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From: Gordon Ashworth
Director of Consumer Policy

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Dear Mr Livermore,

Review of the Pricing Practices Guide – Call for Evidence

The Competition and Markets Authority (CMA) welcomes the opportunity to input into TSI's Call for Evidence on the review of the Pricing Practices Guide (PPG). Enclosed with this letter is the response of the CMA.

The CMA

The CMA is a non-ministerial Government department which works to promote competition both within and outside the UK, for the benefit of consumers. The CMA's aim is to make markets work well for consumers, businesses and the economy.

The CMA was established under the Enterprise and Regulatory Reform Act 2013 and came into being in October 2013. It took on its full powers and responsibilities, such as competition law enforcement, market studies and investigations, and merger control, on 1 April 2014.

One of the CMA's five strategic goals is refocusing consumer protection: working with its partners to promote compliance and understanding of the law, and empowering consumers to make informed choices.¹

¹ More information on the CMA's strategic goals, its role and its functions can be found here: www.gov.uk/government/organisations/competition-and-markets-authority/about.

The CMA fully supports the TSI's objectives in conducting the review, as set out on page 19 of its Call for Evidence document:

It is important that consumers are not misled about the price of products and that traders are provided with clear and useful guidance to assist them in making their offers and promotions lawful and transparent. We are therefore calling for evidence to help us determine whether the current PPG should be changed.

The role of guidance

Guidance can be a key tool in driving compliance, but in order to do this it needs to be clear and correct in law, encapsulating the purpose and spirit of the underlying legislation. With principles-based legislation such as the Consumer Protection from Unfair Trading Regulations 2008 (CPRs), it may not be possible to demarcate the boundary of the law with absolute predictability and certainty. The CPRs require interpretation and practical application by traders. From both the trader's and the enforcer's perspective, this requires a different approach from guidance that seeks to present hard and fast rules which work for any given scenario. Guidance cannot give traders reassurance that their activities are compliant when they are not. This wastes business time and resources, threatens consumer welfare and raises obstacles to effective enforcement of the law.

The CMA's response

The enclosed response is primarily drawn from the experience of the Office of Fair Trading (OFT), which closed on 31 March 2014. Through the enforcement activity it undertook, and the market studies and research it conducted, the OFT developed a detailed understanding of pricing practices and how they can affect consumer behaviour.

The response focuses on four main areas where review of the PPG would, in our view, be most likely to improve its effectiveness. We ask whether the current PPG:

- properly encourages self-assessment and risk awareness by traders
- puts sufficient focus on the consumer and the consumer's expectations
- adopts an approach to disclaimers and explanatory text that is in line with the substantive requirements of the CPRs
- does enough to protect against selective interpretation of the guidance by some traders

In addition, the response suggests a three-tier structure for a revised PPG which begins with the general principles embodied in the CPRs, moves to a discussion of specific pricing practices (including non-exhaustive sets of relevant factors or

considerations), and then provides a number of 'good' and 'bad' examples of each practice.

This review is a significant undertaking, but one which can make a real difference for consumers. By repositioning the PPG to reflect the essential consumer focus of the CPRs, this review has the potential to drive behavioural change and wider compliance for the benefit of consumers and fair-competing businesses alike.

The CMA is keen to assist the TSI in its review and looks forward to participating further in the work that follows this Call for Evidence.

Yours sincerely,

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