaviour is beyond the scope of this Annex.[49]

Summary of the existing evidence on the effects of promotions and price frames

C.32. Previous empirical and experimental work provides evidence that consumers do alter their behaviour in response to promotions and price frames. For example, reference prices have been shown to affect consumer perceptions of the fair price, the normal price, the lowest available price in the market, the potential savings and the value of a product.[50]

C.33. Similarly, it has been established that volume promotions can increase sales volumes relative to a situation in which such promotions are not used.[51] However, the literature has not explored in detail the factors which drive

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[48] Ellison and Wolitzky (2012), 'A search cost model of obfuscation', *RAND Journal of Economics*, Volume 43, Number 3, pp417-441 and Carlin (2009), 'Strategic price complexity in retail financial markets', *Journal of Financial Econometrics*, Volume 91, pp278-287 provide discussions of when firms have a unilateral incentive to increase search costs in order to soften competition.
[49] OFT (15 October 2009), *Advertising of prices*, in particular Annexe F provides a more detailed discussion of how each of the promotions and price frames cited by Which? may affect consumer behaviour.
[50] See OFT (15 October 2009), *Advertising of prices*, Annexe F, p16.
[51] For example, see Blattberg and Neslin (1990), *Sales Promotion: Concepts, Methods and Strategies*, Englewood Cliffs, NJ: Prentice-Hall, Inc and Wansink *et al*. (1998), 'An Anchoring and Adjustment Model of Purchase Quantity Decisions', *Journal of Marketing Research*, Vol. 35, No. 1, pp71-81.

consumer responses to volume promotions. For example, the literature has not attempted to establish whether this effect is driven by a simple response to lower prices when a volume promotion is introduced or whether it is driven by an increase in consumer willingness to pay due to anchoring on the higher price for a single unit under the volume promotion.

C.34. The experimental literature also provides evidence that price frames can affect consumer behaviour even when the price frame is completely uninformative and is misleading.[52] Therefore, there is evidence that misleading promotions and price frames have the potential to cause consumer detriment.

C.35. However, the existing literature does not provide evidence that any particular price frame is likely to have a systematically detrimental effect on consumers. Rather, there are some situations when the price frames and promotions will provide benefits to consumers and others in which the price frames and promotions may be misleading and consumer detriment will arise.

C.36. Consequently, it is necessary to consider the specific characteristics of an individual promotion or price frame in order to assess whether it leads to detrimental effects. Previous work (such as the OFT's *Advertising of Prices* market study, the BIS Pricing Practices Guide and the OFT's Principles on food pricing display and promotional practices, which are detailed at Annex B) has developed indicators of the practices that are more likely to comply with the relevant legislation. These indicators may be used when considering whether a particular promotion or price frame is more or less likely to be misleading.

Summary of the economic analysis of offers, promotions and price frames

C.37. The above analysis suggests the following:

- Promotions and price frames can provide significant consumer benefits. In particular, promotions and their associated price frames may be a particularly efficient way of signalling the value of an offer to consumers. They may also allow firms to price discriminate between groups of consumers in an efficient and beneficial manner.

- However, the heuristics which consumers use when making decisions, and which allow genuine promotions and price frames to be effective, also

[52] For example, the behavioural experiment conducted as part of the OFT's *Advertising of Prices* market study (OFT1291) found that the reference price frame affected participant behaviour even though the reference price was meaningless because there was no previous period for the reference price to refer to. See OFT (15 October 2009), *Advertising of prices*, Annexe G.

create the potential for misleading promotions and price frames to have detrimental effects.

- As a result, misleading and complex promotions may artificially inflate consumer willingness to pay, reduce consumer perceptions of the value of further search and increase the search costs faced by consumers, consequently softening competition between retailers. These effects may then lead to consumers paying higher prices for products than they would otherwise and purchasing products they would not otherwise purchase.

- The existing research provides evidence consumers do alter their behaviour in response to promotions and price frames. However, this research does not provide evidence that the price frames we have considered are systematically detrimental to consumers.

- Therefore, it is necessary to consider the specific characteristics of each promotion and price frame and the context in which it is used to assess whether a particular price frame is misleading. To this end previous work has developed a number of screens which can be used to assess the likelihood that a specific use of a particular promotions or price frame is misleading.

Unit pricing

C.38. The second issue raised by Which? concerns the limitations of unit pricing (the total price for a metric unit of a product, typically a kilogram or litre).

C.39. Consumers are able to use many different pieces of information, such as the price, brand and size of a product, when making product choices. Consumers do not necessarily place the same weight on each piece of information. In particular, consumers may anchor on certain pieces of information (such as price) and they may not fully account for other pieces of information (such as size or the unit price). Consumers may be particularly likely to anchor on the most prominent pieces of information, for example the information in the largest font or in a distinctive colour. Such anchoring may be especially likely in more complex environments where consumers face a large amount of information or where consumer decision making is driven by habit and less attention is paid to every decision.

C.40. One piece of information which a consumer may consider when making their product choice decision is the unit price of the product. Unit pricing information may be used by consumers as an indication of both the material costs of a product and the perceived quality of the product. Therefore, consumers may use unit pricing to:

- identify the cheapest product when: [53]
  - comparing prices between products when a retailer sells different pack sizes from the same brand; and
  - comparing prices between similar products; and
- evaluate and compare perceived product quality between brands when prices are used as a signal of quality.

C.41. Providing unit pricing can make it easier for consumers to compare products of different sizes. That is, instead of a consumer having to mentally calculate the unit price of two products, the unit pricing information is easily at hand and the consumer can quickly make the comparison. Therefore, the cognitive effort required to make price comparisons is lower and consumers can more easily rank the products by price. This allows consumers to better identify their preferred price/quality (value) combination across products.

C.42. If unit pricing information is legible and consistent then consumers may be more likely to anchor on this information and to incorporate it into their decision making. As a result, the provision of legible and consistent unit pricing information may reduce the costs consumers face when making product choice decisions and the potential for confusion to arise due to a misunderstanding of the information provided. Consequently, this may help to ensure that consumers do not pay more per unit than they otherwise would have done or that they choose the product which best meets their needs.

Possible limitations of unit pricing

C.43. There are several arguments which suggest that the impact of unit pricing information may be limited or that caution is needed when deciding on the appropriate prominence of the information.

C.44. First, the potential benefits of unit pricing will only be realised if consumers use this information and take account of it in their shopping decisions. However, consumers can face a vast quantity of information in a retail environment and purchasing decisions may often be substantially shaped by habits. Therefore, as discussed at paragraph C.39 above, consumers tend to anchor on a subset of the available information. As a result, consumers may

[53] Although it should be noted that the extent to which consumers purchase the most cost effective size may still be affected by constraints such as the perishability of the product.

not use all of the available information in their decision making, and may not take account of unit pricing.[54]

C.45. Second, unit pricing is an additional piece of information for consumers to incorporate into their decision making process. In general, when consumers are provided with additional information, especially if the environment is already complex, there is a risk that the consumer is overloaded by information. As a result, the additional information, which was intended to improve consumer decision making, may actually lead to worse decision making and worse outcomes.[55]

C.46. Finally, some consumers may not know how to interpret and to apply the information. Alternatively, consumers may feel that the time costs and cognitive effort required to process the information is too high, especially relative to the perceived benefits of using the information. Such factors may limit the benefits which could be expected to arise from the provision of unit pricing information.[56]

Existing evidence on the use and effects of unit evidence

C.47. There is limited pre-existing evidence on the extent to which UK consumers are aware of, use and comprehend unit pricing.

C.48. A small number of studies have considered the use of unit pricing by UK consumers. For example, before the current PMO came into effect, McGoldrick and Marks (1985) looked at the self-reported awareness of unit pricing at one UK supermarket and found that around half of the consumers surveyed were aware of the unit pricing at that supermarket.[57] Similarly, Mitchell *et al*. (2003) assessed awareness of unit pricing in the UK through reported usage and found that around half of those surveyed reported having used unit pricing.[58] However, it should be noted that these studies focused on self-reported rather than actual usage.

C.49. There has been some limited research looking at the factors that affect consumer awareness and comprehension of unit pricing. For example, using

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[54] This theme was also apparent in the qualitative research conducted by BDRC and detailed in Annex F.
[55] For example, suppose that the size of the unit pricing information was increased in an attempt to make the information more prominent and to increase its usage. If the unit pricing information is too large then there may be a risk that some consumers confuse the unit price with the actual sales price of the product. As a result, the unit pricing information may actually detract from the consumers' decision making.
[56] Again both points were apparent in the qualitative research conducted by BDRC and detailed in Annex F.
[57] McGoldrick and Marks (1985), 'Price-Size Relationships and Customer Reactions to a Limited Unit-Pricing Programme', *European Journal of Marketing*, 19 (1), pp47-64.
[58] Mitchell, Lennard and McGoldrick (2003), 'Consumer Awareness, Understanding and Usage of Unit Pricing', *British Journal of Management*, Vol. 14, pp173-187.

a field study in the USA, Miyazaki *et al*. (2000) found evidence that the prominence of unit pricing information has a positive effect on the awareness and usage of this information.[59]

C.50. Similarly, Bogomolova *et al*. (2015) conducted an experimental shopping scenario and used eye tracking technology to measure the level of attention paid to unit pricing and to assess the impact on decisions of changes in legibility and prominence, focusing on Australian consumers.[60] The authors found that improvements in legibility and prominence led to consumers focusing more on unit prices. In contrast, inconsistency in the placement of unit pricing reduced the probability of consumers choosing products with a low unit price.

C.51. Mitchell *et al*. (2003) attempted to identify potential barriers to the usage of unit pricing in the UK using accompanied shopping research and simulated tasks.[61] They found that, in the absence of the provision of unit pricing, some consumers find it difficult to calculate and then compare unit prices. Even when unit pricing information is provided, its usage may be constrained by the cognitive effort and time costs involved in doing so.

C.52. Finally, a number of studies have considered the effects of unit pricing on consumer behaviour. For example, in a second study, Miyazaki *et al*. (2000) conducted a controlled experiment, across a range of product categories, in which the prominence of the unit pricing information was varied.[62] In this simplified setting they found some evidence that when unit prices were more prominent consumers shifted their purchases towards lower unit priced items. Bogomolova *et al*. (2015) also found that improvements in the legibility and prominence of unit pricing led to an increase in the selection of products with lower unit prices.[63]

C.53. A conclusion emerging from these studies is that unit pricing can assist consumer decision making when the information is clearly and consistently

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[59] Miyazaki, Sprott and Manning (2000), 'Unit Prices on Retail Shelf Labels: An Assessment of Information Prominence', *Journal of Retailing*, 76 (1), pp93-112, used a survey to, among other things, compare the awareness of respondents that shopped at two supermarkets where unit pricing was classified as 'high prominence' at one store and 'low prominence' at the other. The differences in prominence between the two supermarkets was based on: (i) the placement of the unit price relative to the retail price; (ii) the amount of white space around the unit price; (iii) the inclusion of the words 'unit price'; and (iv) the size of the unit pricing information relative to the retail price.

[60] Bogmolova, Oppewal, Cohen and Yao (2015), *How the layout of a price label influences unit price visual attention and choice during grocery shopping.*

[61] Mitchell, Lennard and McGoldrick (2003), 'Consumer Awareness, Understanding and Usage of Unit Pricing', *British Journal of Management*, Vol. 14, pp173-187.

[62] Miyazaki, Sprott and Manning (2000), 'Unit Prices on Retail Shelf Labels: An Assessment of Information Prominence', *Journal of Retailing*, 76 (1), pp93-112.

[63] See also Russo (1977), 'The Value of Unit Price Information', *Journal of Marketing Research*, 14 (2), pp193-201 for similar findings.

provided and when it is used by consumers. However, there may be limits to the extent to which consumers (especially some groups of consumers) will use unit pricing information.

Summary of the economic analysis of unit pricing

C.54. In summary:

- if unit pricing is provided in a clear and consistent manner then this information may help consumers to identify the best value product which fits their needs. As a result, unit pricing information may help consumers to pay lower prices than they would otherwise; and
- the existing evidence suggests that there are a number of factors which may limit and constrain the extent to which people use unit price information. However, there is also evidence that, when used, unit pricing information leads consumers to select products with a lower unit price.

Pack size changes

C.55. The third issue raised by Which? is reductions in the size of a product where there is no corresponding change in the price, leading to an increase in the unit price. This practice is sometimes known as ‘product downsizing’.

C.56. For any increase in the unit price resulting from a product pack size decrease the same increase could have been achieved through an increase in the nominal selling price of the product. Therefore, an important consideration is whether the effects of a pack size change should be viewed any differently to a nominal price increase.

Theory of harm

C.57. As discussed at paragraph C.39, when making product choice decisions, consumers may anchor on certain product characteristics (such as price) and may not fully account for other product characteristics (such as size). As a result, consumers may react more quickly to changes in product characteristics they anchor on than to changes in other product characteristics which receive less attention. Therefore, competition may be softened in connection with the product characteristics on which consumers do not focus.

C.58. If consumers anchor on price information and not on product size, they may fail to adjust their purchases following a change in product size that leads to a unit price increase in the same way that they would have if a nominal price increase had led to the same increase in the unit price.

C.59. Hence, consumer detriment may arise, relative to a scenario in which the nominal price is changed, because consumers pay a higher price for a product without realising they are, or they purchase a product they would not otherwise have bought had they realised that the price had increased.

Mitigating factors

C.60. There are a number of factors which are likely to make the above theory of harm less likely to arise, or which mean that the consumer detriment arising from any product downsizing may be reduced.

C.61. First, in general adjusting the nominal price of a product is a low cost means of adjusting a product's unit price when compared to achieving the same change in unit price through a change in the size of the product. Indeed, there may be significant costs involved in changing production processes. For example, a manufacturer may have to find a new packaging supplier or engage in costly reconfigurations of their production techniques. Consequently, the costs involved in changing a product's size will reduce the incentives firms have to adjust product pack sizes rather than nominal prices. Thus, these costs may act to limit the frequency with which product downsizing occurs in practice.

C.62. Second, any negative effects due to the downsizing of a product may be limited if product size is a salient product characteristic such that consumers are more likely to notice when the unit price of a product increases as a result of a change in product size. This is more likely to be the case – and thus product downsizing is less likely to generate consumer detriment – when the following occur:

- Unit pricing is clear, consistent and usable and is used by consumers in making purchasing decisions – the unit price can aid consumers in making product comparisons and identifying which of two products is cheapest. As a result, if consumers use unit pricing information when making decisions then they may be more likely to substitute away from a product if a pack size change has led to an increase in the unit price of that product, than if consumers only used nominal price information.

- Quantity information is clear, consistent and usable – if consumers have access to legible and consistent package quantity information, then consumers may be more likely to use that information when making product choice decisions. As a result, the provision of this information may make it more likely that consumers will substitute away from a product if its pack size is adjusted relative to alternative products.

C.63. Finally, the change in the size of a product may provide benefits to consumers, or be accompanied by the addition of a feature, or a number of features, which add value to the consumer. Examples of this could include where the size change:

- is accompanied by the addition of an innovative feature or when the downsizing is a necessary part of adding these features. For example, when products are sold in easier-to-use packages, such as adding a re-sealable feature to the new package or moving from a glass to plastic containers. Alternatively, a product might become more concentrated and the pack size might shrink accordingly but the actual size, in terms of usage, of the product has not changed;
- is made to adapt to the demands of society (for example, if there is an increasing proportion of smaller households demanding smaller products or if there is a move towards more regular convenience shopping in which consumers wish to purchase smaller volumes on a more regular basis);
- helps to decrease consumption of unhealthy food; or
- helps to reduce excess packaging and product waste.

Existing evidence in relation to product downsizing

C.64. Previous work provides evidence that, in a variety of circumstances, consumers do not fully examine the information available to them and that consumers do indeed anchor on certain product characteristics which are then more salient than others.[64]

C.65. Specifically, in relation to product size:

- Research in the UK, based on a nationally representative sample, concluded that the majority of consumers do not use quantity indications when buying products. In particular, only 8% of the consumers reported using the information on quantity on the packages in deciding whether to

[64] For a recent discussion of how the salience of different product attributes can affect consumer decision making see Bordalo, Gennaioli and Shleifer (2013) 'Salience and Consumer Choice', *Journal of Political Economy*, 121(5), pp.803-843. Hasting and Shapiro (2013), 'Fungibility and Consumer Choice: Evidence from Commodity Price Shock', *Quarterly Journal of Economics*, 128 (4), pp1449-1498 and Thaler (1999), 'Mental Accounting Matters', *Journal of Behavioural Decision Making*, 12, pp183-206 provide particular examples of situations in which the salience of different product attributes affects consumer decision making.

buy the product, even when buying a product for the first time (MORI 1997).[65]

- Lennard *et al*. (2001) investigated the extent to which consumers use quantity indications in the UK.[66] This study used accompanied shopping interviews, simulated tasks and an in store questionnaire. The results suggest that most consumers do not read product size information, are often overloaded with product information, are unwilling to make comparisons and will use visual impressions of products to estimate the actual size of the product. This research suggests that consumers may only make limited use of product size in their decision making and that, as a result, changes in product sizes may not be noticed by consumers.

C.66. Furthermore, some studies have found evidence that, in some circumstances, consumer demand is less responsive to changes in quantity or product size than it is to changes in nominal price. For example:

- Çakir and Balagtas (2014) compared the effects of product size and nominal price changes in the Chicago market for ice cream and found evidence that consumers are about four times as sensitive to price as they are to package size changes;[67] and

- Gourville and Koehler (2004) found evidence of a greater sensitivity to price than product size in breakfast cereals, coffee and a number of ready-to-eat products.[68]

Summary of product downsizing

C.67. In summary, see the following points:

- If consumers anchor on characteristics such as price and do not anchor on product size information then they may not notice and respond to changes in product size in the same way they respond to changes in other product characteristics.

- As a result, consumer detriment may arise because consumers do not respond as promptly to a unit price increase arising from a pack size

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[65] MORI (1997), 'Indications of Quantity on Pre-packaged Food: Drained Net Weight', Department of Trade and Industry.
[66] Lennard, McGoldrick and Betts (2001), 'Why Consumers Under-Use Food Quantity Indicators', *The International Review of Retail Distribution and Consumer Research*, 11 (2) pp177-200.
[67] Çakir and Balagtas (2014), 'Consumer response to Package Downsizing: Evidence from the Chicago Ice Cream Market', *Journal of Retailing*, 90 (1), pp1-12.
[68] Gourville and Koehler (2004), 'Downsizing Price Increases: A Greater Sensitivity to Price than Quantity in Consumer Markets', *Harvard Business School Research Paper No.04-01.*

change as they would to a nominal selling price increase. Thus, consumers may pay higher prices than if the nominal selling price was increased, without realising that this is the case.

- The available evidence suggests that consumers do indeed anchor on certain product characteristics and that consumers may only use product size information to a limited extent in their decision making. Further, the evidence also suggests that consumers may be less responsive to changes in product size than to changes in prices.

- However, the incentives firms have to adjust pack sizes, rather than prices, may be mitigated because the costs of adjusting pack size may be significant. For example, this may be because a change in pack size requires a change in the production process. Additionally, any negative effects of pack size may be partially offset if product size information and unit price information increases the likelihood that consumers will substitute towards another product following a pack size change.

- Finally, there may be features associated with changes in the size of a product that may provide benefits to consumers. For example, a product size change may be a necessary part of introducing a new feature to a product, such as resealable packaging which consumers value.

Price matching

C.68. The final issue raised by Which? is the use of price matching schemes by grocery retailers.

C.69. A number of retailers, both grocery retailers and more generally, have price matching schemes. These schemes are a guarantee by a retailer that it has matched or beaten (or will match or beat) the prices offered by another retailer (or retailers) on a range of products.

C.70. In general, price matching schemes may vary along a number of dimensions, for example:

- Price matching versus price beating – under the former a retailer only matches the prices offered by another retailer; under the latter the retailer promises to undercut the prices offered by their competitor.

- Ease of redemption – the price matching scheme may be automatic (for example, the shelf edge prices are adjusted) or the consumer may face some cost (known as ‘hassle’ costs) in activating the price matching

scheme (for example, the consumer must provide proof of the lower price or remember to redeem a voucher on a subsequent visit).

- Product coverage – under some schemes only a subset of a retailer's range may be included (for example, a retailer may only match prices on its branded products).
- Competitor coverage – the price matching scheme may match the prices of only one competitor or it may match the prices of multiple competitors.

C.71. These distinctions are important because they have implications for the plausibility of the various theories of harm and efficiency arguments.

Efficiencies

C.72. A price matching scheme may be an efficient means by which a retailer can signal its pricing relative to its competitors. In particular, a price matching scheme may allow:

- a low cost base retailer to signal that they have low prices; or
- an upmarket retailer to signal that its added service and higher quality retail environment does not come at the expense of higher prices on equivalent products (that is, the retailer wants to signal that it is a low cost base but high quality retailer).

C.73. Indeed it may be that within a single market different retailers use price matching schemes in different ways such that both types of signal are present in the same market.

C.74. Consider the example of a low cost base retailer wishing to signal to consumers that it has low pricing when at least some consumers are not aware of the actual prices of the products themselves at the retailers. In this case, a price matching scheme may be an efficient means to communicate that the retailer has prices at least as low as its rivals on the products included in the price matching scheme.

C.75. However, for the price matching to be a credible signal it must not be profitable for a high price, high cost base retailer to mimic the signal and to also introduce a price matching scheme. In other words, it must be more costly for the high price, high cost base retailer to introduce a price matching scheme than for the low cost base and low price retailer. This is likely to be the case if:

- a large number of consumers would activate any price matching scheme offered by a high cost base retailer, for example because the price matching scheme is automatic or there are a significant number of consumers who are informed about prices in the market; and

- there are large differences in costs between retailers such that the high cost retailer would never find it profitable to sell at the same price as the low cost retailer.

When these conditions hold it is likely that the high cost base retailer would have to match the low cost base retailer's price on a significant proportion, if not all, its sales. Furthermore, given the difference in costs, this would not be profitable for the higher cost base retailer.[69]

C.76. When this is the case then it would be expected that:

- only some retailers in the market adopt the price matching scheme;[70]

- only the low cost base retailers adopt these price matching schemes; and

- there is some price dispersion among retailers, so that the price matching scheme is effective at signalling lower prices.

C.77. Further, the literature has suggested that where price matching schemes are being used as a signalling device they may lead to higher levels of concentration and lower prices. This is because the price matching scheme may help the retailer to attract customers at the expense of higher cost retailers. Therefore measures of concentration may not capture the intensity of competition.

C.78. Finally, if the price matching scheme is being used as a credible low cost signalling device one would expect there to be little, if any, redemption of the price matching scheme. This is because only the lowest cost retailer, who will also have the lowest prices, adopts the price matching scheme whilst it is not profitable for a higher cost, and higher price, retailer to do so.

C.79. The basic intuition underpinning the use of a price matching scheme as a signalling device by an upmarket retailer is the same as that for a low cost retailer as outlined above. One notable additional point is that one might

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[69] For more detailed discussions of price matching schemes and the conditions required for them to act as a signalling device see Moorthy and Winter (2006) 'Price matching guarantees', *The RAND Journal of Economics,* 37 (2), pp.449-465, and Winter (2008), 'Price matching and meeting-competition guarantees', in *2 Issues in Competition Law and Policy*.

[70] That is, at least some retailers must not have a price matching scheme as if all retailers have a price matching scheme then it has no value as a signal.

expect a high quality retailer to only apply a price matching scheme to branded products. This is because these products are those where the quality of the underlying product is directly comparable across retailers. Therefore, matching only branded products allows the upmarket retailer to signal that, while prices may be higher for better quality (and higher cost) own-branded products, prices will be the same for comparable branded products which are available at other retailers.

Theories of harm

C.80. In the super-complaint Which? specifically asked the CMA to 'investigate whether the price matching practices operated by the supermarkets overall benefit consumers, or simply have the effect of reducing shopping around based on potentially misleading information.' [71] Therefore the CMA has first assessed the impact price matching schemes may have on consumer search and whether this may lead to consumer harm ('the consumer attraction theory').

C.81. There are also a number of other theories of harm related to the use of price matching schemes and the CMA has focused on the one which is of most relevance to this super-complaint,[72] namely, 'the softening of competition theory', which looks at the impact price matching schemes may have on retailer incentives.

The consumer attraction theory of harm

C.82. When deciding whether to search and to shop around between different retailers, consumers compare the perceived benefits of searching (for example the possibility of finding lower prices elsewhere) with the perceived costs (for example the time involved visiting another retailer).

C.83. A price matching scheme may affect the perceived benefits to a consumer of searching between retailers. This is because the price matching scheme may lead consumers to believe that the scheme will ensure that the consumer received the best price regardless of where they shop. As a result, consumer search may be reduced.

C.84. However, consumer detriment may arise if this belief is mistaken and consumers systematically overestimate the extent to which the price matching

[71] Super-complaint, p21.
[72] The theories of harm not considered here are the use of price matching schemes to enable tacit collusion and as a means of entry foreclosure. For a detailed discussion of these theories of harm see LEAR, commissioned by the OFT (2012), *Can 'Fair' Prices Be Unfair? A Review of Price Relationship Agreements*.

scheme ensures that they receive the best price. If this is the case, then consumer detriment may arise because consumers may fail to identify and to take advantage of lower prices. In addition, the reduction in consumer search may also soften competition between retailers leading to higher prices than would otherwise be the case.

C.85. Examples of when consumers may systematically overestimate the benefits of a price matching scheme are the following:

- If consumers have insufficient information about the coverage of the price matching scheme (both in terms of the products and retailers included). Such an outcome might arise if the terms of the price matching scheme are opaquely or misleadingly presented to consumers.

- If a retailer imposes significant 'hassle' costs which create a cost for consumers who want to benefit from the price matching scheme, but consumers underestimate or fail to anticipate these costs. Such unanticipated costs may lead consumers to believe that they are more likely to benefit from the price matching scheme than is actually the case.

Direct softening of competition

C.86. Price matching can also directly lead to a softening of competition between retailers by reducing the incentives retailers have to reduce prices.

C.87. The intuition is that when a competitor has a price matching scheme, a retailer knows that if it cuts its prices its competitor will always match or beat those prices. Therefore, the retailer knows that if it cuts its price it will reduce the revenue it receives from all its existing customers but, since the competitor will also (immediately) reduce its price the retailer is less likely to attract any of the competitor's customers (ie to receive the benefits of the price cut). Consequently, the loss in revenue on existing customers is more likely to outweigh any additional revenue from new customers and retailers are disincentivised from reducing their prices.[73]

C.88. As a result, the introduction of a price matching scheme may lead to a softening of competition in the market and consumers will end up paying higher prices than would otherwise be the case.

C.89. Further, if there is a softening of competition, then one would expect that the price matching scheme will rarely identify price differences and thus

[73] For a general discussion of the softening of competition theory see LEAR, commissioned by the OFT (2012), *Can 'Fair' Prices Be Unfair? A Review of Price Relationship Agreements*..

redemption rates should be low. This is because under the softening of competition theory retailers have no incentive to undercut the retailer(s) offering the price matching scheme and therefore the price matching scheme is rarely, if ever, activated.

C.90. The literature on price matching schemes suggests that there are two important factors which affect the likelihood that a price matching scheme softens competition:

- **Hassle costs** – anticipated hassle costs (the costs of benefiting from the price matching scheme) encourage consumers to directly purchase from the lowest priced competitor rather than to rely on a retailer's price matching scheme. Therefore, hassle costs restore a competitor's incentive to cut prices as it allows them to attract some new customers and can prevent a softening of competition.[74]

- **Switching costs** – switching costs (the costs of switching to purchase at another retailer)[75] deter consumers from directly purchasing from the lowest priced competitor and encourage consumers to rely on a retailer's price matching scheme. For example, if a consumer faces switching costs that are higher than a price matching scheme's hassle costs then the consumer has an incentive to rely on the price matching scheme. Therefore, switching costs reduce the incentives for competitors to reduce prices, and lead to a softening of competition, because few consumers will switch when a competitor lowers its price.[76]

C.91. A retailer's incentives to cut prices are lower when a larger fraction of the market (in terms of the customers of other retailers) is covered by a price matching scheme. Therefore, one would expect that the softening of competition theory of harm would be more plausible when:

- the market is concentrated, so that a smaller number of retailers need to introduce a price matching scheme before there is a significant effect on incentives, and/or

[74] See Hviid and Shaffer (1999), 'Hassle Costs: The Achilles' Heel of Price-Matching Guarantees', *Journal of Economics & Management Strategy*, 8 (4), pp489-521, and Edlin (1997), 'Do Guaranteed- Low Price Policies Guarantee High Price, and Can Antitrust Rise to the Challenge?', *Harvard Law Review,* 111 (2), pp528.
[75] Examples of switching costs might be brand loyalty or the additional time costs involved in travelling to another retailer.
[76] See Edlin (1997), 'Do Guaranteed- Low Price Policies Guarantee High Price, and Can Antitrust Rise to the Challenge?', *Harvard Law Review,* 111 (2), pp528.

- where there is a high rate of adoption of price matching schemes, so that a large number of competitors automatically respond to any price cut, reducing a retailer's incentive to cut prices in the first place.

C.92. However, the literature suggests that these are not necessary conditions and that anti-competitive effects can still arise even when the conditions are not met. For example, the literature suggests that price matching schemes can lead to a softening of competition even when: they apply to advertised prices rather than actual selling prices;[77] there are cost differences between retailers;[78] price matching schemes are only adopted by some of the retailers in a market;[79] and in unconcentrated markets.[80]

Price matching as a form of price discrimination

C.93. When a price matching scheme is not automatic, then the scheme may facilitate price discrimination. In particular, where customers have:[81]

- differences in hassle costs;
- differences in search costs (so that some consumers are more informed about prices than others); or
- differences in switching costs

a retailer may use a price matching scheme to price discriminate and to set different prices to consumers with different price sensitivities.

C.94. In such cases a non-automatic price matching scheme can allow a retailer to set a high initial price to price insensitive consumers who may not shop around, are unwilling to switch and/or who face high hassle costs such that they do not benefit from the price matching scheme. However, the retailer can (through the price matching scheme) also lower the effective price charged to

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[77] For example, see Corts (1995), 'On the robustness of the argument that price-matching is anti-competitive', *Economic Letters*, 47 (3-4), pp417-421, Kaplan (2000), 'Effective price-matching: a comment', *International Journal of Industrial Organization*, 18 (8), pp1291-1294 and Arbatskaya, Hviid and Shaffer (2006), 'On the use of low-price guarantees to discourage price cutting', *International Journal of Industrial Organization*, 24 (6), pp1139-1156.
[78] See Logan and Lutter (1989), 'Guaranteed lowest prices: do the facilitate collusion?' *Economic Letters*, 31 (2), pp89-192, and Moorthy and Winter (2006), 'Price matching guarantees', *The RAND Journal of Economics,* 37 (2), pp449-465,
[79] See Logan and Lutter (1989), 'Guaranteed lowest prices: do the facilitate collusion?' *Economic Letters*, 31 (2), pp189-192, and Hviid and Shaffer (1999) 'Hassle Costs: The Achilles' Heel of Price-Matching Guarantees', *Journal of Economics & Management Strategy*, 8 (4), pp489-521.
[80] See Edlin and Emch (1999), 'The welfare losses from price-matching policies', *Journal of Industrial Economics*, 47 (2), pp.145-167.
[81] For example, Corts (1997) 'On the competitive effects of price-matching policies'. *International Journal of Industrial Organizations*, 15 (3), pp283-299.

price sensitive consumers who would shop around and who are willing to activate the price matching scheme.

C.95. As was discussed at paragraphs C.15 to C.18 in the context of promotions, the welfare effects of such price discrimination are ambiguous. The introduction of the price matching scheme may lead to higher prices for some consumers and lower prices for others than would otherwise be the case. It might also beneficially increase the consumption of price sensitive consumers. If this increase in consumption is sufficiently large then the price discrimination function of the price matching scheme will increase welfare.

C.96. Finally, if price discrimination is the motivation behind a price matching scheme then one would expect to see that:

- retailers who adopt the price matching scheme set higher prices relative to at least one competitor who is covered by the price matching scheme (ie there is price dispersion); and
- there are non-negligible rates of redemption such that consumers are paying different prices at the same retailer (ie price discrimination is actually occurring).

Assessing the effects of price matching schemes

C.97. A small number of studies have analysed the empirical evidence on the effects of price matching schemes.[82] These studies do not provide systematic evidence as to whether price matching schemes have pro-competitive or anti-competitive effects.

C.98. However, the research and the theory discussed at paragraphs C.72-C.96 does suggest that certain 'screens' (market characteristics or outcomes) are more or less likely to be associated with each of the theories of harm or efficiency rationales for a price matching scheme. In particular all of the theories of harm and efficiency arguments rely on the following two factors:

- **Consumer influence** – price matching schemes must influence consumer price perceptions and search intentions.

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[82] For example, Hess and Gerstner (1991), 'Price-matching policies: An empirical case.' *Managerial and Decision Economics*, 12(4), pp305-315, Arbatskaya, Hviid and Shaffer (2006), 'On the use of low-price guarantees to discourage price cutting'. *International Journal of Industrial Organization*, 24(6), pp1139-1156, and Mañez, J. A., (2006), 'Unbeatable Value Low-Price Guarantee: Collusive Mechanism or Advertising Strategy?' *Journal of Economics & Management Strategy*, 15(1), pp143-66.

- **Consumer choice** – at least some consumers must be attracted by a retailer's price matching scheme.

If these factors do not hold then price matching schemes will not have a significant effect on consumer behaviour and will therefore have little impact on the market.

C.99. The assessment screens identified by the CMA are outlined in Table C1 below. These screens have been split into three groupings:

- Market characteristics, for example, the level of price dispersion may determine how likely a particular theory of harm or efficiency is.

- Scheme characteristics, for example, the level of hassle costs may determine how likely a particular theory of harm or efficiency is.

- Scheme adoption, for example, the type or number of retailers in a market that adopt a price matching scheme may determine how likely a particular theory of harm or efficiency is.

The CMA has identified which theory of harm or efficiency is more likely based on each of the screens identified. As can be seen in Table C1 some of these screens are consistent with more than one theory of harm or efficiency. Therefore, it is necessary to look at these screens collectively to identify which theory of harm or efficiency is most likely to hold in any given circumstances.

Table C1: Price matching screens

Screen	*Softening of competition*	*Consumer attraction*	*Low cost, low price signalling*	*Upmarket signalling*	*Price discrimination*
			Market characteristics		
Low price dispersion	✓				
High price dispersion			✓	✓	✓
High market concentration	✓				
Some consumers have high switching costs	✓				✓
Some consumers have high search costs					✓
			Scheme characteristics		
Some consumers face high hassle costs		✓			✓
Consumers face low hassle costs	✓				
Information on the price matching scheme is unclear		✓			
Price matching scheme has low coverage across products/rivals		✓			
Price matching scheme only covers branded products				✓	
High rate of redemption					✓
Low rate of redemption	✓		✓	✓	
			Scheme adoption		
High adoption rate across retailers	✓				
Low adoption rate across retailers			✓	✓	
Only high quality retailers adopt the price matching scheme				✓	
Only high price retailers adopt the price matching scheme					✓
Only low cost base and low price retailers adopt the price matching scheme			✓		

Source: CMA analysis.

Summary of the economic analysis on price matching schemes

C.100. In summary, the above analysis suggests the following:

- Price matching schemes may be pro-competitive because they can be a means by which a retailer can efficiently signal its low prices to consumers. In particular, a price scheme may be an efficient signalling device for low cost, low price retailers and for high quality, low cost retailers.

- However, price matching schemes may also lead to consumer detriment and consumers may pay higher prices than would otherwise be the case for two reasons:

  – First, consumers may overestimate the benefits provided by a price matching scheme leading them to hold a mistaken belief that the price matching scheme will ensure that they receive the best price when this is not the case. As a result, consumers may search less than they would otherwise.

  - Second, a retailer's price matching scheme may reduce the incentives their competitors have to reduce prices because the competitors know that any price reduction will be matched by the retailer. Therefore, the price matching scheme may soften competition between retailers leading to higher prices than would otherwise be the case.

- Price matching schemes may also be used as a form of price discrimination, allowing lower prices to be charged to more price sensitive consumers. However, the welfare effects of such price discrimination are ambiguous and will depend upon the specific circumstances.

- Finally, the research does not provide evidence that price matching schemes are systematically pro-competitive or anti-competitive. However, the research does indicate that certain factors (or combinations of factors) are more likely to be associated with each theory of harm or efficiency rationale. Therefore, these factors can be used as screens to make an initial assessment of individual cases.

The cumulative impact

C.101. As was noted in the introduction, Which? has raised concerns about each of the four issues discussed above both individually and cumulative. The CMA is not aware of any studies which have attempted to systematically assess the cumulative impact of these practices (or a subset of these practices). However, the CMA has used the framework outlined above when assessing the economic effects of the cumulative impact of the practices identified by Which?.

C.102. When taken together, if:

- promotions and price frames are used in a complex and misleading manner;

- unit pricing information is unclear and inconsistent;

- product downsizing occurs; and

- price matching schemes are applied and presented in a misleading manner.

then this may significantly increase the complexity of an individual's shopping experience. This may have a detrimental impact upon consumers by reducing the desire and ability of consumers to compare prices. For example, by:

- increasing the complexity of comparing prices across products within a store or across retailers or by creating a misleading impression about relative prices across retailers. As a result, consumer search may be reduced, leading consumers to select products which may not best meet their needs and softening competition within the market, leading consumers to face higher prices than would otherwise be the case;

- exploiting the mental shortcuts consumers make in their decision making, leading consumers to purchase products at higher prices than would otherwise be the case or to select products they would not have done otherwise; and

- in combination, significantly increasing the complexity of the shopping environment may make consumers more reliant on the mental shortcuts they use when making decisions and on the use of environmental cues. This may increase the likelihood that misleading practices take advantage of these behaviours leading to consumer detriment.

D: Promotional data analysis

Introduction

D.1. This Annex sets out the CMA's analysis of data provided by mySupermarket on reference price promotions, volume promotions and products that come in multiple pack sizes. The aim of the analysis was to test:

- for reference price promotions (such as 'was/now' promotions):
  - whether the previous higher reference price had been charged for at least 28 days prior to the promotion commencing, as recommended by the BIS Pricing Practices Guide (PPG); and
  - whether the product had been available at the higher reference price for at least as long as it was subsequently made available at the lower price during the reference price promotion, as recommended by the Office of Fair Trading principles on food pricing display and promotional practices (the OFT Principles); and
- for volume promotions (such as multi-buy promotions): whether the per item price of the product under the volume promotion is higher than the previous selling price for one item; and
- for products available in multiple pack sizes: whether the unit price for the larger pack size of the product is lower than the unit price for smaller pack sizes of the product.

D.2. The CMA has concentrated on analysing these indicators because they were the characteristics of the examples provided to the CMA by Which? in the super-complaint. The indicators from the PPG and the OFT Principles in relation to reference price promotions are also used by retailers to ensure their own compliance.

D.3. However, the CMA is mindful of the limitations of data alone in demonstrating whether particular practices are misleading under the law and that it is not appropriate solely to use indicators in guidance to establish compliance or non-compliance with the CPRs. Rather, any assessment of the compliance by traders with the CPRs can only be undertaken with reference to the requirements of the legislation, the established precedent and guidance and the specific circumstances of any promotion.

D.4. This Annex is structured as follows:

(a) Section 1 describes the data collected by mySupermarket, explains the data used by the CMA and explains some of the limitations to the analysis the CMA could conduct.

(b) Section 2 sets out the analysis of reference price promotions.

(c) Section 3 sets out the analysis of volume promotions.

(d) Section 4 sets out the analysis of pack sizes.

Section 1: MySupermarket data provided to the CMA

D.5. MySupermarket collects pricing and promotions data from the websites of the retailers on a daily basis and this data is used by mySupermarket as the basis for its price comparison service and in its market research analysis. Therefore, mySupermarket's data relates to the products,[83] prices and promotions which are available online rather than in store. From conversations with retailers, the CMA understands that the prices and promotions for individual products which are available online are generally the same as those available in stores. However, there are a number of notable exceptions which need to be accounted for:

- Retailers may only make a subset of their products available online and the set of products available online may vary over time. For example, if a retailer only listed a product online when it was on a promotion then there is no pricing information in the data set for the time prior to the promotion and the tests outlined above cannot be applied.

- Retailers may set different prices for the same product at different stores. Therefore, the pricing information recorded in the data set may not reflect the prices available across all stores. Where multiple prices are available for a product at a retailer the lowest price and the associated promotions are provided and the existence of multiple prices is indicated in the data set.

- The data set only records certain factual information about a promotion (for example the start and end date, the price and any promotional wording, such as '2 for £5') which is available online. However, finer details of a promotion and the way in which it is presented to consumers

[83] In this Annex a product is equivalent to a stock keeping unit (SKU). Each SKU is a uniquely identifiable product supplied by a retailer. For example, different sizes of an otherwise identical product will be listed as separate SKUs.

in store or the volume of sales are not included in the data set. Therefore, it is not possible to use this data to make an accurate assessment of whether an individual promotion, or set of promotions, is compliant with the relevant legislation.

D.6. The CMA requested data from mySupermarket on all of the reference price promotions, volume promotions and products that come in multiple pack sizes available on 7 November 2014 at each of Aldi, Asda, Morrisons, Ocado, Sainsbury's, Tesco and Waitrose. The fact that pricing data was more readily available for five retailers in particular should not be taken to support any conclusion that these five retailers are more or less compliant with the CPRs than any other retailer, or that the CMA's recommendations are limited in scope to these retailers in particular.

D.7. In certain tables the CMA has anonymised the retailers' names so it is not possible to identify them in relation to the data provided by mySupermarket. The CMA has done this because the analysis of this data is only intended to provide a snapshot of the pricing practices of the specified retailers on 7 November 2014. Given the limited nature of this data, the CMA would not consider it appropriate to specify the parties to whom the information relates which risks creating an inaccurate implication that any particular retailer is not complying with the legislation.

D.8. The CMA requested data for 7 November 2014 because concentrating on a single day provided a significant sample of products and promotions whilst ensuring that the analysis was feasible within the strict 90 day statutory time limit for responding to the super-complaint. Additionally, the CMA considered that 7 November 2014 was unlikely to be disproportionately affected by seasonal promotions.

D.9. The CMA did not analyse the data provided for Aldi and Morrisons. For Aldi, this is because Aldi do not sell their products online and mySupermarket collects Aldi's pricing data less frequently (twice a week) than it does for other retailers. Therefore, the CMA considered that Aldi's data was not of sufficient granularity and necessarily reflective of the full range of Aldi's in store prices and promotions to permit the required analysis. Morrisons only began to retail online in early 2014. The CMA's initial analysis of the data suggested that Morrisons lists a much smaller set of its overall product range online at any one time and that the set of products which is listed online changes regularly. Consequently, the CMA considered that Morrisons' data was not sufficiently detailed to permit the analysis required or sufficiently representative of the prices and promotions for Morrisons' products in store.

D.10. Furthermore, the fact that retailers may set different prices for the same product at different stores creates a particular challenge for alcoholic products. A major reason for this is that the Alcohol etc. (Scotland) Act 2010 prohibits the use of volume promotions on alcohol in Scotland. As a result, it is difficult to construct a clean history of pricing and promotions for these products and these products have not been included in the CMA's analysis of reference price or volume promotions.[84]

D.11. Table D1 summarises the number of reference price promotions, volume promotions and products with different pack sizes for each of the retailers in the CMA's final sample.

Table D1: Number of products analysed

Retailer	*Products stocked on 7 November 2014*	*Products involved in a reference price promotion**	*% of all products*	*Products involved in a volume promotion**	*% of all products*	*SKUs with a smaller pack size of the same product*	*% of all SKUs*
Asda	32,620	2,618	8%	5,978	18%	2,281	7%
Ocado	31,818	2,676	8%	4,116	13%	1,923	6%
Sainsbury's	26,909	2,297	9%	4,372	16%	2,106	8%
Tesco	41,239	3,486	8%	6,963	17%	3,208	8%
Waitrose	20,078	1,657	8%	3,076	15%	1,192	6%

Source: CMA analysis of data supplied by mySupermarket.
*Excluding alcoholic promotions.
Notes:
1. Here a product refers to a single SKU.
2. The percentages reported in this table refer to the percentage of all products stocked by the retailer on 7 November 2014.
3. One would expect that the fraction of expenditure accounted for by products involved in reference price promotions and volume promotions on 7 November 2014 would be higher than the percentage of all products stocked by each retailer.

D.12. Having used 7 November 2014 to identify an initial sample of reference price promotions, volume promotions and products available in multiple pack sizes, the CMA asked mySupermarket to provide data on the pricing and promotions for those products.

D.13. For the products involved in a reference price or a volume promotion on 7 November 2014, mySupermarket provided data on the prices and promotions relating to those products both before and after the reference price or volume promotion of 7 November 2014. Specifically, mySupermarket provided the CMA with information about the prices and promotions for each product for two 'Periods' prior to the promotion occurring on 7 November 2014 and for one 'Period' after the promotion.

D.14. A 'Period' was defined as a sequence of time during which the price of the product or the price frame applied to a product did not change. If a product was priced at 'Was £2, Now £1.50' on one day and simply '£1.50' the next day then these would be recorded as separate 'Periods'. Similarly if a product was

[84] These products are those in mySupermarket's Adult Drinks & Mixers product category.

priced at ‘£3’ one day and ‘£3 for one or two for £5’ the next, then these would be recorded as separate ‘Periods’.

D.15. A product was recorded as being out of stock if it was not recorded in the mySupermarket data for 3 or more days. In these cases, the start and end date of the out of stock period were provided. A 3 day time limit for an out of stock period is necessary because there are a variety of reasons why a product might be temporarily absent from the mySupermarket data, whilst still being listed online by the retailer. For example, the retailer’s website might be down for maintenance when mySupermarket attempts to collect the information from the retailer’s website. Where the product was not recorded in the mySupermarket data for less than 3 days, this was considered to be a continuation of the previous pricing and promotion of the product and was not recorded as an out of stock event.

D.16. In addition to the factors summarised at paragraph D.5, there are a number of features of the data set which limit the analysis of reference price and volume promotions which is feasible.

D.17. First, on occasions retailers upload prices and promotions in stages over a short period of time (eg a day) or a promotion may take some time to be applied to all of a retailer’s branches. For example, a retailer might originally price a product at £11 and decide to reduce the price to £9 and to introduce a reference price promotion of ‘Was £11, Now £9’. In practice this change will be made in stages so that one day the price is £11, the next day it is £9 without any reference price frame being added and it is only the next day that the reference price frame of ‘Was £11, Now £9’ will be added. Alternatively, a promotion may be extended but the promotional frame may not be presented for a short period. For example, the ‘Was £11, Now £9’ promotion may be extended but the product will simply be priced at £9 without any promotional frame for a day or two before the ‘Was £11, Now £9’ promotion returns.

D.18. The frequency with which mySupermarket collects information from a retailer’s website means that each of these prices and promotions are recorded as distinct events in the data. Therefore, in the first example above, three distinct pricing and promotion periods would be recorded in the data: one in which the price is £11, one in which the price is £9, with no promotion and one in which the price is £9 with the ‘Was £11, Now £9’ promotional frame. This feature of the data means that there are a number of short periods (eg 2 days or less) in the data provided to the CMA. The ways in which the CMA has accounted for these short periods in each aspect of the analysis are discussed in more details below.

D.19. Second, the pricing and promotions associated with many products change on a regular basis. For example, a product may be involved in a volume promotion and then no promotion and then a reference price promotion all within a relatively short period of time. However, the CMA has only been able to analyse a limited pricing and promotion history for each product (two 'Periods' before and one 'Period' after the promotion arising on 7 November 2014). Again, the implications of the limited time span of the data which is available to the CMA for each aspect of the analysis are discussed in more detail below.

D.20. For products which were available in multiple pack sizes mySupermarket provided data on the pricing and promotions which applied to those products on 7 November 2014. Because there was no time series dimension to this data, the issues described at paragraphs D.18-D.19 above did not apply to this aspect of the CMA's analysis.

Section 2: Reference price analysis

D.21. In analysing the sample of reference price promotions provided by mySupermarket the CMA has assessed whether the previous higher reference price was charged for at least 28 days prior to the commencement of the promotion (**'the 28 day indicator'**), and whether the product had been available at the previous, higher reference price for at least as long as it was subsequently available at the lower price during the reference price promotion (**'the 1:1 ratio'**).

D.22. Throughout its analysis the CMA incorporated a margin of error and allowed for 3 days leeway from both the '28 day indicator' and the '1:1 ratio'. In part this is to reflect the issue discussed above regarding how the data is collected, and it is also to focus on material departures from the '1:1 ratio'.

D.23. In its initial analysis the CMA has begun by assessing whether each reference price promotion satisfies the '1:1 ratio'. This is consistent with the approach taken in the OFT Principles which state that 'where this '1:1 ratio' is not exceeded, the OFT is unlikely to be concerned with the length of time which the higher price was initially charged'. The CMA has then used the '28 day indicator' when further analysing those reference price promotions which did not satisfy the '1:1 ratio'.

D.24. In analysing the data the CMA has been able to identify cases in which the data provides evidence that a reference price promotion:

- satisfies the '1:1 ratio'. In other words the previous higher reference price had been charged for at least as long as the subsequent lower price was available during the reference price promotion; or

- does not satisfy the '1:1 ratio'. In other words where the previous higher reference price had not been charged for at least as long as the subsequent lower price was available during the reference price promotion. This could be the case because either:

  – the product was available at the lower promotional price for longer than it had been available at the higher price prior to the promotion and the data does not suggest that the higher price may have been charged for longer than is recorded in the data;[85] or

  – for at least 14 days immediately prior to the promotion, the product was sold at a price other than the reference price used during the reference price promotion. In these cases it could be argued that another price (not the reference price) was established prior to the reference price promotion.[86]

D.25. As discussed at paragraphs D.16-D.19, several features of the data set have limited the extent to which the CMA has been able to analyse the characteristics of some reference price promotions. For example, consider a product with the following pricing history with the final 'Half Price' promotion occurring on 7 November 2014:

(a) 'Buy 1 for £10 or 2 for £15' for 7 days.

(b) '£10' for 7 days.

(c) 'Buy 1 for £10 or 2 for £15' for 7 days.

(d) '£10' for 7 days.

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[85] The higher reference price may have been charged for longer than is recorded in the data if this higher price is the first price recorded in the data. In such cases, further data could plausibly establish that the product was price established for longer than is recorded in the data set. However, when this is not the case the data does not suggest that the higher reference price was charged for longer than is recorded in the data.

[86] For example paragraph 1.2.1 of the PPG states that 'if you have offered the product at a lower price for any significant period in the interval (lower, that is, than the price at which you now intend to sell it), this should be stated. What might constitute a significant period of time will depend on all the circumstances, but a single period not exceeding a week in a six month interval, or two or three periods of a weekend each in a six month interval, would be unlikely to be significant.'

(e) ‘Half Price, Now £5’ for 21 days.

D.26. In this case, a single unit of the product has been priced at £10 for 28 days. However, the data set analysed by the CMA would only provide the following information:

(a) ‘Buy 1 for £10 or 2 for £15’ for 7 days.

(b) ‘£10’ for 7 days.

(c) ‘Half Price, Now £5’ for 21 days.

D.27. Therefore, the data set would only record the product as being priced at £10 for 14 days. Consequently, a simple analysis of the ‘Half Price’ promotion would suggest that the ‘1:1 ratio’ and ‘28 day indicator’ were not satisfied but this is not necessarily the case.

D.28. The CMA has also been able to identify cases where the available data would lead to a conclusion that the reference price promotion:

(a) does not satisfy the ‘1:1 ratio’ but further information may show that this is an incorrect conclusion to draw because:

(i) there is evidence that the higher reference price may have been charged for longer than is recorded in the data set (ie the first price recorded in the data is the higher reference price used during the reference price promotion). In these cases, additional data could plausibly reveal that the product met the ‘1:1 ratio’; or

(ii) the product is out of stock immediately prior to the reference price promotion for longer than the subsequent promotion. In such cases it is plausible that the higher reference price could have been charged in store for long enough to satisfy the ‘1:1 ratio’; or

(b) satisfies the ‘1:1 ratio’ but further information may show that this is an incorrect conclusion to draw because:

(i) the product was out of stock for 2 weeks or more prior to the promotion. In such cases, the data does not provide clarity over the product’s price immediately prior to the promotion and it is possible that another price may have been charged in store prior to the reference price promotion; or

(ii) the data set contains information on the pricing of the product for less than 4 days following the reference price promotion. In these cases the data does not provide sufficient clarity that the reference price

promotion has ended. For example, such cases may reflect a temporary out of stock period before the promotion continues once the product is back in stock. Alternatively, these could reflect the short periods of time which can occur when a promotion is renewed but the promotional frame is not applied for a short time. In these cases, it could be that the reference price promotion continued for longer than is recorded in the data so that additional data would suggest that the '1:1 ratio' was not satisfied.

In these cases, the CMA was not able to clearly assess whether the '1:1 ratio' was satisfied. Further data is required in order to fully assess the characteristics of these reference price promotions.

D.29. Additionally, in a number of cases the characteristics of the data mean that it has not been possible for the CMA to analyse the reference price promotions. This was the case where:

(a) the data set did not include any information on the prices charged prior to the reference price promotion because:

(i) the product was not listed online prior to the reference price promotion so that any previous prices were only available in store;

(ii) the data records a series of price reductions which are a deepening of a promotion. For example, if the promotion occurring on 7 November was 'Half price, was £4.99' and the two previous prices for the product had been 'Save 20%, was £4.99', which becomes 'Save 1/3, was £4.99'; or

(iii) immediately prior to the reference price promotion there is a short period (less than 4 days) which interrupts an otherwise continuous promotion. For example, such short intervening periods may arise when a promotion is renewed but for a short time the promotional frame is not applied to the product; or

(b) The data set only provides limited information (4 days or less) on the pricing of the product prior to the reference price promotion.

D.30. The CMA's initial analysis is summarised in Table D2.

Table D2: Characteristics of reference price offers analysed by the CMA (% of all reference price promotions available at each retailer on 7 November 2014)

				%
Retailer	*Satisfies the '1:1 ratio'*	*Does not satisfy the '1:1 ratio'*	*Further data required*	*Not analysed*
A	70	5	16	9
B	81	1	18	0
C	34	21	13	32
D	90	4	5	1
E	91	1	6	2

Source: CMA analysis of data supplied by mySupermarket.

D.31. Where the data did provide a clear indication of whether the '1:1 ratio' had been satisfied, there was generally a low incidence with which reference price promotions in the sample did not satisfy the '1:1 ratio'. However, there was one retailer for which this proportion was much larger. For this retailer 21% of the reference price promotions in the sample did not satisfy the '1:1 ratio'. This equated to 37% of the reference price promotions where the CMA could clearly analyse whether the reference price promotion satisfied the '1:1 ratio'. For the other four retailers 5% or less of the reference price promotions in the sample did not satisfy the '1:1 ratio'. For each of these retailers this equated to 6% or less of the reference price promotions where the CMA could clearly analyse whether the reference price promotion satisfied the '1:1 ratio'. Overall, across the five retailers 8% of the reference price promotions we analysed did not satisfy the '1:1 ratio'. This represents 0.5% of the products available at the retailers analysed.

D.32. There are a number of circumstances in which the data might suggest that a reference price promotion did not satisfy the '1:1 ratio'. Therefore, the CMA has analysed these reference price promotions in more detail to understand the relative frequency of these circumstances. The CMA identified the following circumstances in which the data suggested that a reference price promotion did not satisfy the '1:1 ratio':

(a) **Neither the '28 day indicator' nor the '1:1 ratio' are satisfied** – the previous, higher reference price was not charged for 28 days prior to the commencement of the promotion and the subsequent, lower price was available for longer during the promotion than the previous higher reference price.

(b) **The '28 day indicator' is satisfied but the '1:1 ratio' is not** – the previous higher reference price was charged for 28 days prior to the commencement of the promotion but the subsequent, lower price was available for longer during the promotion than the previous, higher reference price.

(c) **The price frame was added at least 2 weeks after the higher price was last used** – the reference price frame was added to the product 2 or more weeks after the product's price had been reduced. For example, the product was priced at £11 before the price was cut to £9 with no price frame being applied and then 2 or more weeks later a 'Was £11, Now £9' price frame was added.

(d) **A previous promotion had a larger discount** – immediately prior to the reference price promotion that existed on 7 November 2014 the retailer had used another reference price promotion. Both reference price promotions used the same reference price but the promotion occurring before 7 November provided a larger discount from that reference price. For example, on the 7 November 2014 a product was involved in a '1/3 off, Now £6' promotion but immediately prior to this the product was involved in a 'Half price, Now £4.50' promotion.

(e) **A higher reference price could have been used** – prior to the reference price promotion the product had a higher price than the actual reference price used the promotion. For example, a higher price of £5 was charged prior to the promotion but then the promotional frame applied was 'Was £4, Now £3'. In these cases, the data suggests that the retailer could have referenced a higher price than it actually did.

D.33. Table D3 summarises the results of this analysis.

Table D3: Circumstances in which reference price promotions did not meet the 1:1 ratio (as a percentage of all reference price offers available on 7 November 2014)

%

Retailer	*Neither '28 day indicator' nor '1:1 ratio' are satisfied*	*The '28 day indicator' is met but the '1:1 ratio' is not*	*Price frame added at least 2 weeks later*	*Previous promotion with a larger discount*	*A higher reference price could have been used*	*Other*
A	2.5	0.8	0.1	0.4	0.9	0
B	0.1	0.6	0.0	0	0.4	0.2
C	0.0	12.4	6.7	0	0.7	0.7
D	1.3	0.7	0.0	0	2.0	0.1
E	0.2	0.2	0.0	0	0.2	0.1

Source: CMA analysis of data supplied by mySupermarket.

D.34. From Table D3 it can be seen that instances of neither the '28 day indicator' or the '1:1 ratio' being satisfied occurred in only a minority of the promotions analysed by the CMA (at most 2.5% of reference price promotions and less than 1% of reference price promotions at three retailers). Furthermore, for one retailer 2% of the reference price promotions in the sample could have referenced a higher price than that which was actually used. This accounted for half of the occasions in which the data suggested that the '1:1 ratio' was not satisfied for this retailer (4% of reference price promotions did not satisfy the '1:1 ratio' for this retailer).

D.35. However, at one retailer in a significant number of cases the '28 day indicator' was shown to be met but the '1:1 ratio' was shown to not be met. At this retailer this was the case for 12.4% of the reference price promotions in the sample. This equates to 22.6% of the reference price promotions where the CMA could identify whether the '1:1 ratio' was satisfied at this retailer.

D.36. Further, when a promotion ran for longer than the period for which the higher reference price had been charged (ie the '1:1 ratio' was not satisfied), this difference was often significant. For the retailer concerned, the length of the promotion exceeded the length of time for which the higher price was charged by an average of 37 days[87] and the largest difference was 73 days. This is in contrast to the average length of a reference price promotion in the sample of 31 days (50 days for the retailer concerned).

D.37. Second, the data suggests that, at the same retailer, a number of reference price promotions had the promotional price frame added 2 or more weeks after the price had been lowered. For example, the product was priced at £11, then reduced to £9 with no promotional frame before a 'Was £11, Now £9' promotional frame was added 2 or more weeks later. On average at this retailer the product was available at the lower price for 19 days before the reference price frame was added.

D.38. Third, the data suggests that a different retailer runs successive promotions, using the same reference price and where the second promotion provides a lower discount from the reference price. For example, a product will be involved in a 'Half price. Now £4.50' promotion' followed by a '1/3 off. Now £6' promotion. For this retailer, the average length of the promotion providing the larger discount was 24 days.

D.39. Table D2 also shows the percentage of reference price promotions where the limitations of the data set mean that further data is required to ascertain whether the reference price promotion satisfies the '1:1 ratio' (ranging from 6% to 18% at each retailer). These reference price promotions can be split into two types, those which the data suggests:

(a) did not satisfy the '1:1 ratio', but additional data would show that this was an incorrect conclusion because:

(i) the higher reference price was still being charged at the start of the period for which the CMA has information. Therefore, further

[87] The average across all retailers was 30 days.

information is required to ascertain whether the higher reference price had been charged for longer than is recorded in the data; or

(ii) the product was not listed online immediately prior to the reference price promotion for a sufficient length of time, such that the higher reference price may have been charged in store for long enough to satisfy the '1:1 ratio'; or

(b) did satisfy the '1:1 ratio', but additional data may show that this was an incorrect conclusion to draw because:

(i) The data set contains information on the product's pricing for less than 4 days immediately following the reference price promotion. In these cases the data does not provide sufficient clarity that the reference price promotion has actually ended and further data would show that the promotion had continued for longer than is actually recorded in the data.

Table D4: The reasons why further data may be required (as a percentage of reference price promotions at each retailer)

%

Retailer	*Further data required*	*Data suggests that the promotion did not satisfy the '1:1 ratio' but the:*		*Data suggests that the promotion did satisfy the '1:1 ratio' but the:*	
		'1:1 ratio' could be satisfied if earlier data available	*higher price may be charged in store*	*promotion could continue if further data were available*	*product was out of stock immediately prior to the promotion for at least 2 weeks*
A	15.9	8.6	0.0	7.3	0.1
B	17.6	5.6	0.0	12.0	0.1
C	13.5	12.0	0.1	1.4	0.0
D	5.5	5.0	0.0	0.5	0.0
E	6.4	2.0	0.0	4.2	0.1

Source: CMA analysis of data supplied by mySupermarket.

D.40. From Table D4 it can be seen that at each retailer between 2% and 12% of the reference price promotions did not satisfy the '1:1 ratio', but additional data may show that the higher reference price was charged for longer than is shown in the CMA's data. In these cases additional data may show that the '1:1 ratio' was met. Then, at each retailer between 0.5% and 12% of the reference price promotions satisfied the '1:1 ratio' but additional data may show that the promotion continued. Therefore, additional data may show that the '1:1 ratio' was not met in these cases.

D.41. When combined with the reference price promotions the CMA could not analyse this amounts to between 6% and 45% of reference price promotions at each retailer. Since it is not clear whether these reference price promotions satisfy the '1:1 ratio', the CMA will continue to analyse the data and will seek to establish whether there are any further issues or practices which merit

further investigation. The CMA has also accounted for the limitations in the analysis the CMA has been able to undertake in drawing its conclusions and in its recommendations.

D.42. Finally, the CMA's review of the evidence provided by retailers has highlighted that retailers take different views about whether a volume promotion can contribute towards the '28 day indicator' or the '1:1 ratio'. This is also apparent in the data provided by mySupermarket. Table D5 shows that there is considerable variation in the use of volume promotions prior to a reference price promotion. One retailer did not use volume promotions at all in the period prior to the reference price promotion. In contrast one retailer used a volume promotion in the period before a reference price promotion in 16% of cases.

Table D5: Percentage of reference price promotions where the higher reference price was charged during a volume promotion

Retailer	*Percentage of reference price promotions**
	%
A	6
B	9
C	14
D	16
E	0

Source: CMA analysis of data supplied by mySupermarket
*As a percentage of all reference price promotions available at that retailer.

Summary of reference price analysis

D.43. In summary, the data provided by mySupermarket suggests that in general, there is a low incidence of reference price promotions which are shown to not satisfy the OFT's recommended '1:1 ratio'. Across the five retailers 8% of the reference price promotions we analysed did not satisfy the '1:1 ratio'. This represents 0.5% of the products available at the retailers analysed. Of this 8%, more than half was accounted for by just one retailer.

D.44. However, the data suggests that there a number of particular practices which may merit further analysis. Those practices are as follows:

(a) Reference promotions where the PPG's '28 day indicator' is met but the OFT's '1:1 ratio' is not. In these cases the reference price promotion outlasted the period for which the higher reference price was charged. In many cases the reference price promotion lasted for significantly longer than the period for which the higher reference price was available.

(b) A reference price frame is added after the lower price had already been charged for at least 2 weeks.

(c) The use of consecutive reference price promotions which use the same reference price but the first promotion provides a larger discount from that reference price than the second promotion.

Section 3: Volume promotions analysis

D.45. In analysing the sample of volume promotions provided by mySupermarket the CMA has assessed the frequency with which the price per item under the volume promotion was the same or higher than the previous selling price for one item.[88]

D.46. When analysing the sample of volume promotions the CMA has identified cases in which:

(a) the volume promotion occurring on 7 November 2014 followed another volume promotion. For example, a '3 for 2' promotion was followed by a '5 for £3' promotion. In these cases a retailer has changed the pricing structure within a volume promotion, rather than moving from a single selling price to a volume promotion;

(b) the price per item under the volume promotion provided a clear discount relative to the previous selling price for one item. For example, a product was priced at '£1.50' before moving to a '1 for £1.50 or 2 for £2' promotion. In this example, the volume promotion allows consumers to purchase two units of the product at £1 per unit. This is a clear discount on the previous selling price for one unit of £1.50;

(c) the price for one item under the volume promotion was higher than the previous selling price for one item because:

(i) the product was not involved in another promotion prior to the volume promotion and the single item price under the volume promotion was the same or higher than the previous selling price. For example, the product was priced at '£1' prior to the volume promotion and '1 for £1.50, 2 for £2' during the volume promotion; or

(ii) the product was involved in a reference price promotion immediately prior to the volume promotion and the price per item under the volume

[88] As the previous selling price the CMA has taken the last price charged by the retailer for 2 or more consecutive weeks. This is consistent with the CMA's approach when analysing reference price promotions.

promotion was the same or higher than the reference price used in the reference price promotion. For example, the product was involved in a reference price promotion of 'Was £2, Now £1' prior to a volume promotion of '1 for £2.50 or 2 for £4'; and

(d) it is not clear whether the price per item under the volume promotion was higher or lower than the previous selling price for the product. This is because immediately prior to the volume promotion the product was involved in a reference price promotion. Additionally, the price per item under the volume promotion was higher than the price under the reference price promotion but lower than the reference price. For example, the product was involved in a reference price promotion of 'Was £2.75, Now £1.50' prior to a volume promotion of '1 for £2.50 or 2 for £4'.

D.47. Additionally, in a number of cases the CMA was not able to clearly establish what the previous selling price for one item had been. Therefore, it was not possible to assess whether the price per item under the volume promotion was the same or higher than the previous price for one item. This was the case when:

(a) a product was only listed during the volume promotion period and the data records that the product was not stocked online by the retailer prior to the volume promotion. Therefore, there is no pricing information in the data with which to compare the volume promotion and additional data, such as information on in store pricing, would be needed to allow a comparison;

(b) a product was out of stock for two or more weeks prior to the volume promotion. In these cases, the data does not provide clarity over the product's price immediately prior to the promotion;

(c) immediately prior to the volume promotion there is a short period which interrupts an otherwise continuous promotion. For example, such short intervening periods may arise when a promotion is renewed but for a short time (eg a day) the promotional frame is not applied to the product. In these cases the data set does not provide information on the previous selling price; or

(d) the data does not record a single selling price which was available for at least 2 weeks prior to the volume promotion. In this case it is not clear what the most appropriate 'previous selling price' is with which to make a comparison.

D.48. Table D6 summarises the results of the CMA's analysis on the sample of volume promotions.

Table D6: Summary of the characteristics of volume promotions as a percentage of all volume promotions available on 7 November 2014

%

Retailer	Change in the structure of a volume promotion	Price per item under the volume promotion: not higher than the previous selling price	higher than previous selling price	between the higher reference and the lower selling price in a previous reference price promotion	Not analysed
A	9.1	33.4	0.4	5.9	51.3
B	25.5	48.9	0.5	10.7	14.4
C	10.0	17.0	5.3	4.5	63.1
D	11.0	35.8	0.2	12.1	41.0
E	28.0	38.9	1.2	6.5	25.2

Source: CMA analysis of data supplied by mySupermarket.

D.49. Limitations in the available data meant that the CMA could not compare the price per item under the volume promotion to a previous price for one item in between 14% and 63% of volume promotions for each retailer. In 81% of the cases where the volume promotion could not be analysed this was because there was a short intervening period which interrupted an otherwise continuous volume promotion.

D.50. Where the CMA was able to analyse the volume promotions, for four of the five retailers less than 1.2% of the volume promotions in the sample had a higher price per item under the volume promotion than the previous selling price. For these retailers this equated to less than 2% of the volume promotions the CMA was able to analyse. For the final retailer the figure was somewhat higher at 5.3% of the volume promotions in the sample (16% of the volume promotions the CMA was able to analyse at this retailer). Overall across the five retailers 3% of the volume promotions we analysed had a higher price per item under the volume promotion than the previous selling price. This represents 0.3% of the products available at the retailers analysed.

D.51. However, the features of the data have limited the extent to which the CMA has been able to analyse the characteristics of the volume promotions in the sample. Therefore, the CMA will continue to analyse the data and will seek to establish whether there are any issues or practices which merit further investigation.

Section 4: Different pack size analysis

D.52. As set out at paragraph D.20, the CMA also obtained pricing and promotion information on all of the products available in multiple sizes at each of Asda, Ocado, Sainsbury's, Tesco and Waitrose for 7 November 2014. This was used to examine the extent to which the unit price of larger pack sizes was higher than that for smaller pack sizes of the same product.

D.53. For each product stocked by the retailer, mySupermarket identified whether multiple sizes of that product were available at that retailer. In other words mySupermarket identified whether there were multiple SKUs which were identical except for their size.[89] Table D7 below summarises the data provided to the CMA. This table shows, for each retailer, the number of SKUs[90] where there was at least one other SKU which was a smaller pack size of the same product and occasions where an SKU had more than one smaller pack size.

Table D7: Summary statistics for different pack size analysis

Retailer	*Number of SKUs*	*Number unused*	*Number analysed*	*Number of SKUs analysed with…*			
				1 smaller	*2 smaller*	*3 smaller*	*4+ smaller*
Asda	2,281	2	2,279	1,883	331	53	12
Ocado	1,923	2	1,921	1,604	273	36	8
Sainsbury's	2,106	9	2,097	1,753	283	50	11
Tesco	3,208	6	3,202	2,556	503	107	36
Waitrose	1,192	0	1,192	1,005	164	19	4

Source: CMA analysis of data supplied by mySupermarket.
Notes:
1. The figures in this table relate to individual SKUs rather than individual product lines. For example, suppose that a single product comes in pack sizes of 2 units, 4 units, 9 units and 16 units (ie four different SKUs).
2. This product would have three SKUs listed in the data: the 16 unit pack (which has three smaller SKUs), the 9 unit pack (which has two smaller SKUs) and the 4 unit pack (which has one smaller SKU).

D.54. As this table shows, the majority of SKUs had only one other SKU which was a smaller size (82% of all the SKUs analysed) and most of the rest only had two smaller SKUs. A small number of SKUs (19 in total) were excluded from the analysis because the pricing and promotional data provided by mySupermarket for those SKUs was inconsistent.[91]

D.55. First, the CMA analysed the frequency with which a smaller sized SKU (the smaller pack size) had a lower per unit price than a larger SKU (the larger pack size).[92] The CMA also identified the frequency with which the unit price difference was greater than 10 percent as an indicator of whether the unit price differences were significant. Table D8 summarises the results of this analysis.

[89] MySupermarket are able to match products based upon a large number of criteria, such as brand, product size etc. This technology is used by mySupermarket for its price comparison website and in its other commercial operations.
[90] Here the term SKU is used rather than product in order to avoid confusion between individual SKUs and collections of SKUs which may make up different sizes of the same product.
[91] For example, the promotional description might say 'Was £2.50, Now £2' but all of the prices were recorded as £2.50.
[92] In this initial analysis the CMA has analysed the prices which applied after any promotional offers (eg a volume promotion) had been applied).

Table D8: Percentage of SKUs with at least one smaller sized SKU which is cheaper

%

Retailer	Percentage (of SKUs with multiple sizes) with at least one smaller pack which is cheaper	
	Any lower price	*Price lower by 10% or more*
A	18	12
B	16	12
C	17	12
D	16	11
E	21	16

Source: CMA analysis of data supplied by mySupermarket.

D.56. As can be seen in Table D8 a significant proportion of the larger SKUs had at least one smaller SKU which had a lower per unit price. For each of the retailers the proportion of larger SKUs where at least one smaller SKU had a lower per unit price was between 16% and 21%. In addition, the difference between the unit prices for the smaller and larger SKUs was often significant. For four of the retailers the proportion of the larger SKUs whose unit price was at least 10% larger than the unit price the smaller SKUs was between 11% and 12% and for the other this proportion was nearly 16%.

D.57. The CMA then considered the extent to which the lower price on the smaller pack size was due to a promotion that only applied to the smaller pack. This analysis is shown in Table D9.

Table D9: Frequency with which a smaller SKU has a lower unit price due to a promotion

%

	SKUs with at least one smaller SKU which is cheaper		Due to a promotion on the smaller pack only		Not due to a promotion only on the smaller pack size	
	Any lower price	*Price lower by 10% or more*	*Any lower price*	*Price lower by 10% or more*	*Any lower price*	*Price lower by 10% or more*
A	18	12	12	9	7	3
B	16	12	12	9	4	2
C	17	12	7	6	10	6
D	16	11	13	10	3	2
E	21	16	15	12	6	3

Source: CMA analysis of data supplied by mySupermarket.
Note: The percentages in this table may not equate due to rounding errors.

D.58. This shows that for four of the five retailers, in the majority of instances where the unit price is lower for a smaller sized SKU this is due to a promotion which only applies to the smaller sized SKU. However, for one retailer the majority of instances where the unit price is lower for a smaller pack size were not due to a promotion of the smaller pack size, and in over half of these cases the price difference was greater than 10%.

D.59. In summary, the CMA's analysis suggests that it is not uncommon for smaller packs sizes of a product to have a lower unit price than a larger pack size of

the same product. In some cases, this arises because a promotion is applied only to the smaller pack size. However, in a significant number of cases this arises because there is no promotion on either the larger or smaller pack size or a promotion is applied to both pack sizes.

E: CMA analysis of the consumer survey

Introduction

E.1. The CMA commissioned a number of questions in a consumer Omnibus survey to help understand the role of price matching schemes in grocery shopping. In particular, the objectives of these questions were to provide an understanding of:

- consumer awareness of price matching schemes and their rules;
- the role price matching schemes play in consumer choice of store; and
- the impact price matching schemes have on perceptions of relative pricing.

E.2. The consumer survey was carried out by TNS, a major market research company, as part of its face to face Omnibus survey. This survey is based on a large representative sample of adults aged 18 and above. A sample of 1,625 principal shoppers[93] was obtained from across Great Britain and Northern Ireland when the survey was in field between 22 and 25 May 2015. To avoid inaccurate recall, respondents who have not visited[94] one of the main supermarket chains within the last week were screened out at the start of the survey. As a result, the sample size was reduced to 1,493.

Methodology

E.3. The analysis set out below is that of the CMA based on the data provided to it by TNS and not the analysis of TNS. Therefore the results presented below may differ from data tabulations provided to the CMA by TNS and published at Annex G.

E.4. Where the results are presented for questions asked only of subsets of respondents or comparisons are made between sub-groups, we present results which are based on sufficient responses for us to draw robust conclusions: as a guide, generally speaking this is where there are at least 100 respondents in the unweighted base (for a subset or for each sub-group).

[93] 'Principal shopper' is the individual within a household who does at least a half of shopping for that household.
[94] The survey covered bricks-and-mortar stores only. Internet only supermarkets such as Ocado were not covered by the consumer survey.

E.5. For differences between sub-groups, we comment on results which are statistically significant at the 95% confidence level.

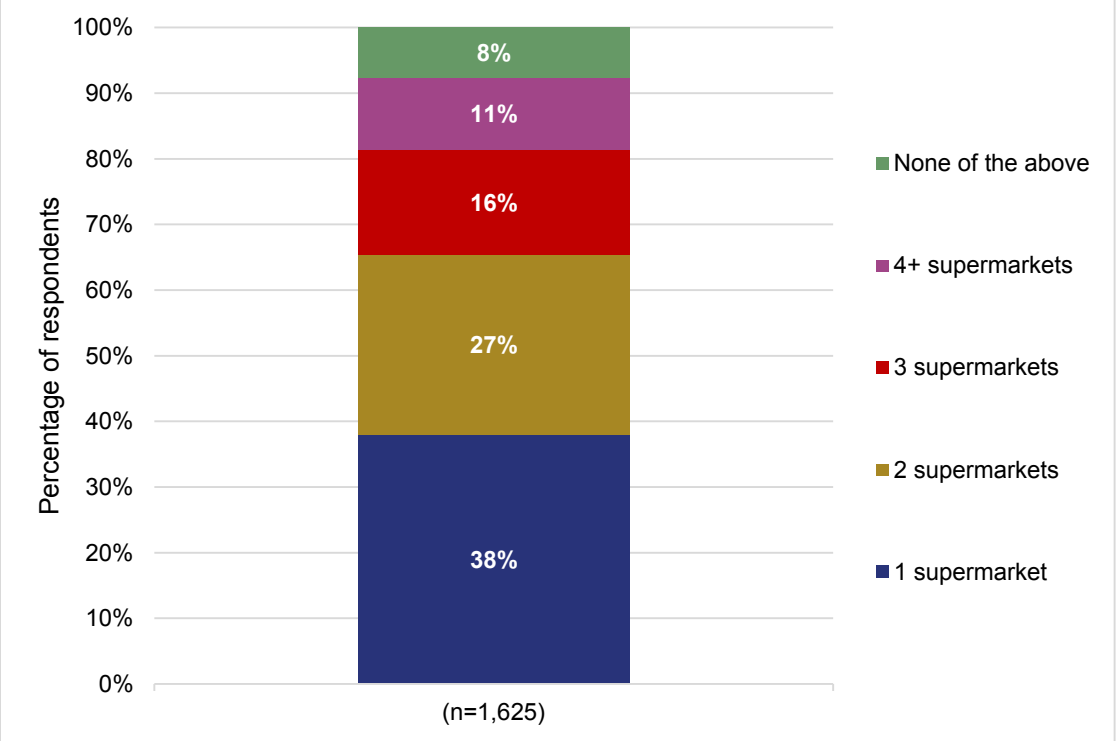
E.6. Finally, as the analysis and results in relation to the section on price matching schemes rely on perceptions, understanding and recall in relation to a respondent's planned shop supermarket, those respondents who could not remember the identity of their planned shop supermarket are excluded.

Grocery shopping

E.7. Although the objectives of the Omnibus survey were related to price matching schemes the nature and design of the survey meant that the results are also informative in relation to grocery shopping in general and the key points are outlined below.

E.8. Consumers appear to be visiting supermarkets frequently and also use a range of supermarkets. For example, more than half of the respondents (54%) had visited more than one supermarket in the last 7 days. Around one in ten of respondents had been to four major supermarkets or more in the last week with this rising to just over a quarter of respondents who have been to three or more supermarkets in the last 7 days.

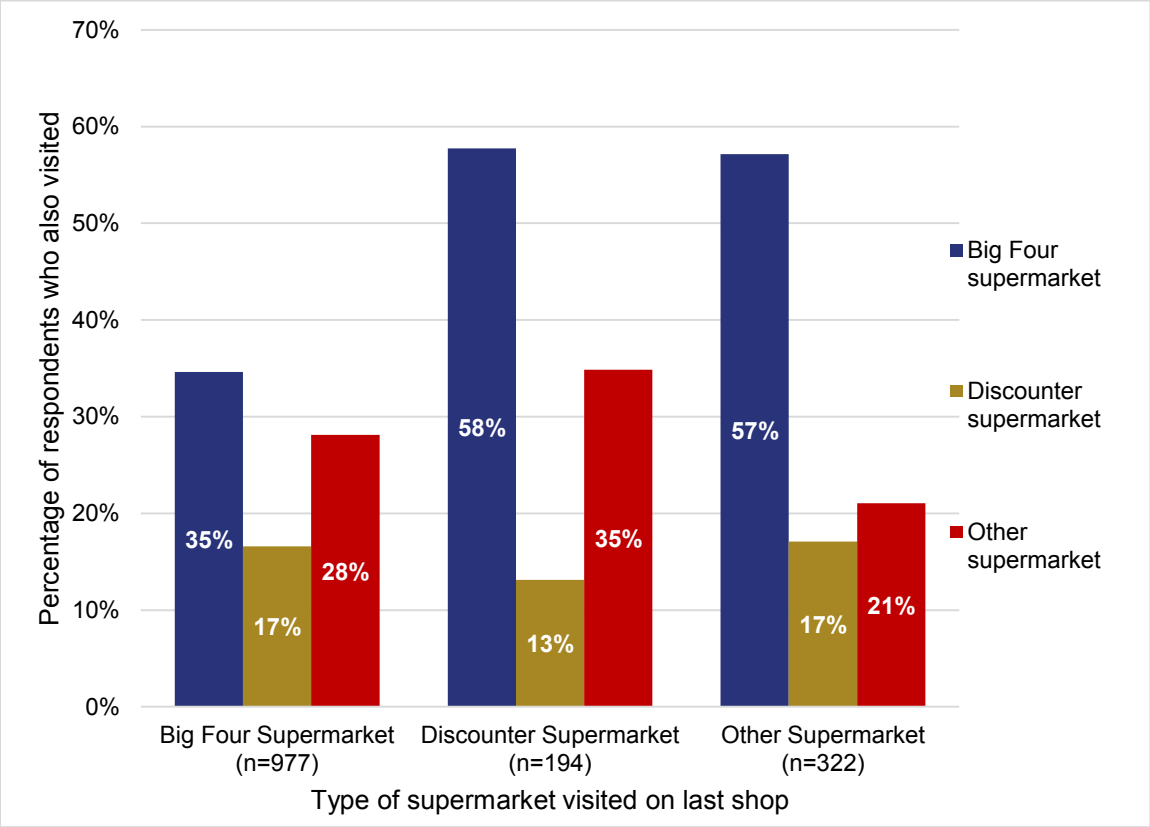
Figure E1: Number of major supermarkets visited in the last 7 days



Source: CMA's analysis of TNS dataset.
Notes:
1. Question 1A: 'Which, if any, of these shops have you personally visited and bought something from in the last 7 days?'
2. Base: All principal shoppers.

E.9. There are several different types of supermarket. One categorisation is to split supermarkets into the 'Big Four', 'Discounters' and 'Others'.[95] The survey shows that many consumers are visiting more than one of these types of supermarket. Figure E2 shows, based on the type of supermarket a respondent visited for their last shop in the last 7 days, the percentage of those respondents who had visited more than one of that type of supermarket and also visited an alternative type of supermarket in the last 7 days. It can be seen that a third of respondents whose last shop was at a Big Four supermarket had been to at least two 'Big Four' supermarkets in the last 7 days. Further, just less than two in ten whose last shop was at a 'Big Four' supermarket had also shopped at a 'Discounter' supermarket in the last 7 days and roughly three in ten went to an 'Other' supermarket in the last 7 days.

Figure E2: Types of shop visited in the last 7 days



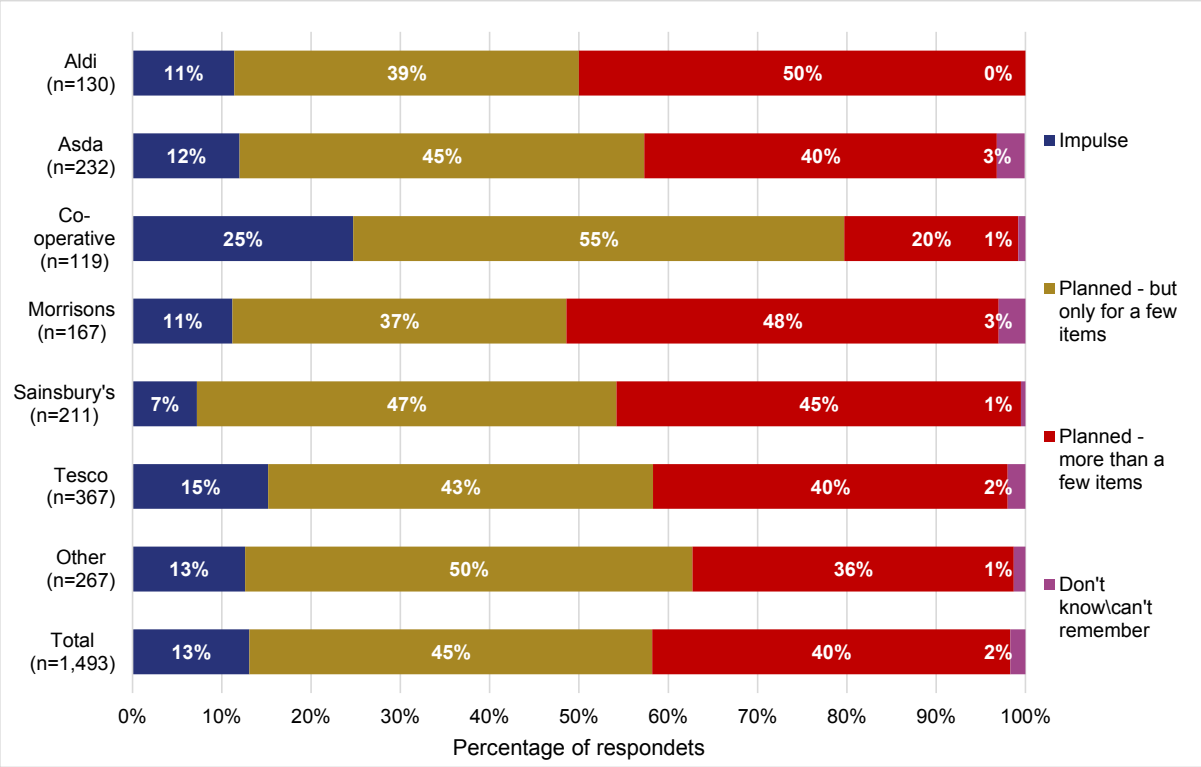
Source: CMA's analysis of TNS dataset.
Notes:
1. Question 1A: 'Which, if any, of these shops have you personally visited and bought something from in the last 7 days?'
2. Base: All who have visited a supermarket in the last 7 days (n=1,493).

E.10. Figure E3 looks at the purpose of the respondents' last shop by supermarket. As can be seen, just over one in ten respondents last shop had been an

[95] Where the 'Big Four' supermarkets are defined as Asda, Morrisons, Sainsbury's and Tesco, the 'Discounter' supermarkets are defined as Aldi and Lidl and 'other' supermarkets are defined as Booths, Budgens, Centra, The Co-operative, Dunnes, Iceland, Mace, Marks & Spencer, Spar, SuperValu and Waitrose.

'impulse' shop, nearly a half had been a planned shop but only for a few items and two in five had been a planned shop for more than a few items. Further, as can be seen from Figure E3 these results are consistent across supermarkets except for The Co-operative where respondents' last shop was significantly less likely to have been a planned shop for more than a few items.

Figure E3: Type of most recent shopping trip



Source: CMA's analysis of TNS dataset.
Notes:
1. Question 3: 'Just thinking about the last time, when you visited [last supermarket visited] what type of shopping trip was that?
2. Base: All who had visited a supermarket in the last 7 days.
3. Supermarkets are only reported separately when at least 100 respondents last shop was at that supermarket. Therefore other includes those whose last shop was at Booths, Budgens, Centra, Iceland, Lidl, Marks & Spencer, Spar and Waitrose. Note that no respondents had last visited Dunnes, Mace or SuperValu.

Price matching schemes

E.11. This section covers the results of the Omnibus survey in relation to price matching schemes. In particular, it presents results in relation to:

- consumer awareness of price matching schemes and their rules;
- the role price matching schemes play in consumer choice of store; and
- the impact price matching schemes have on perceptions of relative pricing.

Awareness

Consumer awareness of the presence of a price matching scheme

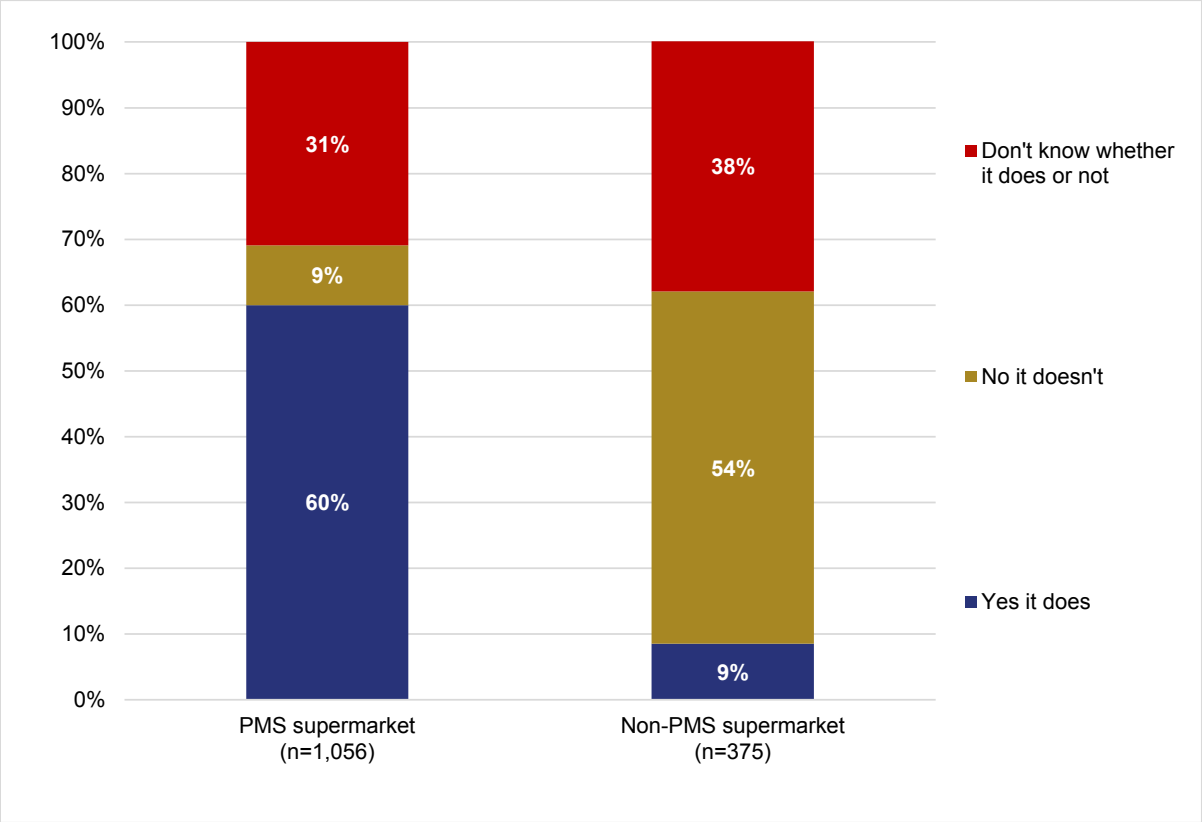
E.12. The CMA wanted to understand the extent to which consumers were aware of whether their planned shop supermarket had a price matching scheme or not.[96] Figure E4 shows self-reported consumer awareness of price matching schemes.

E.13. This shows that self-reported awareness is relatively high with a majority correctly able to identify that the last supermarket they visited for a planned shop for more than a few items (planned shop) has a price matching scheme when it does (60%) or does not have a price matching scheme when it does not (54%).[97] However, a significant proportion of respondents did not know whether it did or not (31% of respondents whose planned shop supermarket had a price matching scheme and 38% for those whose planned shop supermarket did not). Additionally, some respondents (9%) believed that the supermarket had a price matching scheme when it does not or thought that it did not have one when it did (9%).[98]

E.14. Further, as can be seen in Table E1, those whose planned shop was at Asda were significantly less likely to have correctly identify that Asda has a price matching scheme when compared to Morrisons, Sainsbury's and Tesco. This could be due to nature of Asda's price promise where a consumer needs to use the information on their till receipt to generate the results of the price matching scheme whereas, for example, at Tesco and Sainsbury's results are provided at the till.

[96] To do this question 13 of the survey asked: 'Do you know if [planned shop supermarket] have a price matching scheme whereby they promise to match the prices offered by other retailers for a range of products?'
[97] The major supermarkets with price matching schemes in the UK are Asda, Morrison, Sainsbury's, Tesco and Waitrose.
[98] This could be due to possible confusion between everyday low prices type marketing and price matching schemes.

Figure E4: Self-reported awareness of price matching schemes



Source: CMA's analysis of TNS dataset.
Notes:
1. Question 13: 'Do you know if [planned shop supermarket] have a price matching scheme whereby they promise to match the prices offered by other retailers for a range of products?'
2. Base: All who had visited a supermarket in the last 7 days excluding those whose planned shop supermarket was listed as 'Don't know' (n=1,431).

Table E1: Self-reported awareness of price matching schemes by supermarket

					%
	Asda	*Morrisons*	*Sainsbury's*	*Tesco*	*Total*
Correct	48	67	67	65	46
Incorrect	16	6	7	5	21
Don't know whether it does or not	37	27	26	30	33
Unweighted base (number)	272	158	222	372	1,431

Source: CMA's analysis of TNS dataset.
Notes:
1. Question 13: 'Do you know if [planned shop supermarket] have a price matching scheme whereby they promise to match the prices offered by other retailers for a range of products?'
2. Base: All who had visited a supermarket in the last 7 days excluding those whose planned shop supermarket was listed as 'Don't know'.
3. The results for Waitrose have not been reported individually due to an insufficient sample size.

Consumer awareness of how price matching schemes work

E.15. The CMA wanted to understand the extent to which consumers who correctly believed their planned shop supermarket had a price matching scheme

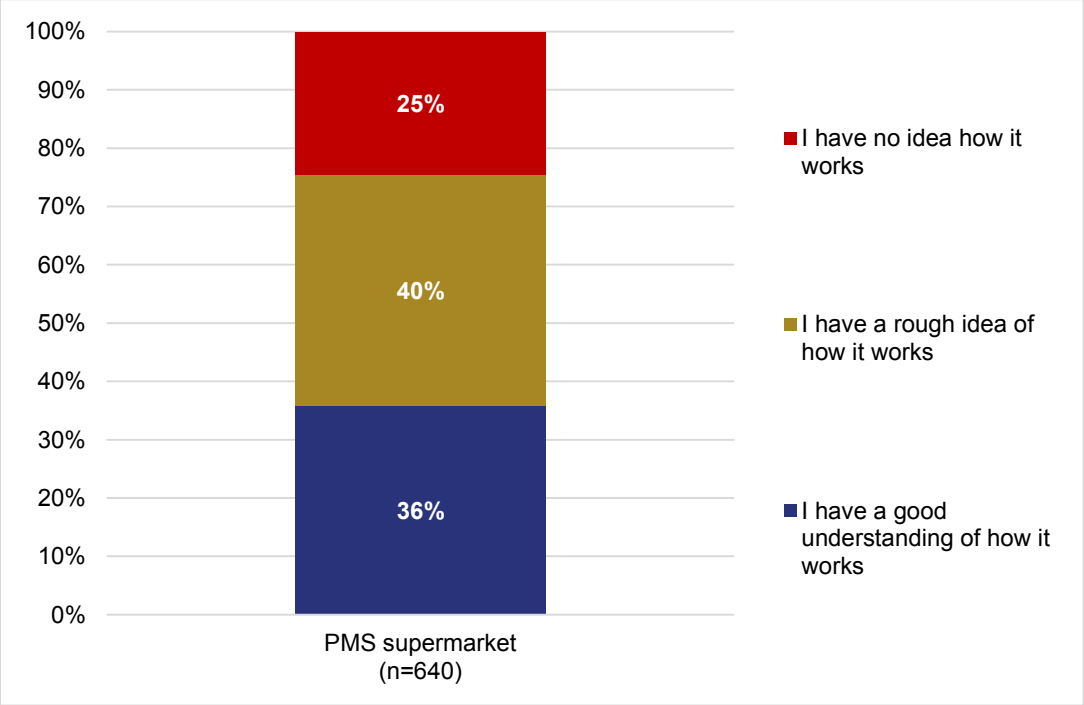
understood how that price matching scheme worked.[99] Figure E5 shows the self-reported understanding of those who correctly believed their planned shop supermarket had a price matching scheme. In particular, it can be seen that:

- 25% of respondents who knew their planned shop supermarket had a price matching scheme reported that they had 'no idea how' the price matching scheme worked; and
- 40% of respondents reported only having 'a rough idea of how it worked'.

E.16. Therefore the responses to this question indicate that a significant portion of consumers who know that a supermarket has a price matching scheme do not have a good idea of how that price matching scheme works.

E.17. Across price matching supermarkets it can be seen that those who shopped at Asda were significantly more likely to have no idea how the price matching scheme when compared to Sainsbury's and Tesco (Table E2).[100] Again this could be due to nature of Asda's price promise in comparison to those of Sainsbury's and Tesco.

Figure E5: Self-reported understanding of price matching schemes



Source: CMA's analysis of TNS dataset.
Notes:
1. Question 14: 'Do you know how that price matching scheme works?'
2. Base: All who knew if their supermarket had a price matching scheme excluding those whose planned shop supermarket does not have a price matching scheme.

[99] To do this question 14 of the survey asked: 'Do you know how that price matching scheme works?'
[100] Note that Waitrose has been excluded from this analysis due to an insufficient sample size.

Table E2: Self-reported understanding of price matching schemes by supermarket

					%
	Asda	*Morrisons*	*Sainsbury's*	*Tesco*	*Total*
I have a good understanding of how it works	29	43	38	35	36
I have a rough idea of how it works	32	32	43	44	40
I have no idea how it works	39	25	19	20	25
Unweighted base (number)	127	107	151	243	640

Source: CMA's analysis of TNS dataset.
Notes:
1. Question 14: 'Do you know how that price matching scheme works?'
2. Base: All who knew if their supermarket had a price matching scheme excluding those whose planned shop supermarket does not have a price matching scheme.
3. The results for Waitrose have not been reported individually due to an insufficient sample size.

Information on price matching results

E.18. The CMA wanted to understand the extent to which consumers who correctly believed their planned shop supermarket had a price matching scheme received information about the results of the price matching scheme (that is, whether their shop was cheaper or more expensive than at a different supermarket).[101] Figure E6 sets out, for those respondents who correctly believed that their supermarket had a price matching scheme, whether those respondents believed they received such information or not.

E.19. Of the respondents who correctly believed that their supermarket had a price matching scheme most recalled receiving some information on whether their shop was cheaper or more expensive than at an alternative supermarket (71%), while only 10% of respondents did not know if they received any information.

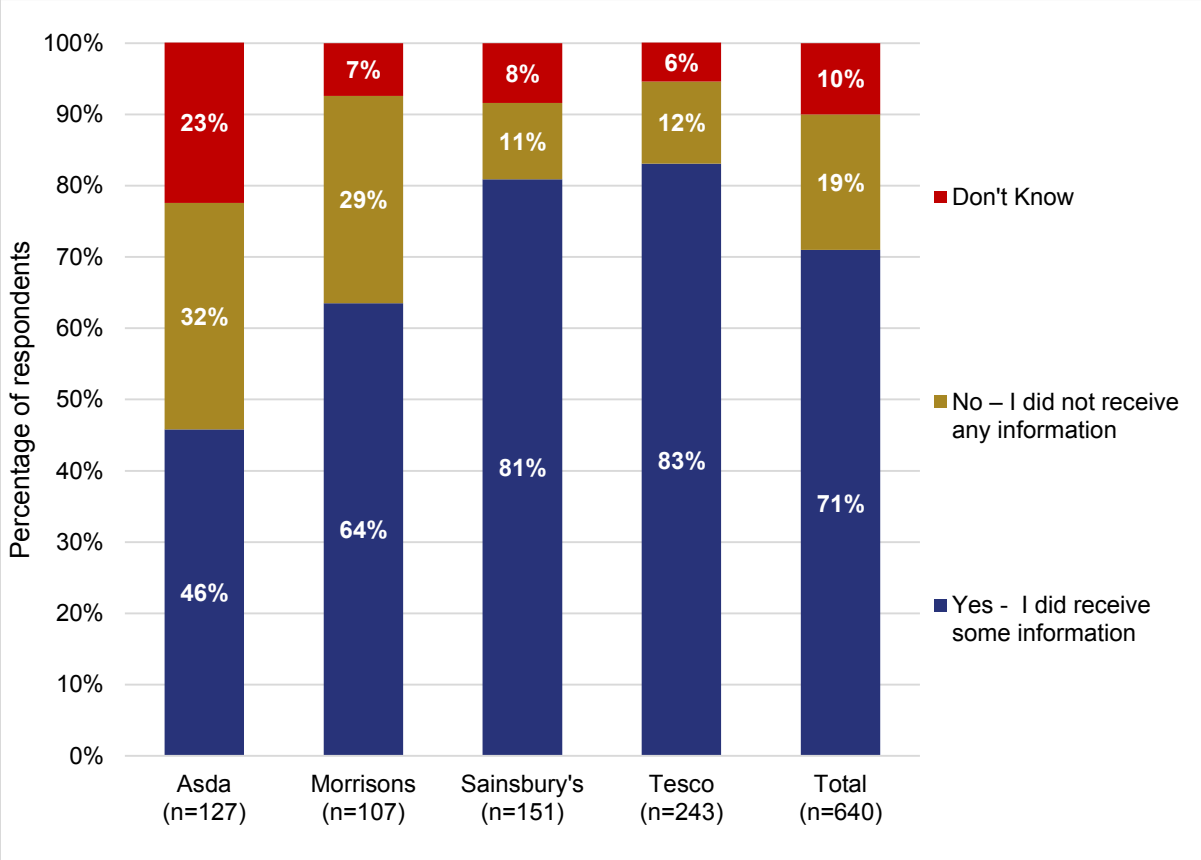
E.20. Further, when looking across the price matching supermarkets,[102] see Table E6, it can be seen that:[103]

- those who shopped at Asda were significantly more likely to respond 'don't know' when compared to those who shopped at Morrisons, Sainsbury's and Tesco; and

[101] Two questions were necessary for this due to the different ways in which supermarkets provide this information. For example, Tesco and Sainsbury's provide information via a voucher provided at the till, while shoppers at Asda have to input information from their receipt into a website to find out their results. To allow us to account for both methods question 15 of the survey asked: 'Thinking still about the last time you did your planned shop at [planned shop supermarket], did the supermarket give you information, eg a voucher or till receipt, which told you whether your shopping basket/trolley was cheaper or more expensive than at a different supermarket?' While question 16 asked: 'And were you told where to find out this information?'
[102] Note that Waitrose has been excluded from this analysis due to an insufficient sample size.
[103] To check whether the length of recall time (and therefore memory) has any impact on the results of these questions responses were analysed both for all respondents who answered the questions irrespective of when their last planned shop for more than few items occurred and for those whose last planned shop was within the last 7 days. This analysis did not indicate that there were any differences between the results. Therefore the results presented at Figure E6 are based on all planned shops irrespective of when they occurred.

- those who shopped at Asda were significantly more likely to respond 'no' when compared to those who shopped at Sainsbury's and Tesco.

Figure E6: Price matching information by supermarket



Source: CMA's analysis of TNS dataset.
Notes:
1. Question 15: 'Thinking still about the last time you did your planned shop at [planned shop supermarket], did the supermarket give you information, eg a voucher or till receipt, which told you whether your shopping basket/trolley was cheaper or more expensive than at a different supermarket?'
2. Question 16: 'And were you told where to find out this information?'
3. Base: All who knew if their supermarket had a price matching scheme excluding those whose planned shop supermarket does not have a price matching scheme.
4. The results for Waitrose have not been reported individually due to an insufficient sample size.

Awareness of price matching results

E.21. The CMA wanted to understand the extent to which consumers were conscious of receiving a message from the price matching scheme that their shopping had been cheaper than it would have been at another supermarket (or supermarkets). To help gauge the strength of customers' perceptions we asked if respondents could recall whether shopping was more or less than £1 cheaper/more expensive.[104]

[104] To do this question 17 of the survey asked: 'And do you remember whether your shopping was cheaper or more expensive in comparison?'

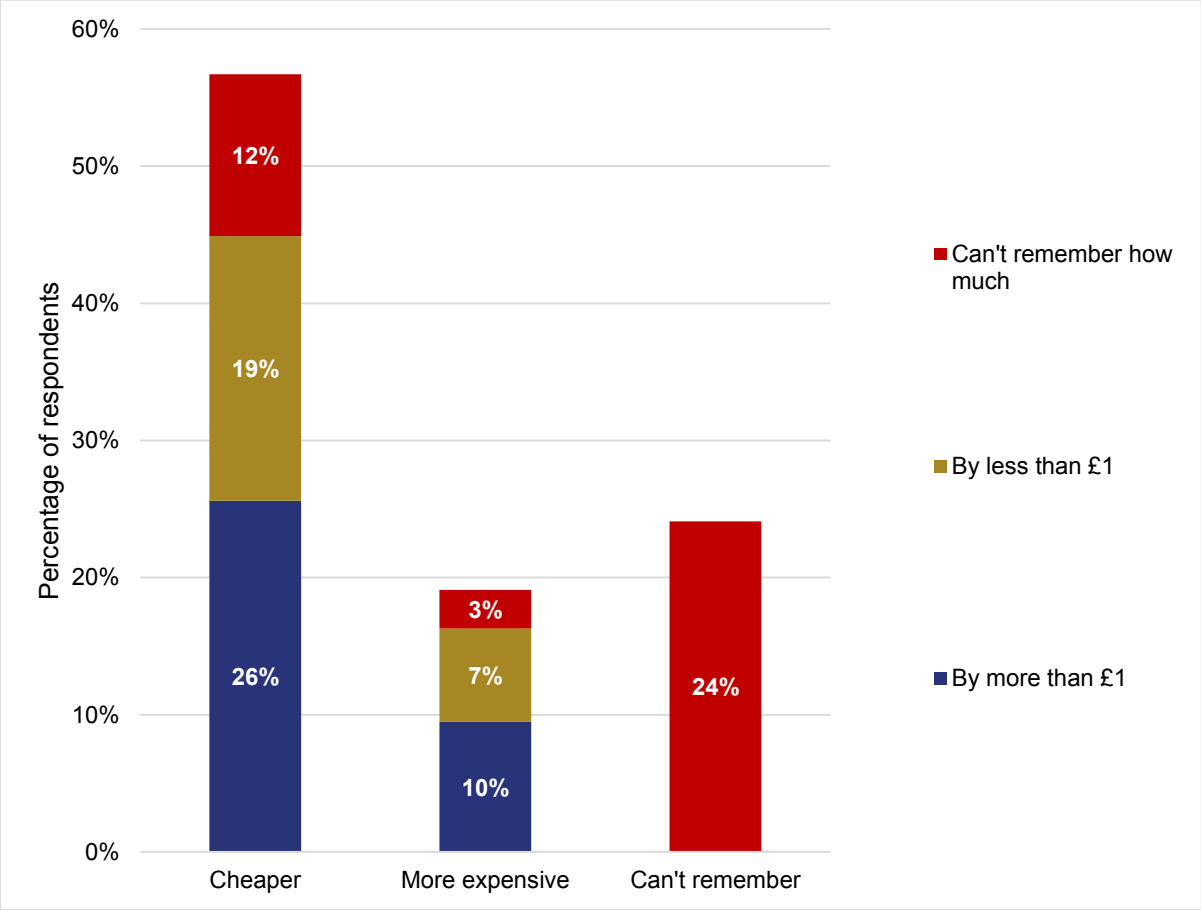
E.22. Figure E7 sets out respondents' recall[105] in particular, it can be seen that a just over a half (57%) thought they were told their shopping was cheaper. In addition, it can be seen that:[106]

- about a quarter of respondents (24%) cannot remember whether their shop was more expensive or cheaper;
- 15% believe that their shopping was cheaper or more expensive but cannot remember by how much; and
- the remaining 61% of respondents believed they could remember by roughly how much their shop was more expensive or cheaper.

E.23. However, it is important to note these results should be treated with caution as this result is only for the segment of respondents who remembered receiving this information. For example, respondents may be basing their response to this question on their perceptions of the relative pricing across price matching supermarkets (see below), rather than the actual information provided. Alternatively, respondents may want to sound knowledgeable such that the results for 'don't know' may be understated.

[105] There were no significant differences across supermarkets therefore these results are not presented here.
[106] As with questions 15 and 16 responses were analysed both for all respondents who answered the question irrespective of when their last planned shop for more than few items occurred and for those whose last planned shop was within the last 7 days. This analysis did not indicate that there were any differences between the results although, due to the sample sizes significance testing is not possible for all results. Therefore the results presented at Figure E7 below are based on all planned shops irrespective of when they occurred.

Figure E7: Recall of price matching results



Source: CMA's analysis of TNS dataset.
Notes:
1. Question 17: 'And do you remember whether your shopping was cheaper or more expensive in comparison?'
2. Base: All who were given or told where to get a price matching receipt excluding those whose planned shop supermarket does not have a price matching scheme (n=456).

Role in choice

E.24. The CMA wanted to understand what factors are important in a consumer's choice of planned shop supermarket and, in particular, the importance of price matching schemes in consumer choice. To do this the survey included two questions, one to elicit the factors identified by shoppers when unprompted[107] and one which asked about the importance of a number of key factors.[108]

[107] To do this question 9 of the survey asked: 'Still thinking about the last time you did a planned shop for more than a few items, was there anything in particular that prompted you to visit [planned shop supermarket] on that occasion?'
[108] To do this question 10 of the survey asked: 'Thinking still about the last time you did a planned shop for more than a few items, how important would you say each of the following were in your choice of shopping at [planned shop supermarket] rather than another supermarket that you could have used?' Respondents were asked to rank the importance of ten factors in their choice of planned shop supermarket on a five point scale which ranged from 'very important' to 'not at all important'.

The importance of price matching schemes

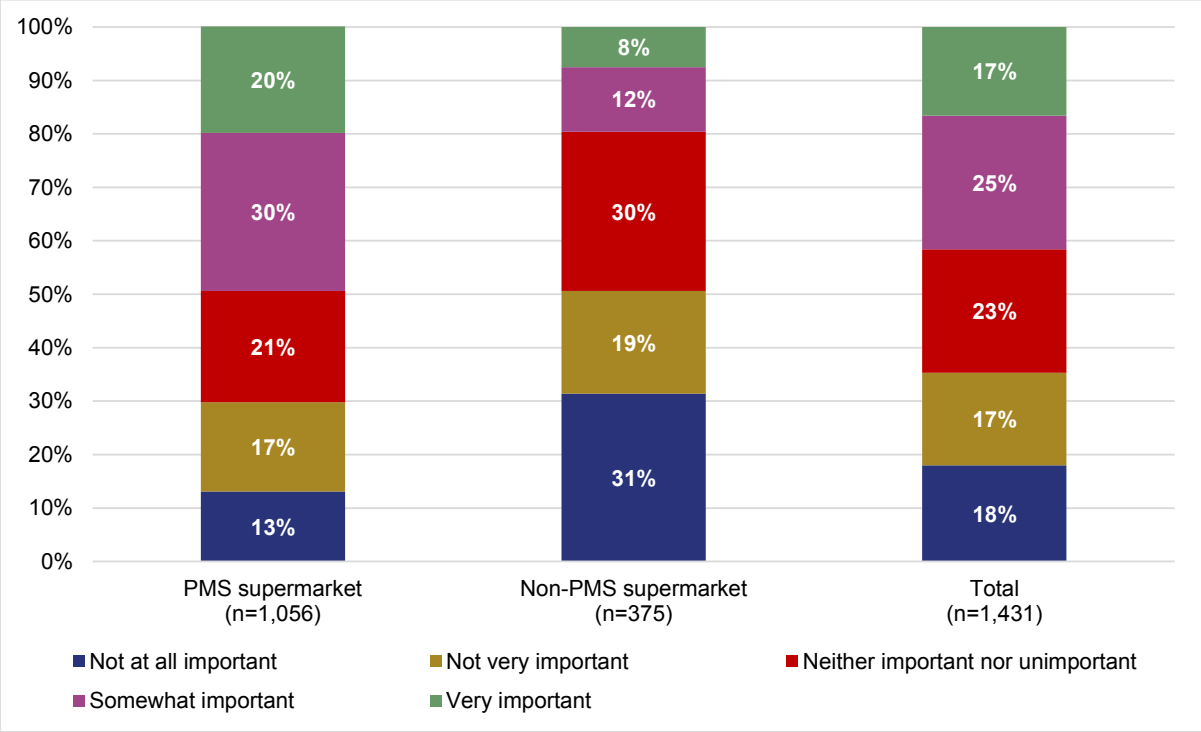
E.25. Price matching schemes were very rarely (only 2% of respondents) mentioned unprompted as a determining factor in choice of supermarket, which was about as often as the ability to purchase 'cigarettes/lottery' (1%) and that 'others wouldn't stock what I wanted' (2%). Further, those whose planned shop was at a price matching supermarket were no more likely to mention price matching schemes than those whose planned shop was at a non-price matching supermarket. The factors mentioned by respondents are discussed in more detail below (see paragraphs E.28 to E.30).

E.26. Even when prompted, see Figure E8, price matching schemes are only seen as 'very important' by a minority of respondents, with only 17% stating that it was an important factor. About the same proportion as said that being able to 'buy petrol' (15%) and that 'other stores don't stock what I wanted to buy' (14%) were very important. However, those whose planned shop was at a price matching supermarket were more likely to cite price matching schemes as 'very important' (20% for price matching supermarkets compared to 8% for non-price matching supermarkets). Finally the presence of a price matching scheme was cited as 'not at all important' by 18% of respondents, which was the same proportion as for ease of parking (18%).

E.27. Therefore, overall, price matching schemes do not appear to be an important factor in a consumer's choice of supermarket.[109]

[109] Note that while there were significant differences in response to question 9 and question 10, dependent on whether the respondents planned shop supermarket had a price matching scheme or not, these differences are unlikely to be driven by the presence of a price matching scheme. Instead these differences are likely to be due to the fact that supermarkets with price matching schemes are larger chain supermarkets. For example, in response to both question 9 and question 10 respondents whose planned shop supermarket had a price matching scheme were more likely to cite loyalty cards. This is likely to be driven by the fact that larger chain supermarkets who have price matching schemes are more likely to have loyalty cards than those supermarkets who do not employ price matching schemes. Therefore these results are not discussed.

Figure E8: Prompted importance of price matching schemes



Source: CMA's analysis of TNS dataset.
Notes:
1. Question 10: 'Thinking still about the last time you did a planned shop for more than a few items, how important would you say each of the following were in your choice of shopping at [planned shop supermarket] rather than another supermarket that you could have used?'
2. Base: All who had visited a supermarket in the last 7 days excluding those whose planned shop supermarket was listed as 'Don't know'.
3. Figure only includes results for 'they have a price matching scheme'.

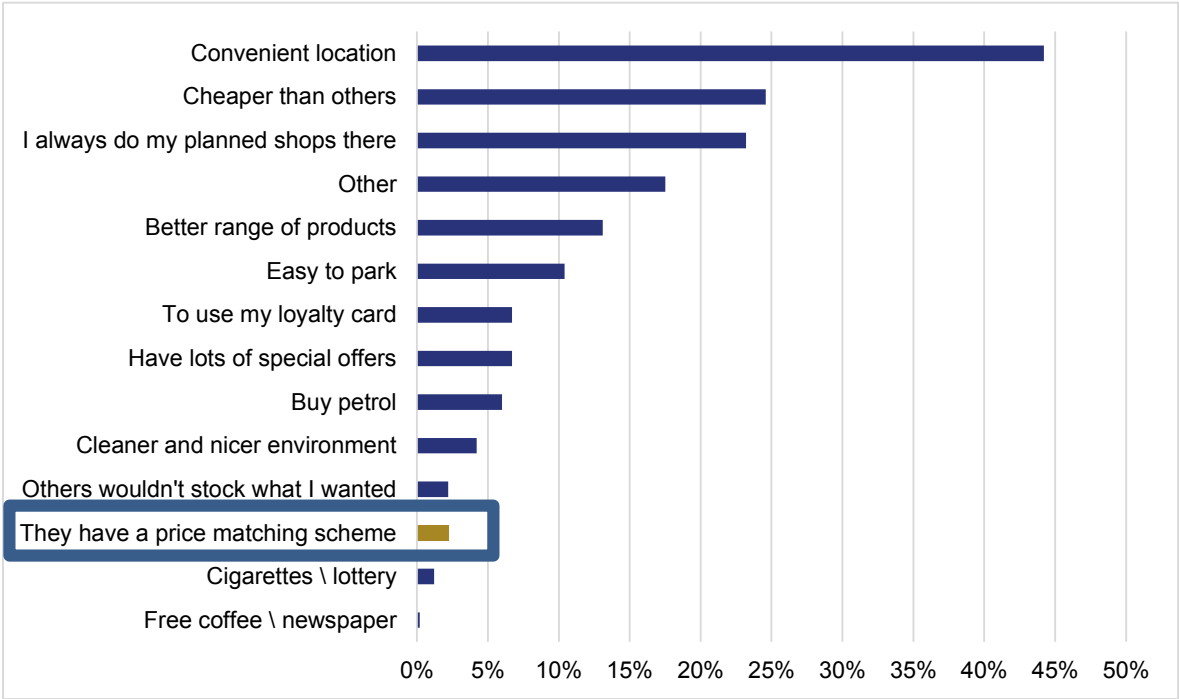
Factors in consumer choice

E.28. Figure E9 sets out the unprompted factors respondents cited as determining choice of planned shop supermarket. As can be seen:

- the factors cited most as the determining factors in consumers' choice of planned shop supermarket were convenience (44%), perceived cheapness (25%) and habit (23%); and

- special offers were cited as a determining factor in consumer choice of planned shop supermarket by 7% of respondents which was about as much as loyalty cards (7%) and petrol (6%), but less than having a 'better range of products' (13%) and ease of parking (10%).

Figure E9: Unprompted importance



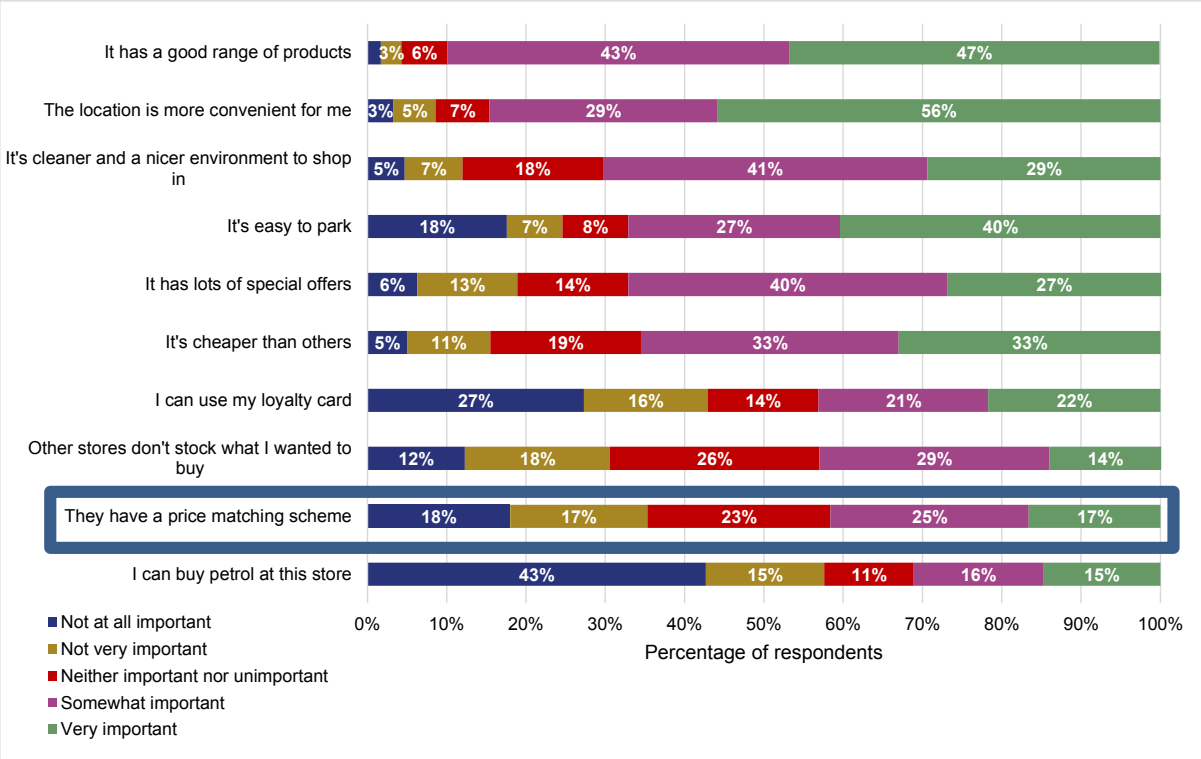
Source: CMA's analysis of TNS dataset.
Notes:
1. Question 9: 'Still thinking about the last time you did a planned shop for more than a few items, was there anything in particular that prompted you to visit [planned shop supermarket] on that occasion?'
2. Base: All who had visited a supermarket in the last 7 days excluding those whose planned shop supermarket was listed as 'Don't know' (n=1,431).

E.29. Similarly, Figure E10 sets out the importance, when prompted, of various factors in a consumer's choice of planned shop supermarket. As can be seen:

- when looking at the 'very important' responses:
  - the factors cited most as being 'very important' were convenience (56%), having 'a good range of products' (47%) and ease of parking (40%); and
  - special offers were cited as 'very important' by 27% of respondents which was about as often as being a nice environment to shop in (29%) and loyalty cards (22%), but less than perceived cheapness (33%); and
- when looking at the 'not at all important' responses:
  - The factors cited most as being 'not at all important' were ability to purchase petrol (43%) and availability of loyalty cards (27%); and
  - special offers were cited as 'not at all important' by 6% of respondents which was less than that 'other stores don't stock what I wanted to buy' (12%) and about as often as being a nice environment to shop in

(5%), convenience (3%), perceived cheapness (5%) and having a good range (2%).

Figure E10: Prompted importance



Source: CMA's analysis of TNS dataset.
Notes:
1. Question 9: 'Thinking still about the last time you did a planned shop for more than a few items, how important would you say each of the following were in your choice of shopping at [planned shop supermarket] rather than another supermarket that you could have used?'
2. Base: All who had visited a supermarket in the last 7 days excluding those whose planned shop supermarket was listed as 'Don't know' (n=1,431).

E.30. Therefore the responses, both unprompted and prompted, indicate that a consumer's choice of supermarket is more likely to be determined by whether the supermarket is conveniently located. Further, it is notable that while ability to purchase petrol and availability of loyalty cards were important enough to be cited unprompted by some people, they are more likely than other factors to play no role in choice of supermarket for others.

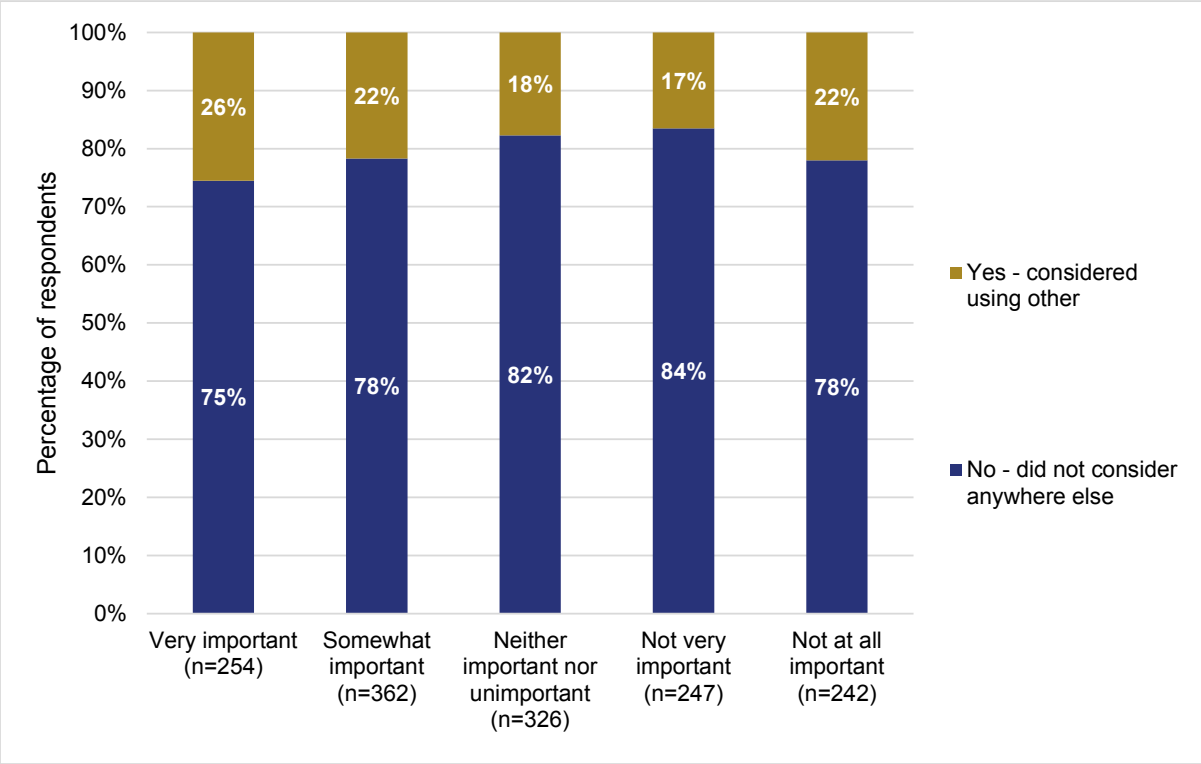
Price matching and consideration of alternatives

E.31. The CMA wanted to understand whether consumers who, when prompted, cited price matching schemes as important, were less likely to consider alternatives supermarkets for their planned shop.[110] Figure E11 sets out the percentage of respondents who considered alternatives based on the relative

[110] To do this question 7 of the survey asked: 'When you last did a planned shop for more than a few items, did you consider going to any other shop on that occasion or not?'

importance of price matching schemes. As can be seen the relative importance of a price matching scheme was not associated with significant differences in whether people considered alternative supermarkets.

Figure E11: Consideration of alternatives by reported importance of price matching schemes



Source: CMA's analysis of TNS dataset.
Notes:
1. Question 7: 'When you last did a planned shop for more than a few items, did you consider going to any other shop on that occasion or not?'
2. Base: All who had visited a supermarket in the last 7 days excluding those whose planned shop supermarket was listed as 'Don't know' (n=1,431).

Price matching schemes and perceptions of relative prices

E.32. The CMA wanted to understand consumers' beliefs about relative pricing between their planned shop supermarket and the five price matching supermarkets[111] and, in particular, the basis for these beliefs.[112] To assess this respondents were assigned a 'price matching comparator' from Asda, Morrisons, Sainsbury's, Tesco or Waitrose, which was, where possible, either:

[111] To do this question 11 of the survey asked: 'Thinking about the basket or trolley of shopping you bought at [planned shop supermarket], do you think it would have been cheaper or more expensive if you had gone to [price matching comparator]?'
[112] To do this question 12 of the survey asked: 'What makes you think the price would have been cheaper/more expensive/about the same at [planned shop supermarket]?'

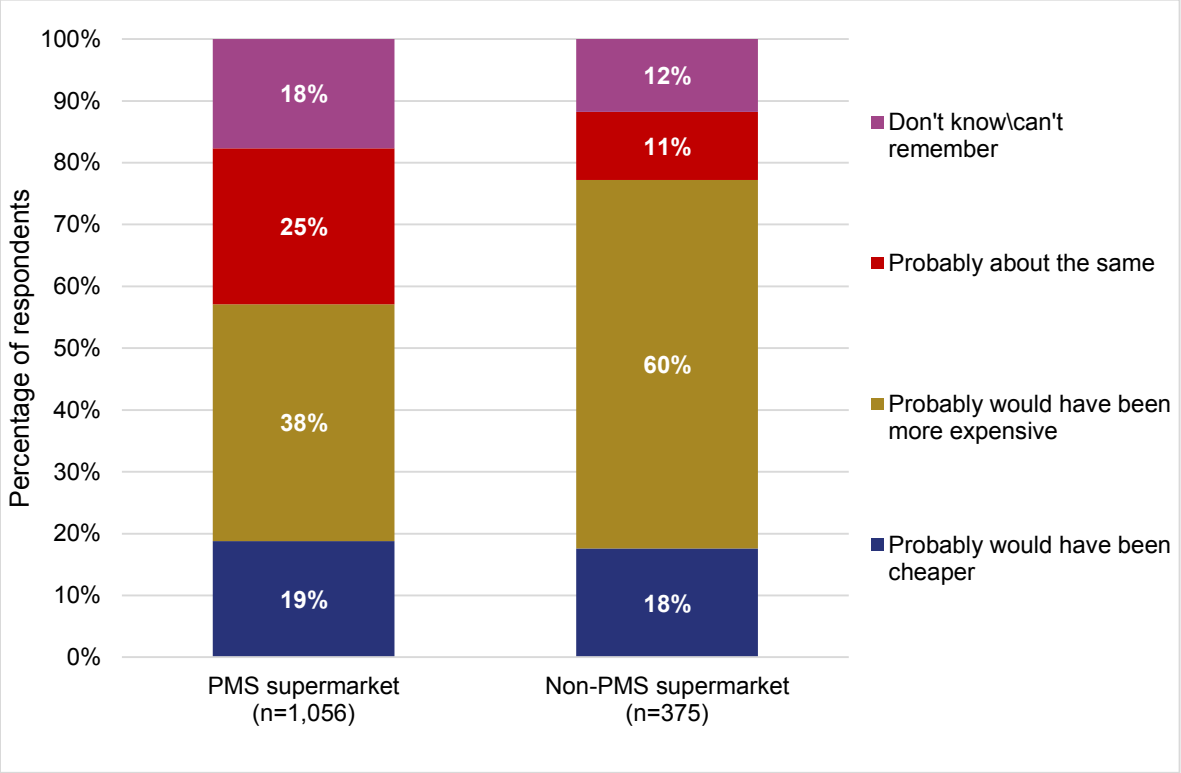
- a price matching supermarket they had considered as an alternative to their last planned shop supermarket;[113] or
- a price matching supermarket that they had visited in the last 7 days.[114]

If they had not considered or visited any other price matching supermarket then one of the price matching supermarkets was assigned at random.[115]

E.33. In doing this the CMA found that overall many respondents (44%) outlined that they believed that their shop would have been more expensive at a comparator price matching supermarket, see Figure E12. Further, those whose planned shop was at a price matching supermarket were less likely (38% vs 60%) to say it 'probably would have been more expensive' and more likely (25% vs 11%) to say it was 'probably about the same'.[116]

[113] This was based on Question 8: 'Which of these shops, if any, did you consider when you did a planned shop for more than a few items?'
[114] This was based on Question 1A: 'Which, if any, of these shops have you personally visited and bought something from in the [last 7 days]?'
[115] Overall this led to 764 respondents whose comparator supermarket was 'non-random' as it was based on an alternative supermarket they had considered or a supermarket that they had visited in the last 7 days and 729 respondents whose comparator supermarket was 'random' as it was randomly assigned by the interviewer.
[116] When the results for question 11 were analysed based on which supermarket the respondent used for their last planned shop for more than a few items it was found that: (i) those whose planned shop was at Asda (54%), when compared to those whose planned shop was at Morrisons (38%), Sainsbury's (25%) or Tesco (37%), were significantly more likely to think that their shop 'probably would have been more expensive' at the comparator price matching supermarket; and (ii) those whose planned shop was at Aldi (79%), when compared to those whose planned shop was at any of the Big Four supermarkets, were significantly more likely to think that their shop 'probably would have been more expensive' at the comparator price matching supermarket. Note that the results for Waitrose were excluded from this analysis due to an insufficient sample size.

Figure E12: Relative pricing perceptions



Source: CMA's analysis of TNS dataset.
Notes:
Question 11: 'Thinking about the basket or trolley of shopping you bought at [planned shop supermarket], do you think it would have been cheaper or more expensive if you had gone to [price matching comparator]?'
Base: All who had visited a supermarket in the last 7 days excluding those whose planned shop supermarket was listed as 'Don't know'.

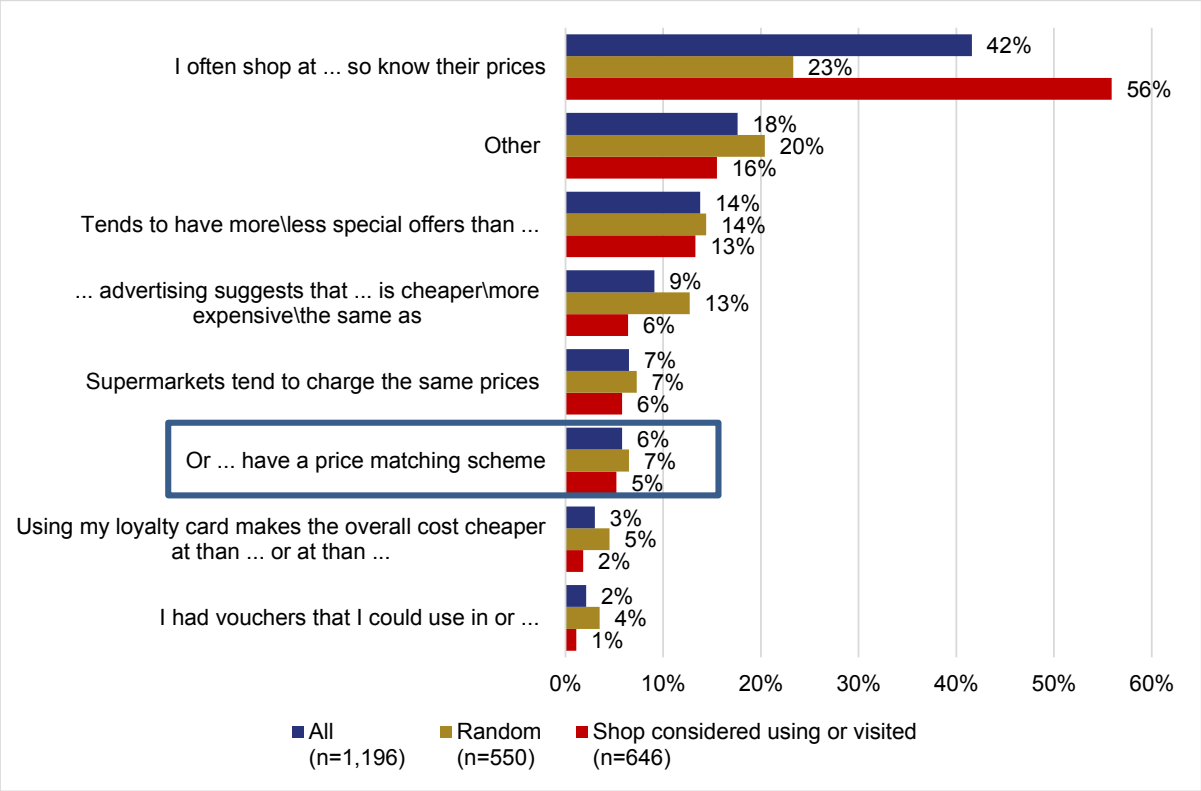
E.34. These results are consistent with a price matching scheme influencing consumer perceptions of relative prices. However, these results are also consistent with other possible explanations. For example, roughly half of respondents were matched to a comparator supermarket that they had considered or visited in the last 7 days.

E.35. Figure E13 sets out the unprompted reasons given by respondents for their perceptions regarding relative prices between supermarkets. Figure E13 presents the results for all respondents and the results separately based on whether the respondent had considered or visited the comparator supermarket in the last 7 days.

E.36. Respondents rarely, unprompted, cited price matching schemes (6%) or a belief that supermarkets tend to charge the same prices (7%) as the basis of their perceptions. As would be expected a respondent was significantly more likely to cite a price matching scheme if their planned shop was at a price matching supermarket. In addition, those who believed that their shop would have been 'about the same' at the comparator supermarket were more likely to cite price matching schemes than those who believed that their shop would have been 'cheaper' or 'more expensive'.

E.37. Finally, there is no significant difference in the extent to which price matching schemes were cited based on whether the respondent had considered or visited the comparator supermarket in the last 7 days. This is surprising as one might expect that those who had considered or visited the comparator supermarket in the last 7 days would be more aware of that supermarket's price matching scheme. Consequently, one might expect this increased awareness to feed into the respondents perceptions regarding relative prices such that price matching schemes would be cited more often by those who had considered or visited the comparator supermarket in the last 7 days.

Figure E13: Basis for relative pricing perceptions



Source: CMA's analysis of TNS dataset.
Notes:
1. Question 12: 'What makes you think the price would have been cheaper/more expensive/about the same at [planned shop supermarket]?'
2. Base: All who had visited a supermarket in the last 7 days excluding those whose planned shop supermarket was listed as 'Don't know' and those who responded 'don't know/can't remember' to question 11.