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# The Consumer Ombudsman's Guidelines on Price Marketing

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# 1. Preamble and legal basis

## 1.1 Background and purpose

The Consumer Ombudsman processes a large number of cases on price marketing. The purpose of these guidelines is to prevent consumers from being misled and to influence traders to adhere to the regulations monitored by the Consumer Ombudsman.<sup>1</sup> The purpose is also to make it simpler and less time consuming for consumers to compare various offers in terms of price. These guidelines shall ensure consistency and equality in the Consumer Ombudsman's processing of cases, and shall also be an element of the information given to traders.

## 1.2 The nature and applicability of the guidelines

The guidelines express how the Consumer Ombudsman will enforce the Marketing Control Act concerning price marketing. The guidelines are not regulations and do not give an exhaustive presentation.

The guidelines concern price marketing in all industries. In addition, special guidelines apply for certain industries; see references in Point 7.

Some of the topics in these guidelines may be addressed several places and overlap to a certain degree with one another. One should therefore read the entire document to get a full impression.

Traders who are in doubt about whether their marketing is in line with the Marketing Control Act can contact the Consumer Ombudsman for guidance. While the Consumer Ombudsman cannot preapprove marketing, it can provide guidelines about the applicable requirements.<sup>2</sup>

## 1.3 Definitions and concepts used

By *commercial practice* is meant any act, omission, course of conduct or representation, commercial communication including advertising and marketing, by a trader, directly connected with the promotion, sale or supply of a product to consumers.<sup>3</sup> The concept of "marketing" will be used throughout these guidelines, as this is considered the most practical in regard to the area of applicability for the guidelines.

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<sup>1</sup> See the Marketing Control Act (MCA) § 34, Paragraph Two, Point One and § 35, Paragraph One. Law 9 January 2009 No. 2 on Control of Marketing and Contract Terms and Conditions, etc. (Marketing Control Act), the new Marketing Control Act, put into effect 1 June 2009. The act succeeded the former Marketing Control Act, Law 16 June 1972, No. 47. Through the new Marketing Control Act, the Unfair Commercial Practices Directive (Directive [2005/29/EE](#) of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council) is implemented. In these guidelines, reference is not made to the regulations in the directive. References to the Marketing Control Act in this document apply to the new Marketing Control Act.

<sup>2</sup> See regulation on the Consumer Ombudsman and Markedsrådet's case processing, etc. § 3, Points Two and Three.

<sup>3</sup> See MCA § 5, Sub-paragraph (d).

By *product* is meant any good, service, immovable property, rights and obligations.<sup>4</sup> The concepts of “good” and “service” will be used in these guidelines in points that only or mainly pertain to goods and services; see particularly Points 3.5, 3.6, 5.6, 5.7, 5.8, 6.2 and 6.3.

By *trader* is meant a natural or legal person who is acting for commercial purposes, and anyone acting in the name of or on behalf of that person.<sup>5</sup>

According to the Consumer Ombudsman’s view, the instances in which *shall* and *must* are used in the guidelines can be interpreted as clear requirements for price marketing. Traders must expect that the same requirements apply, unless in a specific case it can be proven that special circumstances call for a different solution for that specific company or industry. *Should* is used to express a recommendation. The Consumer Ombudsman has not determined whether it will be against the law in all cases not to follow such a recommendation; however, these cases may easily be assessed as misleading.

#### 1.4 Legal basis

These guidelines are developed on the basis of the Marketing Control Act, primarily §§ 6, 7 and 8. Additional reference is made to § 10.

Unfair marketing shall be prohibited, see MCA § 6, Paragraph One. Regulation on unfair commercial practices, given pursuant to § 6, Paragraph Five, contain kinds of cases that are always to be regarded as unfair and thus prohibited. This so-called “black list” follows from Appendix 1 to the Unfair Commercial Practices Directive. In the subpoints below, reference is made to the points in the regulation that are applicable here.

Marketing is always to be regarded as unfair and prohibited if it is misleading according to § 7. Whether the marketing is misleading depends on whether it contains false information, or whether it is likely to mislead consumers in any other way, see § 7, Paragraph One, sub-paragraphs (a-h).

Particularly important in this context are MCA § 7, Paragraph One, sub-paragraph (d), where it is stated that marketing is considered misleading if it is likely to mislead consumers with regard to the price of the product or the manner in which the price is calculated, or the existence of a price advantage.

Misleading omissions in marketing as mentioned in MCA § 8 are unfair and prohibited, see MCA § 6, Paragraph Four, see Paragraph One. Misleading omissions are considered to exist if the trader’s marketing omits or hides material information that the average consumer needs to take an informed transactional decision, or presents the facts in an unclear, unintelligible, ambiguous or untimely manner, see § 8, Paragraph One, first point.

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<sup>4</sup> See MCA § 5, sub-paragraph (c).

<sup>5</sup> See MCA § 5, sub-paragraph (b).

In the assessment of whether information are omitted, consideration shall be given to factors including space or time limits in the medium used, and any measures taken by the trader to make the information available to consumers by other means, see § 8, Paragraph One, Point Two. No matter what, the trader shall ensure that the consumers get a correct impression of the offer or product, so that they are not given incomplete information, and § 8, Paragraph One, Point Two does not exempt the trader from their duty to provide information on significant limitations in the offer.<sup>6</sup>

Price listings are specifically mentioned in § 8 on misleading omissions when there is an invitation to purchase.<sup>7</sup> One main purpose of the regulation on invitation to purchase is for correct prices to be stated in the marketing.<sup>8</sup> According to § 8, Paragraph Three, Point Two, the following information shall be regarded as material, if not already apparent from the context:

“information about the price inclusive of taxes, or where the nature of the product means that the price cannot reasonably be calculated in advance, the manner in which the price is calculated. Where appropriate, all additional freight, delivery or postal charges shall be disclosed. If the charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable shall be disclosed.”

If the price of a more closely specified product is stated, this shall be the total price the consumer is to pay, if this can reasonably be calculated in advance.<sup>9</sup>

A common condition in §§ 7 and 8 is that the marketing must be suited to influence the consumers to arrive at a financial decision at which they would otherwise not have arrived.

According to the general regulation in MCA § 6, Paragraph Two, marketing is unfair and prohibited if it is against good business conduct towards the consumers and is likely to significantly change the consumers' behaviour such that they arrive at decisions at which they would otherwise not have arrived, cf. § 6, Paragraph One. In the legal history of the regulation, incomplete information on prices are mentioned in this context,<sup>10</sup> and it will thus be used alongside the regulations mentioned above.

## 1.5 **Special remarks on sanctions**

The Marketing Control Act § 39, see §§ 40 and 41, give the Consumer Ombudsman and *Markedsrådet* (the Marketing Council) the legal authority to issue decisions on prohibitions and commands concerning actions in conflict with the Marketing Control Act, Chapter 1-5, including §§ 6, 7, 8

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<sup>6</sup> See Proposition No. 55 to the Odelsting (2007–2008), pp. 55 and 196.

<sup>7</sup> Invitation to purchase are defined in § 8 of the Act, Paragraph Four. An invitation to purchase refers to a commercial communication which indicates the characteristics and price of the product in a way appropriate to the means of the commercial communication used and thereby enables consumers to make a purchase.

<sup>8</sup> See Proposition No. 55 to the Odelsting (2007–2008), p. 57.

<sup>9</sup> See Proposition No. 55 to the Odelsting (2007–2008), p. 197.

<sup>10</sup> See Proposition No. 55 to the Odelsting (2007–2008), p. 193.

and 10 and regulations given in accordance with these regulations. As a main rule, when decisions on prohibitions and commands are issued, an enforcement penalty shall be set according to § 42.

In the event of intentional or negligent infringement of the regulation on unfair commercial practices, MCA § 10 and regulations given in accordance with § 10, which is either regarded as significant or has occurred repeatedly, an infringement penalty may be issued according to § 43.

## **1.6 Relation to previous practice**

The practice of *Markedsrådet* and the Consumer Ombudsman according to the previous Marketing Control Act has been reviewed and assessed according to the new Marketing Control Act and the Unfair Commercial Practices Directive. The Ministry of Children and Equality has previously assumed that the main features of price marketing practice according to the previous law can be maintained.<sup>11</sup> The Unfair Commercial Practices Directive, Article 6 on misleading actions is quite similar to the previous Marketing Control Act § 2, even though it is different in form.<sup>12</sup> According to the legal history, the new Marketing Control Act § 7 on misleading actions and § 8 on misleading omissions are continuations of the prohibitions on misleading and insufficient guidance in §§ 2 and 3 in the previous Marketing Control Act, as far as practices that affect consumers are concerned.<sup>13</sup>

## **2. Price marketing in general**

### **2.1 Main rule**

Price information shall be correct, clear and complete.

### **2.2 The average consumer's perception**

Marketing is assessed according to how it will be perceived by an ordinarily informed, reasonably attentive average consumer.<sup>14</sup> Emphasis shall be placed on the immediate perception of the average consumer.<sup>15</sup>

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<sup>11</sup> See Proposition No. 55 to the Odelsting (2007–2008), p. 119.

<sup>12</sup> See Proposition No. 55 to the Odelsting (2007–2008), pp. 53–54, where it is also indicated that none of the interested authorities had any comments to the fact that Article 6 of the Directive is largely equivalent to applicable Norwegian law at that particular time.

<sup>13</sup> See Proposition No. 55 to the Odelsting (2007–2008), pp. 54, 56, 194 and 196. On p. 56 it is also stated that there may be a certain degree of uncertainty concerning whether the extent of § 3 in the former law and § 8 in the new law are the same.

<sup>14</sup> See preface to the Unfair Commercial Practices Directive, Point 18, Proposition No. 55 to the Odelsting (2007–2008) pp. 32–35 and *Markedsrådet's* cases (referred to as MR cases from here on) 08/787 (Ryanair), 08/791 (Bauhaus) and 08/1185 (Skeidar).

<sup>15</sup> See from more recent practice by *Markedsrådet*, such as MR cases 28/01 (Lefdal I) and 12/04 (Hafslund).

### 2.3 Further remarks on complete price/ total price

In all contexts where price elements are stated in connection with an offer, the complete price must be stated. The consumers shall not be required to make calculations to find the complete price to be paid for an item.<sup>16</sup>

Value added tax (VAT), environmental tax, customs and other fees shall be included in the complete price for all marketing directed towards consumers.<sup>17</sup>

### 2.4 How prices are to be given

Complete prices shall be stated clearly in all price marketing. If one price element is highlighted, the complete price shall be stated with equal or virtually equal attention value as the highlighted price element.<sup>18</sup>

For the attention value to be equal or virtually equal, it is important that the complete price is stated in connection with the highlighted price element.

The relationship between the highlighted price element and the complete price must be compared. Here, emphasis is placed on factors including the placement of the price statements in relation to one another, the font size, the use of colours, the font type and background, the use of asterisks, and so on. Use of sound and moving images will be considered, in terms of whether the various prices are given in the same screenshot and how long they are shown on the screen.

There must be consistency between illustrations used in marketing and the price information given. If the accessories, extra equipment, etc. that are depicted are not included in the given price, this must be clearly indicated.

If price examples are given in the marketing, these must be representative.<sup>19</sup> It will be considered misleading if the price example only applies to a limited quantity of the product being marketed, or if the product is only available to a limited number of customers, for instance

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<sup>16</sup> See MR cases 20/92 (Sentrum Bildesenter), 21/05 (Telebutikken) and Proposition No. 55 to the Odelsting (2007–2008), p. 197.

<sup>17</sup> See regulation 7 June 1996, No. 666 on price information for transport and sale of electrical power § 4, see § 3, regulation 28 November 1997, No. 1382 on price information for services § 3, Paragraph Three, Point Two, regulation 12 December 1997, No. 1393 on price information for funeral services § 4, Paragraph three, regulation 6 December 1999 No. 1256 on price information for goods § 3 see § 2, sub-paragraph (a) and MR case 6/87 (Aker Bil). See also Marketing Control Act § 8, Paragraph Three, Point Two on the fact that the price inclusive fees – in the assessment of misleading statements – is seen as a significant piece of information. In advertisements directed towards both consumers and traders (with right to deduct for VAT), the price may be given exclusive of VAT, but then in such a way that the price inclusive VAT, possibly the additional VAT charge, is stated simultaneously in a way that is "equivalent in terms of informative and persuasive effect", see MR case 4/74 (A/S Direct og Sandnes Hobbyimport) and MR case 8/98 (Hyundai).

<sup>18</sup> See MR cases 12/04 (Hafslund) and 21/05 (Telebutikken).

<sup>19</sup> Price examples are often used where a larger product group is marketed (e.g. furniture series), in cases where the final price will be dependent on further decisions by the customer concerning the offer (e.g. package tours), or where the price is differentiated based on customer factors (e.g. loans and credit).

because it is based on terms in which most customers will not be interested or cannot fulfil. If one uses "from NOK", the price range should also be illustrated with "to NOK". Marketing will easily be misleading if focus is only placed on the lowest price in the given range, especially if the "from price" is plausible only for a limited number of customers.

## **2.5 Documentation**

Documentation shall be available to substantiate claims made in the marketing. See particularly Points 3.1, 3.2, 4.3, 5.1 and 5.2. Documentation shall be at the advertiser's disposal when the marketing occurs.<sup>20</sup>

## **3. Sale marketing, etc.**

### **3.1 Sale marketing**

The statements made in the marketing are the basis for evaluation. When "sale",<sup>21</sup> "seasonal sale", "clearance",<sup>22</sup> "on offer", "-40 %",<sup>23</sup> "discount", "rebate", "save NOK",<sup>24</sup> "only NOK", "now NOK"<sup>25</sup> and similar phrases<sup>26</sup> are used, it is as a rule sale marketing. Also "August shock",<sup>27</sup> "January knock-out", "campaign price" and similar phrases will easily be interpreted as sale marketing. Statements such as "doors open 7 AM, Monday 30 July" can reinforce the sale impression.<sup>28</sup>

If in the marketing an impression is given that the prices are reduced for a limited time, this will indicate sale marketing.<sup>29</sup>

The attention value of the other elements included in the marketing must also be taken into consideration, and a concrete overall assessment must be made of whether other conditions than the statements employed and any time limit are likely to give an impression of reduced prices in a sale period.<sup>30</sup>

The trader must specify what type of campaign is being advertised, if it is for instance wholesale (see Point 3.6), an introductory offer (see 3.8) or "low prices", etc. (see 5.4). Cases where the focus is on a limited time price campaign will be easily interpreted as sale marketing.

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<sup>20</sup> See MCA § 3, Paragraph Two.

<sup>21</sup> See MR case 28/01 (Lefdal I).

<sup>22</sup> See MR case 28/01 (Lefdal I).

<sup>23</sup> See MR case 2/04 (Garderobe Erik Bøckmann).

<sup>24</sup> See MR cases 7/85 (Cappelen) and 14/95 (Hjemmets Bokklubb).

<sup>25</sup> See MR case 2/04 (Garderobe Erik Bøckmann).

<sup>26</sup> See Proposition No. 55 to the Odelsting (2007–2008) pp. 145–146, Proposition No. 34 to the Odelsting (1994–95), p. 18 and MR case 28/01 (Lefdal I).

<sup>27</sup> See MR case 28/01 (Lefdal I).

<sup>28</sup> See further MR case 28/01 (Lefdal I) on assessment of the formulations in the marketing.

<sup>29</sup> See MR case 15/75 (Aktuell), MR case 28/01 (Lefdal I) and others.

<sup>30</sup> See MR case 28/01 (Lefdal I).

### 3.2 Real former price<sup>31</sup>

In sale marketing, prices must be reduced in relation to a real former price.<sup>32</sup> As a main rule, documentation must be available to substantiate that the same product<sup>33</sup> has been sold<sup>34</sup> in a certain quantity, at the former price, at the retailer indicated in the marketing, and in the period directly prior to the sale.<sup>35</sup>

Concerning the quantity that must be sold, this will vary according to the type of product in question.<sup>36</sup> Fewer sales will be required to establish a former price for expensive goods sold relatively infrequently than for mass produced goods with a high rate of turnover. The Consumer Ombudsman has in a number of contexts, such as for standard goods within sport and brown/white goods, determined that less than three items sold can hardly be considered adequate to constitute a former price.

Documentation of sale at the former price within the six weeks prior to the sale is adequate to fulfil the applicable requirements. Prices older than this cannot as a main rule be used.<sup>37</sup> However, if documentation can be presented of a relatively steady sale over a longer period of time prior to the six-week period, then a more limited sale at the same prices in the six-week period will be accepted.<sup>38</sup>

When the marketing communication applies for several enterprises within the same market area, the main rule is that all of the outlets must be able to verify sale of the product at the former price. If the prices have varied between enterprises, the lowest price must be used as the former price. If, however, it can be documented that a uniform price level has been used within the market area, it is acceptable that not all shops can show proof of actual sales during the period.<sup>39</sup> For national chains operating with uniform prices, the former prices will be seen as real if there has been some turnover at the chain's enterprises prior to the sale.<sup>40</sup>

### 3.3 Stating of former price

In sale marketing, the size of the discount must be indicated by clearly stating the former and current price or by another, equally clear indication.<sup>41</sup>

In sale marketing of one or more individual products, the size of the discount must be stated for each individual product. However, if the

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<sup>31</sup> Advertised former prices must be real; see MR cases 6/99 (Bonus), 11/00 (Elkjøp), 2/04 (Garderobe Erik Bøckmann), 08/1185 (Skeidar) among others.

<sup>32</sup> See MR case 28/01 (Lefdal I) among others.

<sup>33</sup> See MR case 08/1185 (Skeidar) and MR case 11/96 (IKEA).

<sup>34</sup> Actual sales constitute the basis for assessment of the real former price, and it is not sufficient that the product has been offered at a certain price; see MR case 08/1185 (Skeidar).

<sup>35</sup> See MR case 11/00 (Elkjøp). See also MR case 6/99 (Bonus).

<sup>36</sup> See MR case 11/00 (Elkjøp).

<sup>37</sup> See MR case 11/00 (Elkjøp).

<sup>38</sup> See MR case 08/1185 (Skeidar).

<sup>39</sup> See MR case 11/00 (Elkjøp).

<sup>40</sup> See MR case 08/1185 (Skeidar).

<sup>41</sup> See MR case 15/75 (Aktuell).

discount applies in general to a group of products, and individual products are not highlighted, it will not be considered illegal to only indicate the percentage discount.<sup>42</sup>

In all marketing – such as advertisements, sale leaflets, on posters and inside the enterprises – the products that are really sold at reduced prices must be held separate from both products sold at regular price and products included in separate offers, i.e. wholesale (see Point 3.6) or introductory offers (see 3.8).

In general sale marketing, such as sale leaflets, posters etc., it will be considered misleading if only a limited number of the products are sold at a reduced price.

### **3.4 Individual items**

Sale marketing of individual products such as handmade Oriental rugs, used cars or housing, or other used goods is misleading.<sup>43</sup>

### **3.5 Closing-down sale, moving sale etc.**

It is considered misleading and unfair marketing to claim that the trader is about to close down or move to another location if this is not the case.<sup>44</sup>

When traders use such statements as “refurbishing sale”, “clearance sale”, “water damage sale”, “fire damage sale” etc., the prices must be reduced. The terms must be correct; for instance, the refurbishing work must be extensive enough to require a reduction of the goods in storage or to justify extra sale activity for other reasons. Information must be given about the extent of the reductions.

The goods on sale must be from the enterprise’s own stock, that is, new goods or goods from other outlets not covered by the reason for the sale must not be included in the sale. The sale must occur within a short, specified time period.

### **3.6 Wholesale**

Wholesale refers to goods acquired at a particularly favourable price. The price that consumers pay must be favourable in comparison to the market prices. Wholesale should constitute a limited quantity in the trader’s selection.

### **3.7 Enticement offers**

It is misleading to market products which one cannot offer. Correct information must be given about the extent of the offer. If there are only a few products available or if the offer is so good that one expects, based on

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<sup>42</sup> E.g. “all goods –50%” or “all Norwegian costume shoes –30 to –50%”.

<sup>43</sup> See MR case 1/82 (Kamran’s), MR case 9/91 (Bilforretningen) and MR case 4/00 (Philipson).

<sup>44</sup> See Regulation on Unfair Commercial Practice § 1, No. 15.

experience, that it will sell out quickly, then the actual number of available products must be clearly indicated. If there is a limit on the number of products available or the quantity available to each customer at a reduced price, then this must be clearly indicated in all marketing. The marketed products must as a rule be available in all enterprises affected by the marketing. If this is not the case, then it must be clearly indicated which enterprises do not sell the product.

The regulation on unfair commercial practice, § 1, No. 5-7 forbids various types of enticement offers, see also § 1, No. 18.<sup>45</sup>

### **3.8 Introductory offer**

When “introductory prices”, “introductory offers”, “introductory discounts” etc. are used in marketing, this must apply to items that have not previously been in the trader’s selection. The discount must be real, such that the product after a fixed, stated introductory period will be offered at a higher price.<sup>46</sup> The size of the introductory offer shall be indicated either directly or by giving the introductory price along with the future price. If at the time of marketing one is uncertain about whether a higher price will be charged later, then one may not use “introductory” or similar statements indicating a price advantage.

## **4. Price comparisons**

### **4.1 Comparative price**

When price comparisons are used in marketing, it must be specified which price (a separate former price, prices at one or several specified competitors, or a suggested price) is given in the comparison with the lower price.<sup>47</sup> The trader must also be able to document that the comparative price is a real alternative price.

### **4.2 Comparisons in marketing<sup>48</sup>**

Marketing that directly or indirectly refers to a competitor or to products offered by a competitor must not be misleading.<sup>49</sup>

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<sup>45</sup> In the hearing memo on the new Marketing Control Act, it was assumed that § 1, No. 18 includes price level; see Proposition No. 55 to the Odelsting (2007–2008), p. 119.

<sup>46</sup> Compare MR case 3/82 (Grans Bryggeri).

<sup>47</sup> See MR case 2/04 (Garderobe Erik Bøckmann) and others.

<sup>48</sup> In the new Marketing Control Act, regulation 19 December 2000, No. 1653 on comparative advertisement is not extended for consumer relationships. Pursuant to § 26, Paragraph Two, the regulation hereafter applies only between traders. Comparative marketing in the consumer perspective shall be assessed according to the general rules in the Marketing Control Act; see Proposition No. 55 to the Odelsting (2007–2008) p. 120. The regulation and corresponding directive (84/450/EEC, see 97/55/EC) will nonetheless according to the view of the Consumer Ombudsman provide guidance for the assessment of comparative marketing. The EC court’s practice according to the Directive is also developed out of consideration for the consumer. The practice of the EC court following the directive is also developed out of consideration for the consumer. See also the viewpoints from the hearing memo on the new Marketing Control Act, referred to in Proposition No. 55 to the Odelsting (2007–2008), p. 119.

Comparisons in marketing are only allowed when the comparison is between products meeting the same need or designed for the same purpose,<sup>50</sup> and when it compares one or more concrete, relevant, verifiable and representative features of these products, including the price.<sup>51</sup>

Comparisons in marketing across segments within an industry are as a rule permissible, as long as the other conditions for comparisons in marketing are met.<sup>52</sup> The trader may choose how many goods will be compared according to price.<sup>53</sup>

Reference is made to the Consumer Ombudsman's Guidelines on Marketing of E-commerce Services for particular standpoints within the field of ICT.

#### **4.3 Comparison with suggested price**

The suggested price is that which the wholesaler, importer or manufacturer recommends the product be sold at from the retailer to the consumer. In price comparisons with suggested prices, it must be demonstrable that the suggested prices are real alternative prices in the market, i.e. that the wholesaler, importer or manufacturer actually stipulates the suggested prices<sup>54</sup> and in that case, that a significant portion of the turnover within the market area in question occurs at suggested prices.<sup>55</sup> In most industries nowadays, suggested prices are seldom real comparative prices because the products, due to the competitive situation, are mostly sold at a lower price.

#### **4.4 Average price and regular price, etc.**

The trader's price must not be compared with prices at which the product is not actually sold on the market. Hereunder, the trader's price must not be compared with an average price for the entire market. Furthermore, the features of one product must not be compared with calculated average values for other products.<sup>56</sup>

The trader's price must not be compared with "regular price", "listed price", "value", "ordinary price", "normal price", or equivalent terms which without further explanation do not have any real or sufficiently clear meaning.

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<sup>49</sup> Compare regulation 19 December 2000, No. 1653 on comparisons in advertising § 2 and § 3, sub-paragraph (a).

<sup>50</sup> The items must thus be substitutable; see EC court's judgement in Case C-356/04 (Lidl Belgium) paragraphs 26 and 27.

<sup>51</sup> Compare regulation 19 December 2000, No. 1653 on comparisons in advertising § 3, sub-paragraphs b and c.

<sup>52</sup> This means for instance that substitutable groceries may be compared between discount stores and supermarkets/full selection stores. See EC court judgement in Case C-44/01 (Pippig Augenoptik), Paragraphs 13, 14 and 80, see also Attorney General Tizzano's proposed decision, Paragraphs 10 and 11.

<sup>53</sup> See EC court's judgement in Case C-44/01 (Pippig Augenoptik) Paragraph 81.

<sup>54</sup> See MR case 3/92 (Moe & Co).

<sup>55</sup> See MR case 2/04 (Garderobe Erik Bøckmann).

<sup>56</sup> See MR case 1/76 (Fiat) and Næringslivets Konkurransesutvalgs case 9/70 (CC).

#### 4.5 **Package offers**

Package offers imply that the trader makes a comparison with its own prices. The comparative price must be real; a parallel price must be established for the various products included in the package.

### 5. **Lowest price claims, price guarantees and certain other promotional expressions**

#### 5.1 **Lowest price claims**

The question of whether claims of “cheapest”, “most reasonable”, “lowest price” etc. can be perceived as a claim of being the cheapest in the market must be assessed specifically in each individual situation. Any clarifying text and the attention value of such a text will be considered in the assessment.<sup>57</sup> Such claims cannot be used unless it is indicated which market area is being referred to. Research verifying the claim must be done in advance.<sup>58</sup> Documentation must be available upon request by the Consumer Ombudsman, see also Point 2.5. When a lowest price claim is made, documentation must be available to substantiate that each individual product is at any time cheaper than comparable products.<sup>59</sup>

The use of question marks, “I believe”, “our opinion is” or similar statements with the same meaning do not exempt traders from the duty to document their claims.<sup>60</sup>

Products advertised as “cheapest” or with similar phrases must actually be available at the competitors’ outlets.<sup>61</sup> Products not found at competitors’ outlets must be marked such that it is clear that the lowest price claim does not apply to these products.<sup>62</sup>

The trader must regularly research the market prices and immediately lower its prices if lower prices are found elsewhere in the market.<sup>63</sup>

Reference is made to the Consumer Ombudsman’s Guidelines on Price Marketing of E-commerce Services for specific standpoints within the field of ICT.

#### 5.2 **Price guarantees**

##### 5.2.1 **Price guarantees in general**

Point 5.1 applies accordingly for price guarantees.

By *price guarantee* is meant any use of the term “price guarantee” and/or equivalent terms which alone or together with text, image or design give

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<sup>57</sup> See MR case 08/787 (Ryanair) and 08/791 (Bauhaus).

<sup>58</sup> See for instance MR cases 11/96 (IKEA) and 23/96 (Osterhausgatens Farvehandel).

<sup>59</sup> See MR cases 23/96 (Osterhausgatens Farvehandel) and 4/04 (Lefdal II).

<sup>60</sup> See MR case 9/79 (Re-Bil).

<sup>61</sup> See MR cases 11/96 (IKEA) and 4/04 (Lefdal II).

<sup>62</sup> See MR case 4/04 (Lefdal II).

<sup>63</sup> Compare MR case 08/791 (Bauhaus).

the average consumer an impression that the trader's prices are lower than that of the competitors.

The term "guarantee" is in this context perceived as a strong assurance that the price is lower than that of the competitors.<sup>64</sup> As with other claims in marketing, traders must also verify the validity of their claims when using price guarantees; see Point 2.5.<sup>65</sup>

### **5.2.2 Limitations in price guarantees**

All limitations or conditions set to make the price guarantee valid must be indicated in the marketing, including the period for which the price guarantee applies, any geographic limitations and whether the price guarantee is delimited against various types of sales or extra offers given by competitors.

"Price guarantee" or equivalent terms must not be used if the limitations or conditions to receive the guarantee render the right to real price reduction practically null.

Price guarantees must not be used in cases where identical products are not available on the market,<sup>66</sup> or in industries where the items are so complex that a comparison between two offers may be meaningless.

### **5.2.3 Requirement for receiving price guarantee**

The requirement for activity on the consumer's part must not be especially extensive. Reference to advertisement clippings or other materials showing that the product was available at the lower price should be enough to receive the guarantee. The consumer must be given adequate time to present any claims on grounds of the promises in the guarantee.<sup>67</sup>

### **5.3 "Free of charge" claims**

"Free", "free of charge", "without payment" and similar expressions must not be used in marketing if the free product is contingent upon purchase of other products to attain the free product.<sup>68</sup>

Reference is made to the Consumer Ombudsman's Guidelines on Price Marketing of E-commerce Services for particular standpoints within the field of ICT.

### **5.4 Cheap, low prices**

The term "cheap" must only be used in marketing if the product costs less than equivalent products of the same quality at most competitors, or if the

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<sup>64</sup> See MR case 08/787 (Ryanair) For the sake of clarity, it should be pointed out that "guarantee" as defined in MCA § 5, sub-paragraph (e) is a different legal term than "guarantee" in the context of price.

<sup>65</sup> See also MR case 08/787 (Ryanair) with further references.

<sup>66</sup> See for instance MR case 11/96 (IKEA).

<sup>67</sup> See MR case 08/787 (Ryanair).

<sup>68</sup> See Regulation on Unfair Commercial Practice § 1, No. 20. See also MR case 20/92 (Sentrum Bildesenter).

product for a short period is sold at a lower price than before. In the latter case, the price advantage must be indicated.

With the use of general and vague statements such as “low price profile”, “low prices” etc., documentation must be available to substantiate that the prices of the products are below the market average within the applicable market area.<sup>69</sup> Such statements are as a rule not seen as sale marketing; see Point 3 above. In this assessment, it is significant whether the statements are used over time. Equivalent statements used in a one-time campaign will more easily be perceived as sale marketing.

Reference is made to the Consumer Ombudsman’s Guidelines on Price Marketing of E-commerce Services for particular standpoints within the field of ICT.

### **5.5 Customer statements and editorial commentary in marketing**

Statements from satisfied customers on any saving or that a product is “best”, “cheapest” etc. cannot as a main rule be attached significance on their own. When using such statements in marketing of one’s own product, the claims are seen as presented by the trader itself, which must be able to verify that the content of the claims is correct.

The same applies for the use of editorial commentary in one’s own marketing.

### **5.6 Factory outlet sale, warehouse sale, bankruptcy sale etc.**

Terms such as “factory outlet sale”, “warehouse sale” etc. must only be used if the prices are low in comparison with the prices of identical or comparable goods within the market area in question, and there is a correlation between the term and the company’s actual scope.<sup>70</sup>

If a “bankruptcy sale” is advertised, the selection must originate in bankruptcy acquisitions and be sold at particularly low prices, see also Point 3.5 on bankruptcy sale which applies to sale of the trader’s own goods in the event of bankruptcy. If in a bankruptcy sale goods are offered which have been purchased through regular purchasing channels, it must be clearly indicated both in the marketing and on the premises themselves that these goods do not originate in the bankruptcy acquisitions. Goods purchased via regular purchasing channels must in all marketing and inside the enterprises be kept separate from goods originating from the bankruptcy acquisitions.

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<sup>69</sup> See MR case 27/98 (Rimi).

<sup>70</sup> See MR cases 8/78 (Fabrikkutsalget A/S i Trøgstad) and 16/97 (Det norske Kjøkkensenter).

## **5.7 Fixed trade-in price**

Fixed trade-in prices must not be offered for goods if the traded-in goods have little or no value, e.g. by offering a certain value in NOK regardless of the condition of the trade-in goods. In the case of a trade-in arrangement, the traded-in goods shall be designed for further use from the trader's side.<sup>71</sup> Documentation must be available to substantiate that the trade-in prices offered for goods do not on average exceed the total amount earned by further sale of the same goods.<sup>72</sup> The price of the new good must be real in the sense that it does not take into account the price offered for the trade-in good. The price of the new good must thus be a fixed, established price at which the trader has sold it prior to the trade-in offer, or a price at which the trader will sell the good after the trade-in arrangement is discontinued.

## **5.8 Economy package, etc.**

"Economy package" or equivalent terms must only be used if the good offers the consumer a lower unit price than for the regular package. If a manufacturer cannot determine the price at which the retailer sells the good, then such terms should not be used.

## **6. Price marking, etc.**

### **6.1 Main rule**

A person who in the course of trade sells goods, services or other products to consumers shall, to the extent that this is practically possible, provide information about the prices in such a way that they can easily be seen by the customers, see MCA § 10, Paragraph One.

### **6.2 More on the content of the price information duty for goods<sup>73</sup>**

The sale price and unit price for a good shall be stated together and with virtually the same attention value, on or in the immediate vicinity of the good. The unit price shall be stated to the left of the sale price, and be given to two decimal places. The price information duty applies regardless of where the good is displayed, such as in a display window, a display case, or elsewhere.

Traders which through written marketing communication to one or more users state the sale price of a good shall also state the unit price.

It is not obligatory to state the unit price when it is identical to the sale price. For goods sold by weight, only the unit price is required to be stated.

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<sup>71</sup> See MR case 16/85 (Stians Sport).

<sup>72</sup> See MR case 20/93 (Braun).

<sup>73</sup> See regulation 6 December 1999 on price information for goods § 3.

More detailed rules on price information for goods, including the calculation method for unit prices, are specified in Regulation 6 December 1999, No. 1256.

### **6.3 More on the content of the price information duty for services<sup>74</sup>**

Price information shall be given on price signs or as a price list displayed at the place where the service is usually ordered, so that the information will be clearly visible to the customer.

If the unit price of each individual service varies within a certain interval, then the highest and lowest prices within that interval shall be stated. Any minimum prices shall be stated.

When nothing else is stated, the prices shall cover all materials and use of necessary tools included in the service. When the trader has conditions resulting in an addition to the price for each individual service, these additional costs shall be stated in particular.

More detailed rules on price information for services are specified in Regulation 28 November 1997, No. 1382. The regulation also applies for financial services.

### **6.4 Special regulations on price information**

In addition to the regulations on goods and services, the following regulations are given on price information:

- Regulation 22 December 1993, No. 1221 on price information for overnight accommodation and restaurants
- Regulation 26 January 1996, No. 122 on price information for dental services, etc.
- Regulation 7 June 1996, No. 666 on price information for transport and sale of electrical power
- Regulation 12 December 1997, No. 1393 on price information for funeral services

## **7. Further guidelines pertaining to price marketing**

In addition to the guidelines here, the Consumer Ombudsman has developed guidelines within certain areas.<sup>75</sup> These guidelines complement the guidelines given here. In particular, the following other guidelines also touch upon price marketing:

- Guidelines on the regulations on telephone sales (June 2009)

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<sup>74</sup> See regulation 28 November 1997, No. 1382 on price information for services § 3.

<sup>75</sup> Orientation letters and industry norms are not mentioned here. Within the individual areas, documents are also found which may be of significance for the assessment of price marketing.

- Guidelines on price marketing of e-commerce services (forthcoming in June 2009)

Furthermore, the Consumer Ombudsman has previously developed guidelines, etc. which as of 1 June 2009 are not updated according to new law. The Consumer Ombudsman assumes that the content in these will largely be the same. The following therefore applies until further notice:

- Guidelines for mobile content services (February 2009)
- Guidelines for stands and door-to-door sale (December 2007)
- Marketing of handmade rugs (April 2003)
- Common Nordic standpoint on marketing and commerce on the Internet (October 2002)
- Guidelines for marketing of automobiles (January 2002)
- Guidelines for marketing of electrical power to household customers (July 2001)
- Marketing of real estate agent services (November 2000)
- Guidelines for marketing of airline tickets where only a limited number are offered at the advertised price (outdated)

The guidelines are available at [www.forbrukerombudet.no/veiledninger](http://www.forbrukerombudet.no/veiledninger) and upon contacting the Consumer Ombudsman: [post@forbrukerombudet.no](mailto:post@forbrukerombudet.no) or tel: (+47) 23 400 600.