

PPG Review Team  
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From: Gaucho Rasmussen  
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Dear Sir or Madam

### **Consultation on the draft Pricing Practices Guide**

The Competition and Markets Authority (CMA) welcomes the opportunity to respond to the Chartered Trading Standards Institute's (CTSI) consultation on the draft Pricing Practices Guide (PPG). Set out below are the CMA's general comments on the draft revised PPG. The CMA supports the approach taken by the CTSI, in particular the emphasis on self-assessment by businesses and the avoidance of prescriptive guidance.

The PPG is an important tool used by businesses of all sizes when developing and/or considering pricing promotions and the advertising of prices. The PPG should aim to offer clear and accurate guidance to assist the interpretation of the relevant principles-based legislation by fair dealing businesses, consumers and enforcers.

However, it is important, that the purpose and limitations of the document are understood. As the CTSI have acknowledged, while the PPG can provide useful guidance and businesses and enforcers welcome as much clarity as possible, the PPG cannot replace the underlying legislation nor is it able to provide answers to every situation.

We also agree with the CTSI that businesses should take a holistic approach to self-assessment. Compliance is not simply a matter of following a formula. The key consideration for businesses of all sizes to bear in mind is what the average consumer would understand was the meaning of a pricing practice or price indication. Compliance should follow where practices are driven by traders dealing honestly and in good faith with consumers and businesses should place consumer understanding and expectation at the heart of their commercial pricing practices.

Businesses should therefore not seek to selectively interpret the PPG, apply an overly formalistic approach to the guidance provided or rely on extracts of the PPG in isolation without taking into account the context provided by the relevant law. An example of such selective interpretation in the context of the current PPG guidance is the use

certain businesses have made of the so-called “28-day rule”, which we note is not included in the revised PPG. We would suggest that the CTSI reviews the proposed sections containing the Quick Guide and the illustrative examples to ensure that they reflect this helpful approach and minimise the risk of selective interpretation.

Because of the nature of the PPG, the CMA and other enforcers may, in certain circumstances, decide to investigate commercial conduct which appears to follow elements of the guidance provided, but which may still have the ability to mislead consumers when the wider context is taken into account.

Similarly, in order to minimise the risk of selective interpretation by businesses, the CMA considers that the CTSI should review the guidance on the use of **explanatory text and headline statements**, currently set out at paragraph 1.1.6, to ensure that it is clearer that ‘small print’ can only be used to explain a headline statement in limited circumstances, as material information needs to be provided in a clear and unambiguous way. “Explanatory text” must never contradict the headline statement or be used to negate a misleading impression created in a headline statement. We would also suggest that the PPG refers to relevant ASA and CAP adjudications on this point.

Our **response to the Which? super-complaint** addressed a number of issues related to pricing and promotional practices<sup>1</sup>. We consider it helpful to ensure that the final PPG provides guidance on all of these issues and look forward to discussing with CTSI how our recommendations could be addressed in the final draft.

We support the CTSI view that the PPG should be **a living document** which can be continuously updated and respond to specific issues as they arise and as new commercial practices appear. Similarly, we believe there is an opportunity for the PPG to reflect more fully the ways businesses sell products in an ever-evolving retail environment. In this regard, the current draft only deals with online retailing to a limited extent, with a principal focus on a certain size of bricks and mortar store. The PPG will provide the most support and guidance to traders where it takes into account the way in which they do business, in many cases across multiple retail channels.

We welcome the opportunity to discuss the above matters more fully with the CTSI and to raise with you some more detailed issues.

Yours faithfully

Gaucho Rasmussen  
Project Director

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