Principles on food pricing display and promotional practices

The following principles are applicable to food and drink (alcoholic and non-alcoholic) produce, for human consumption off the retail premises (that is, not in-store catering).

Internal reference pricing

'Internal reference pricing' means those promotional communications (including advertisements, displays, shelf-edge labels, etc) which use a past selling price (implicitly or explicitly) to convey the fact that the current selling price is a value offer, for example through the use of such claims as 'was £3, now £2', 'half price', 'discount', 'reduction', etc.

1. Prices should never be artificially manipulated so that future planned discounts are made more attractive (for example, actively 'establishing' a higher price in order to advertise a later 'discount', where that later 'discount' price is in fact just the normal selling price of the product).

Good example	Bad example
A retailer reduces the price of the product below its genuine selling price for a limited period and accordingly promotes this as a special offer price reduction.	In order to advertise a discount, a retailer actively establishes a higher price by selling it in a limited number of stores with low prominence and with low expectations of sales, and then rolls the product out across all stores at a lower price and with an advertised discount. There would be particular concerns where this pattern of limited distribution/high price and roll-out/low price is repeated ('yo-yo pricing').
A retailer reduces the price of the product below its previous genuine selling price until stock is cleared,	In order to advertise a discount, a retailer actively establishes a higher price when the product is out-of-

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and accordingly promotes this as a clearance sale. In doing so, the retailer may reduce its price in order to generate sales where demand has been overestimated or where demand has fallen away (for example, when the sales season for a product has passed).	season and then lowers the price in time for the expected product demand. The seasonal product is thus advertised as being on offer from the outset and throughout its sales season.

2. Where a price has been marketed as a discount price for longer than the period of time for which the higher selling price was initially charged, retailers should generally consider that the value of the product is now established at the lower price and that it is no longer appropriate to continue to describe this as a discount. This principle can be described as the '1:1 ratio'. Where retailers depart from this principle, they should be prepared to justify this and explain why the extended discount price is not in fact a normal selling price.

Good example	Bad example
A retailer sells a product at £3 for one month and then reduces it to £2. The retailer removes its 'was £3, now £2' promotional stickers before the expiry of one month following the price reduction and continues to sell it at £2. (NB: Where this 1:1 ratio is not exceeded, the OFT is unlikely to be concerned with the length of time for which the higher price was initially charged.)	A retailer sells a product at £10 for one month and then reduces it to £5. The retailer uses a 'half price' promotional sticker for well over one month. There would be particular concerns where more stock of the product is being bought in to be sold as 'half price'.

3. References to previous selling prices should only be used where they give a relevant and meaningful basis for comparison.

Good example	Bad example
A retailer refers to previous selling prices that were last charged fewer than two months ago and therefore give genuine indications of the current value of products.	A retailer refers to previous selling prices that were last charged many months ago and therefore no longer give genuine indications of the current value of products.
A retailer only refers to the previous price charged in the same store unless there is good reason for referring to the price charged elsewhere (for example, because that store did not previously stock the product).	A retailer charges different prices in different stores (for example, £2 in Store A and £3 in Store B), and refers to the higher price in stores where that price was never charged (for example, 'Was £3, now £1.50' in Store A).
A retailer refers only to the immediate last selling price. (If a retailer wishes to display a sticker referring to series of reductions, such as 'was £2, was £1, now 75p', the retailer should remove this sticker before the product has been available at £1 or 75p cumulatively for longer than it was sold at £2).	A retailer refers to an historic higher price that was superseded by an intervening price lower than the current price.
A retailer refers to the previous selling price of the identical product.	The pack-size/volume of a product has been reduced and a retailer refers to the previous selling price of the product before the reduction in pack-size/volume.

Pre-printed value claims on packs

4. Where a retailer stocks items that carry best/better value claims on their packaging, those claims should be objectively accurate. There should exist no cheaper way of buying the same volume of the identical good in the same store. For example, if a retailer is running a BOGOF or multibuy offer on smaller packs then it must ensure that the unit price of any larger packs that claim to be best/better value is lower than the effective unit price of the smaller packs.

Important note on these principles

The principles contained in this document:

- build on the OFT's 2010 'Advertising of Prices' market study report[1]

- capture the OFT's view on what constitutes clear, meaningful and principled activity relating to the **advertising and promotion** of prices (and are not intended to inhibit the freedom of retailers to **set** prices as they wish), and

- correspond to the OFT's approach to the use of its enforcement powers under the Consumer Protection from Unfair Trading Regulations 2008 ('CPRs') in relation to certain pricing display and promotional practices.

While the OFT is not in a position to give definitive interpretations of the law, it is our view that certain actions (or the avoidance of other actions) by traders will make a breach of the CPRs less likely. To assist traders' understanding of our view, this document sets out some general principles regarding compliance with the CPRs and gives some good and bad examples in relation to the specific practice of internal reference pricing.

In general, it is the OFT's view that the risks of a consumer being misled and a trader breaching the CPRs are likely to be reduced by adherence of these

[1] See: www.oft.gov.uk/OFTwork/markets-work/advertising-prices, in particular Annexe D on the legal framework.

principles. However, it is important to note that whether a particular commercial practice is 'misleading' will depend on the factual context. Ultimately, only the courts can decide whether or not a commercial practice is unfair within the meaning of the CPRs.

In prioritising which promotional activity to take enforcement action against, the OFT will place reasonable weight on whether a trader's practices follow the principles set out in this document. Although a trader's practices would be considered on the particular facts of the case, it is unlikely that the OFT will commence an investigation or consider enforcement action where these principles have been followed.

As with any discussion of this nature, not all of the examples listed will be relevant to every trader, nor are these examples intended to be an exhaustive list of the factors that traders should consider. Nevertheless, these examples address specific points of concern that the OFT has around the use of internal reference pricing and, as such, should serve as a useful aid to traders seeking to understand the OFT's priorities in the context of the application of the CPRs.

The good examples given in this document should not be taken to represent 'best practice'. Traders are encouraged to work to a higher standard that benefits consumers beyond the minimum protection required by the CPRs.

This document should not be interpreted in any way, or form the basis for any conduct, which is inconsistent with the application of competition law.

Office of Fair Trading
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