



Department
for Business
Innovation & Skills

**PRICING PRACTICES IN THE
GROCERIES MARKET**

Government response to the
Competition and Markets
Authority's report and
recommendations on the
super-complaint made by
Which?

OCTOBER 2015

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Government Response to the Competition and Markets Authority's (CMA) report and recommendations¹ concerning the Which? Super-complaint on Pricing Practices in the Groceries Market

Government welcomes this comprehensive and independent report published by the CMA on 16 July into the Which? super-complaint alleging pricing malpractice in the groceries sector. Government takes the findings and recommendations of the CMA's report seriously.

Government is pleased to see the CMA do not consider there to be a systemic problem in the groceries market in how retailers present prices, concluding that problems are not occurring in large numbers across the whole sector and that generally retailers are taking compliance with legislation seriously to avoid such problems occurring. The CMA did, however, identify examples of particular pricing and promotional practices which had the potential to mislead or confuse consumers, and we welcome the CMA's commitment to take further action with the businesses concerned to address these issues and secure any changes necessary.

The CMA also found that more could be done to reduce the complexity in unit pricing to make it a more useful comparison tool for consumers.

In addition to the direct action that the CMA itself proposes to take following the super-complaint, the CMA made 6 recommendations in their report. The first is directed at the Chartered Trading Standards Institute (CTSI), currently reviewing the Pricing Practices Guide (PPG) on behalf of the Department for Business Innovation and Skills (BIS). The second recommends BIS produce best practice guidance to support legibility. The third recommendation is for BIS to continue to review Schedule 1 to the Price Marking Order 2004 (PMO) but with a focus on ways to clarify and simplify the list of 34 product categories in the Schedule. The product categories, which are broadly defined in the Schedule, can be unit priced per the 100 or 10 grams or millilitres instead of the standard kilogram or litre, which leads to inconsistencies in giving the unit price.

CMA also recommends that BIS review the legislative requirements of Article 9 of the PMO on promotions. Recommendation 5 makes recommendations to Which? and consumer bodies and their important role in educating the consumer on unit pricing and its value. The final recommendation - Recommendation 6 - is directed at retailers and recommends that they ensure that all information on their price match schemes on-line and in store is as clear and transparent as possible.

We have been considering CMA's findings and recommendations carefully and discussed these with our Expert Working Group on unit pricing.

We welcome and support these recommendations. Our aim now is to act upon these in the context of the analysis. This response addresses our actions against recommendations which directly concern BIS or in which BIS can play a part. Actions are set out below.

¹ <https://www.gov.uk/cma-cases/groceries-pricing-super-complaint>

We also welcome CMA's plans to continue working with businesses and government to improve pricing and promotional practices in the groceries sector. In addressing the recommendations we will also continue to work closely with Which? CTSI, retailers and supermarkets, including through our Expert Working Group, and welcome continued input from the CMA.

Government Response to the CMA

In relation to special offers

Recommendation 1:

"CMA recommends that the Chartered Trading Standards Institute (CTSI) clarifies how the legislation applies to certain promotional practices. This includes bringing together the requirements of the existing PPG and the OFT Principles into a revised set of guidance as to the likely application of the Consumer Protection from Unfair Trading Regulations (CPRs). In doing so, we recommend they give particular consideration to:-

- (a) clarifying the features of a genuine retail price and set out whether, and in what circumstances:
 - (i) promotional practices can be run sequentially and use a reference price 'established' in a previous volume promotion
 - (ii) an earlier reference price frame ('was' price) can be used after the price of the product has already been lowered for a period (so the reference price does not refer to the last applicable price)
 - (iii) a reference price promotion that involves two consecutive stages of promotional pricing can be used, where the second stage affords a less generous discount than the first stage. For example, a product is involved in a 'half price, now £4.50' and then a '1/3 off, now £6' promotion
 - (iv) out of season prices can be used as reference prices for seasonal products, and
 - (v) businesses can use a reference price when they have not sold a product at that price in the store where the discount is applied.
- (b) setting out good practice in relation to whether, and in what circumstances, it is appropriate and not misleading for the prices of individual products to change before and during a volume promotion.
- (c) clarifying the circumstances in which stating an end date for promotions would be appropriate and the specific application of this to online purchases where consumers may not pay the price they expect when the promotion ends between the consumer ordering the goods and them being delivered."

- CTSI is undertaking a significant review of the Pricing Practices Guide on behalf of BIS. Both CTSI and BIS agree with this recommendation. Following the submission of the Which? 'super-complaint' and the CMA's response, CTSI has re-worked their draft of the PPG to ensure that all of the CMA recommendations are considered in their draft. As part of CTSI's remit of delivering most aspects of business education under the authority of the Consumer Protection Partnership, CTSI has developed a new Pricing Practices Guide to focus on the principles of relevant laws, particularly The Consumer Protection from Unfair Trading Regulations (CPRs). The draft PPG includes a greater emphasis on businesses' assessment of the fairness of the pricing practice and its overall effect, or potential effect, on consumers. These principles are illustrated by good and bad examples taking after the OFT's supermarket promotion principles. The examples do not aim to be prescriptive, nor would they create any safe harbours.
- **A copy of the draft Pricing Practices Guide is launched for consultation today. We encourage all interested parties to respond to this consultation on this key guidance document. CTSI has asked for responses by 5th January 2016.**

In relation to unit pricing

Recommendation 2: - Legibility

"The CMA recommends that BIS produces best practice guidelines on the legibility of unit pricing information, to provide greater clarity about the requirements of the PMO in this regard. This would help TSS and Primary Authorities assess compliance. We also recommend that retailers introduce any resulting changes to labelling as soon as practicable."

- We welcome the steps already taken by supermarkets to date to improve the visibility of the shelf edge labels in response to the challenges set by Which? and BIS in 2013. CMA notes in their findings that retailers appear to be attempting to comply with the legislation that requires that traders display a unit price in a way which is unambiguous, easily identifiable and clearly legible. But as this is not prescriptive and in the absence of guidance and case law it can lead to differing interpretations.
- We accept this recommendation and will work with the Expert Working Group or a sub group of members to consider legibility issues and will consider best practice guidance in the context of the work already undertaken by retailers. We are currently liaising with the Royal National Institute of Blind People (RNIB) and have invited them to join the Expert Working Group.
- Although not asked by the CMA, BIS commits to update the general overall guidance on the Price Marking Order and to incorporate within the text the best practice guidance on legibility developed with the Expert Working Group as described above.

- BIS will action the legibility aspect of PMO guidance in spring 2016 after the consultation on the Schedule 1 to the PMO has been concluded and after gathering further evidence on the legislation in respect of Article 9.

Recommendation 3: Schedule 1 to the PMO 2004

“CMA recommends that BIS continues its review, with the Expert Working Group, of Schedule 1 to the PMO, but changes the focus to give particular consideration to:

- (a) Ways to clarify and simplify the requirements, considering evidence about the advantages and disadvantages of simpler and more future-proofed approaches, with fewer exceptions, used in other countries, and
- (b) What further research, building on the findings from our qualitative research, is needed into how consumers use unit prices to ensure the requirements help as many people as possible to use them in their decision- making”

- We accept this recommendation and have continued to review Schedule 1 to the PMO with particular focus on ways to both clarify and simplify the requirements.
- The Expert Working Group has in the last 12 months been looking at ways to develop guidance to provide clarity on the product categories in the Schedule. These categories are particularly broad and open to interpretation and hence confusion. This work stream was put on hold when Which? submitted their super-complaint to the CMA. In light of the CMA's investigation and report we now consider a public consultation, later in the autumn on proposals to support clarification and simplification, is the best way forward. This will give the wider retail sector the opportunity to give their views. The Expert Working Group continues to give their support to reaching a successful solution. At a meeting of the Group in August members acknowledged that the product categories were out of date and not future-proof and could see arguments for simplicity as well as clarity.

Consultation proposals will include repeal of the Schedule, amending the Schedule to retain only a very small number of product categories e.g. those of low weight, as exemptions to the standard kilogram and litre in the EU Price Indications Directive (98/6) and a proposal to continue with guidance alone with no legislative change. A key objective of the consultation exercise is importantly to seek evidence and clarity on the costs and benefits of the proposals. During the consultation we will seek to establish customer preference for the quantity against which a unit price is displayed.

Recommendation 4: Article 9 of the PMO

“To encourage a more consistent use of unit pricing for products on promotion, the CMA recommends that BIS considers reviewing and clarifying the legal requirements set out in

Article 9 of the PMO, and the associated guidance. This should be done with particular reference to the requirements of the CPRs and the ongoing review of the PPG.”

- BIS acknowledges the potential for Article 9 of the PMO and current guidance issued by the then DTI to create inconsistencies as to when and how to give a unit price for goods on promotions. Article 9 results from the UK making use of a derogation in the EU Price Indications Directive. This Directive pre-dates other EU legislation on consumer protection, notably the Unfair Commercial Practices Directive (implemented by the CPRs) and the interaction between the differing requirements of this legislation should be explored further.

BIS has spoken to CTSI about including in the Pricing Practices Guide information on volume offers and how to give a unit price on simple promotions.

- BIS is in discussion with the CMA on the legal basis of Article 9 and its interplay with the CPRs. In the short term BIS wishes to gather evidence of how the retailers currently apply Article 9 and how they currently apply a unit price on promotions and special offers. As part of this information gathering we are engaging with the Expert Working Group on unit pricing. BIS will consider what fuller analysis is needed and seek views from retailers as part of the consultation and will consider policy options.

Recommendation 5: Educating the consumer

The CMA recommends that Which? and other consumer representative organisations consider whether there is a further role they can play in consumer education on the effective use of unit prices. Further, following any further work by BIS on our above recommendations, there will be a further need to educate consumers on any changes to unit pricing.

- BIS agrees that consumer education is very important and will support the steps by Which? and other consumer organisations to improve education, which we believe is key to consumers making better use of unit pricing and understanding its value as a price comparison tool. We believe improved education and awareness combined with improvements in consistency and legibility will support a successful solution to unit pricing.

In relation to price match schemes

Recommendation 6:

“The CMA recommends that retailers ensure the information they provide about their price match schemes is as clear and transparent as possible in terms and conditions, online FAQs and in store. In particular, consideration should be given to whether the information is sufficiently accessible and in plain English.”

- BIS agrees with this recommendation. In support of retailers' work in this area BIS will facilitate further discussion through the Expert Working Group.



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