

## **The CMA's follow-up work to the groceries pricing super-complaint**

This update gives an overview of the Competition and Markets Authority's (CMA) further work following its [response](#) to the Which? super-complaint concerning pricing and promotional practices in the groceries market (the Response).

### **Which? super-complaint and the CMA's response**

On 21 April 2015, [Which? submitted a super-complaint](#) to the CMA, which raised concerns about pricing and promotional practices in the groceries market across four issues – special offers, unit pricing, pack size changes and price matching schemes.

On 16 July 2015, the CMA published the Response. The CMA found that supermarkets generally have a good awareness of consumer law and take compliance seriously. However, it committed to work with supermarkets to ensure that 'was/now' offers (reference price promotions) and multi-buy deals (volume promotions) are genuine, so shoppers can see when they are getting a real discount and make informed shopping decisions.

### **The CMA's follow-up work**

Following the publication of the Response, the CMA has met with a number of supermarkets and asked them to work with their Trading Standards Services partners<sup>1</sup> to review their pricing and promotional practices. All of these supermarkets have engaged constructively with the CMA, which now expects them to review their practices and make any necessary changes to ensure consumers can be confident they are getting a good deal.

The CMA has had particular engagement with Asda in relation to specific areas of concern. While the CMA has not made any findings against Asda, Asda has given [a commitment](#) to the CMA that it will change the way it operates 'was/now' and multi-buy deals. The CMA welcomes Asda's commitment to change its promotional

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<sup>1</sup> Trading Standards Services partners carry out responsibilities in relation to a particular business. Businesses can choose to form a partnership with a local Trading Standards Services (known as a primary authority). The primary authority scheme is a statutory scheme, administered by the Better Regulation Delivery Office within the Department for Business, Innovation and Skills (BIS).

practices and strengthen its compliance controls. The revised business rules it is implementing will ensure that:

- ‘now’ prices will not be advertised for longer than the ‘was’ price applied, ensuring they are a meaningful comparison;
- multi-buy offers will represent better value than a single product before the offer; and
- multi-buy offers will not be immediately followed by ‘was/now’ promotions, so it will be easier for shoppers to tell what is a good offer.

Once implemented, these changes will give shoppers increased confidence that they are getting a genuine discount and help them to compare the discounted price with the previous higher price.

The CMA maintains its view, set out in the Response that the majority of promotions in the groceries market reflect the relevant legislation and guidance, and are underpinned by internal policies and systems that generally demonstrate a sound approach to compliance by grocery retailers.

The CMA has not made a finding on whether any grocery retailer’s pricing and promotional practices have breached consumer law.<sup>2</sup> Further, as recently [announced](#) in response to media speculation, the CMA has no intention (nor is it empowered) to ‘ban’ particular types of special offer, such as multi-buy offers.

## **CTSI’s review of the Pricing Practices Guide**

In the Response the CMA recommended that the Chartered Trading Standards Institute (CTSI) clarifies how consumer law applies to certain pricing and promotional practices during its review of the Pricing Practices Guide (PPG).

The CMA shared its detailed findings with the CTSI, including the extent to which grocery retailers appeared to be engaging in certain practices and the way in which they had interpreted the existing guidance. The CMA made a [submission](#) to the CTSI’s [consultation](#) on the revised draft PPG, in order to help ensure that the final PPG provides guidance on the practices raised in the Response.

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<sup>2</sup> The Consumer Protection from Unfair Trading Regulations 2008 (CPRs) contain a general prohibition against unfair commercial practices and specific prohibitions against misleading actions, misleading omissions and aggressive commercial practices. The CPRs are enforceable through the civil and criminal courts. The CMA is empowered under Part 8 of the Enterprise Act 2002 to investigate potential infringements of the CPRs, to accept undertakings from traders to change their trading practices and to bring matters to a civil court for a ruling. Only a court can conclude whether a particular practice infringes the law.

## **BIS's review of unit pricing legislation and guidance**

The CMA also recommended in the Response that the Department for Business, Innovation and Skills (BIS):

- produces a set of best practice guidelines on the legibility of unit pricing information;
- continue its review of the Price Marking Order 2004 to determine whether there is a case for simplifying the exceptions in Schedule 1 and clarifying the use of unit pricing for promotions; and
- consider developing consumer education on how unit pricing works to provide clear information that consumers can use to make purchasing decisions.

The CMA is pleased that [BIS has welcomed](#) the Response and has indicated that it intends to consult on potential reforms to the unit pricing legislation and guidance, in order to seek views from businesses and consumers on the possible alternatives for the presentation of unit pricing going forwards.

## **Advertising Standards Authority rulings**

The Advertising Standards Authority (ASA) has made rulings on issues similar to those raised in the super-complaint, particularly the advertising of special offers and price matching schemes.

As stated in the Response, the ASA plays an important role in regulating comparative advertising. The Response also highlighted the ASA's action against misleading advertising, and their engagement with retailers and their TSS partners.

## **Conclusion**

The CMA has acted on the recommendations it set out in the Response and undertaken follow-up work as planned.

**27 April 2016**