

Advertising of Prices

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1 EXECUTIVE SUMMARY

- 1.1 Price framing occurs when a trader presents a price offer in a particular context that affects people's assessment of the value of the offer. Value is an abstract concept and so people use cues from the world around them to make sense of whether a particular offer is a good or bad deal. It is because of this that price framing has the power to influence, and sometimes mislead, consumers.
- 1.2 Clear, honest, upfront advertising of prices is beneficial to consumers and competition. Misleading advertising of prices, however, may lead to consumers spending more than they need to, buying a product which is not the best for them, wasting time or suffering annoyance, disappointment or regret. Fair dealing firms, sticking to the spirit of the consumer protection legislation, feel frustrated and disadvantaged when they observe their competitors pushing the boundaries too far.
- 1.3 The OFT's approach is focused on the circumstances where there is a real risk of harm to consumers and we have avoided a rule based, black and white view of matters - fair dealing businesses should not fear an OFT investigation for inadvertently, and harmlessly, falling foul of a technicality. Advertising of prices is a key part of active price competition which benefits all consumers, and fair dealing businesses should benefit from clarity about the OFT's position but not be concerned that they risk enforcement action on trivial matters.
- 1.4 Fair dealing businesses do need, however, to be confident that other firms using unfair advertising of pricing practices are subject to effective enforcement action, and consumers need to be confident that the advertising they see meets appropriate standards.

The study

- 1.5 In October 2009, the OFT launched this market study to look at the use of price framing. We have collected evidence to support decisions about the kind of enforcement cases that should be a priority for us under the Consumer Protection from Unfair Trading Regulations (CPRs). The study

draws on a large body of evidence including academic psychology studies, experimental research, and consumer surveys.

1.6 We collected evidence about, and examined in detail, the following pricing practices:

- partitioned 'drip' pricing, where price increments 'drip' through during the buying process
- 'baiting sales', where only a very limited, or no, products are available at the discount price and consumers may ultimately purchase a full priced product
- 'reference prices', where there is a relatively high reference price compared to sale price, for example 'was £50, now £20', or '50% off'
- time-limited offers, such as sales which finish at the end of the month or special prices which are available for one day only
- volume offers, where it may be difficult for consumers to assess an individual price, for example 'three-for-two'
- complex offers, such as package prices with many separate elements to the price, and
- price comparison sites which may use some of the practices described above.

1.7 Such price framing practices can be extremely effective at altering people's perception of the value of an offer. For example, an experiment in the US found that consumers offered a car for \$7,272 estimated the true value of the car to be considerably higher when they were also told 'Was \$8,215' compared with when they were told 'Was \$7,414'.

1.8 These effects are not restricted to sale pricing. Surcharges, for example, may also have a powerful influence on people's evaluation of a deal. For example, an online auction experiment found that consumers offered

CDs with the 15 per cent auction surcharge excluded from the headline price were more likely to purchase compared with customers who were shown a single combined price.

Our findings

- 1.9 Some practices are more likely to lead to consumer harm than others, and harm is more likely in some circumstances than others. The following ranking of price frames represents, in general terms, our assessment of their **potential** to mislead:
- drip pricing
 - time limited offers
 - baiting sales and complex offers
 - reference pricing
 - volume offers.
- 1.10 This list represents our view about the **potential** for a certain pricing practice to mislead – it does not mean that all partitioned offers, for example, will mislead consumers. Whether any given offer is misleading depends on the specifics of the advert and a number of other factors. Furthermore, when deciding whether a particular advert is an enforcement priority we will also consider whether the advert leads to harm for consumers. In doing so, we will take into account the features of the market and the product to which the advert relates. Specifically:
- frequency of purchase: with more frequent purchases a consumer has greater opportunity to learn from their mistakes and become familiar with the offers in the market place
 - ease of cross-market price comparisons: markets where like-for-like price comparisons are readily available, such as some of those characterised by good quality price comparison sites, are likely to assist consumers in verifying price claims

- the ease with which a consumer can independently verify quality: the easier it is for a consumer to identify whether a product is high or low quality prior to purchase the less likely they may be to rely on the price for information about quality
- the expense of the item: low value items, especially those bought frequently may present a learning opportunity with less financial harm than big ticket items bought less frequently
- reasonable consumer expectations: if the majority of consumers are aware of and understand the use of a particular practice, for example, whether there are charges for delivery or that time limited sales are often extended, it is less likely that a consumer will be misled by such a practice
- we would also take into account the size of the market and the overall level of harm likely to arise from the advert.

1.11 We engaged extensively with businesses and consumers groups and, after listening carefully to all points, we concluded that the most helpful way to set out our views was in terms of the circumstances where the OFT is less likely to prioritise enforcement action for each pricing practice we considered. For example, in the case of drip pricing:

Drip pricing – the OFT is less likely to prioritise enforcement action where a trader:

Includes all compulsory charges in the upfront price

Where compulsory charges change depending on the options of the consumer, such that they cannot be displayed in a single price, these are flagged with the upfront price.

Example: a £1 booking fee per ticket should be included in the upfront price; a delivery charge which varies depending on where the consumer lives, should be highlighted by 'delivery charges apply' with the upfront price.

Flags with the headline price, and gives information about, compulsory elements of the product or service which have a range of charges, for example payment methods

Example: Charges for use of debit and credit cards (even if optional) are clearly displayed upfront. Paying is not optional so the variety of charges including any free options should be made clear early on in the process.

Clearly displays the total price prior to payment being accepted

Includes any additional charge associated with automatically opting consumers in to extras in the headline price

1.12 The risk of a consumer being misled by any of the practices we looked at is likely to be reduced if a firm sticks to the guidelines in the BIS Pricing Practices Guide and the ASA's Code on Advertising Practices. As the BIS Pricing Practices Guide envisages, in some circumstances it may be necessary for a business to go further and to provide specific information about the meaning of the price offer – this report sets out the circumstances in which we think traders will need to take particular care.

1.13 We also looked at price comparison sites and the extent to which they address some of the concerns around misleading price advertising by allowing consumers to independently verify prices. Although price comparison sites in the main assist consumers in shopping around, they are not widely used for many products and, in any event, necessarily have certain limitations in what they can compare. The emergence of a price comparison industry does not, in most cases, dampen the effect of misleading price advertising.

Next steps

1.14 Taken together, our core concerns, our ranking of the likelihood of particular price frames to mislead and our identification of those features of a market that make harm more likely build a clear framework that we will use to prioritise enforcement cases.

- 1.15 We have extensively road tested our conclusions by holding large roundtable meetings with businesses covering: travel; supermarkets and department stores; household fittings and furnishings; price comparison sites; and many others.
- 1.16 Following publication of this report we will look to see whether there appears to be significant movement in the areas where we have identified the highest potential for consumer harm and, working with our enforcement partners, take targeted follow up enforcement action if necessary.

Thank you

- 1.17 As part of this study, we have consulted the ASA and BIS, consumer groups, industry professionals, trade associations, a large number of businesses from different sectors, other regulators and Government departments. We are grateful for all contributions and willingness to assist the OFT's team in its work.

2 INTRODUCTION

- 2.1 When we launched this study, following public consultation on the scope, we confirmed the scope of the study but announced that, because of limited areas of overlap, the study would be broken into two separate pieces of work: Online Targeting of Advertising and Prices and Advertising of Prices. This is the final report of the Advertising of Prices study. The report for Online Targeting of Advertising was published on 25 May 2010.
- 2.2 This study looked at advertising of prices in its broadest sense: any communication to a consumer that includes information about a price irrespective of where that message appears. It therefore covers all potential marketing channels including but not limited to: press, web, email, television and radio communications as well as in-store information, catalogues and brochures.
- 2.3 We also looked at price comparison sites. Shopping around is key to consumers obtaining good value and is at the heart of the competitive process and so it was important to understand the extent to which price comparison businesses assist consumers in shopping around and to examine whether price comparison sites introduce separate price framing issues.

Focus of the report

- 2.4 The focus of this report is the use of price framing by traders and the use of price comparison sites by consumers and, in particular, seven of the most common price framing practices. We have examined how price framing works, the effects it is likely to have on consumers and whether consumers are likely to be harmed by it. In doing so, we consider Regulations 5 and 6 of the CPRs as well as some of the CPR Annex Practices.
- 2.5 This report does not consider all of the provisions of the CPRs that are relevant to price promotions or the other activities of traders. Its focus is price framing and the types of price promotions that use price framing

that would form priority enforcement cases for the OFT. This does not imply that breaches of the CPRs not discussed in this report would not be priorities for OFT enforcement nor does it imply that any practices not discussed in this report are necessarily lawful.

Price framing

2.6 Price framing covers a wide range of practices but we have focused on:

Reference pricing

- the use of a 'reference' price such as 'was £9.99 now £5.99'
- the use of Recommended Retail Prices
- the use of external reference prices such as 'ABC Ltd price £9.99 Our price £5.99'
- the use of 'after sale' prices.

Partitioned pricing

- the practice of adding additional charges or fees to the headline price
- both compulsory additional charges and optional charges are included in the scope of the study.

Time limited offers

- prices that are only available up to a **stated** end date.

Baiting sales

- the practice of having only a small proportion of stock available at the advertised offer price.

Complex offers

- offers that contain numerous components, that may vary with usage and that may be dependent on each other and/or on subscription to a contract (for example, a mobile phone contract, or gym membership).

Volume offers

- characterised by '3 for 2' offers.

Free offers

- any offer that uses the word free to describe the price such as 'Buy one get one free', 'Free broadband with laptop', 'First two months free' or '33% extra free'.

The evidence

- 2.7 A considerable amount of research on price framing had been published by various researchers before we started this study. To take advantage of this we commissioned a review of this literature from the psychology consultancy Mountainview Learning. This review is at Annexe F. It examines in detail the effects that particular price frames have on people's evaluation of an offer under different conditions and provides the foundation for our overall research.
- 2.8 We have also drawn on experimental research into price framing conducted jointly by the OFT and University College London. This work comprised a controlled laboratory conditions experiment into the relative financial loss that arises from the use of five different price frames. The experiment finds that, as predicted by the psychology review, different price frames have different effects and that the effects of some price frames are more powerful than others. The report of this behaviour experiment is at Annexe G.

- 2.9 We also commissioned extensive consumer research to look at price framing. This had a number of elements: three quantitative surveys and two pieces of qualitative work. The three quantitative surveys comprised: an omnibus survey looking at the awareness of and recall of price framing in price promotions; an in-home survey of 3000 people looking at their experiences of and attitudes towards price framing; and an online survey of 1000 price comparison site users looking at how price comparison sites are understood and used. The two qualitative surveys comprised: a series of focus groups discussing pricing framing; and a 'site-search' test looking at how consumers use price information in an online setting.
- 2.10 The consumer research provides strong support for the findings of the psychology review and the behaviour experiment. The surveys showed that amongst other things, a significant proportion of people felt they had coped poorly with price framing in that they considered they could have obtained a better deal and would do something different the next time they encountered such an offer. Most strikingly, people objected most strongly to those price frames that the behaviour experiment calculated would cause the greatest financial loss and that the psychology review predicted would have the strongest effects. The research agency's report is at Annexe H with associated data tables and questionnaires set out at Annexes L- R.
- 2.11 We consider that there is now compelling evidence that price framing exerts a powerful effect, that the effect can lead to financial loss and other consumer harm when price frames are used in an inaccurate or misleading way, and that a significant proportion of the population have been affected.

Consultation

- 2.12 We met with traders, trade bodies, other regulators and consumer groups in one to one meetings and during a series of five roundtable discussion events. The roundtables tested a series of 'straw man' proposals in terms of what should be a priority for the OFT's enforcement teams – this was a very effective format for drawing out

how people thought enforcement should best focus on the real harm and avoid the trivial or unavoidable and take into account the necessary practicalities of trading.

2.13 The clear view expressed at the roundtables, and in subsequent written comments submitted by the participants and other stakeholders, was that any enforcement approach to misleading price framing must have two key elements:

- flexibility to capture misleading practices while allowing other legitimate practices
- a focus on areas of specific concern rather than a more general 'catch-all' approach.

2.14 To address these points this report sets out a framework for assessing whether a particular price promotion is a priority for enforcement action. The framework reflects the elements above and has been constructed to allow us to focus on those practices that our research suggests have the greatest potential to mislead and cause consumer harm.

2.15 This framework fits with the OFT's overall prioritisation principles in that it assesses the likely impact of any action.¹

The framework

2.16 Our framework is in four parts. First, we identify the general types of price frame that are most likely to mislead consumers. Second, we set out the specific implementations of those price frames that are most likely to mislead. Third, we identify the specific market conditions or product characteristics that are likely to make price framing more misleading and harmful. Price promotions that meet most or all of these criteria are likely to be high priorities for enforcement action. The fourth

¹ See www.offt.gov.uk/shared_offt/about_offt/oft953.pdf

element is to set out mitigating actions that can be taken by a trader to prevent a consumer from being harmed.

Part One: potential to mislead

2.17 We consider that the following ranking of price frames reflects their potential to cause harm:

- partitioned (or 'drip') pricing
- time limited offers
- baiting sales and complex offers
- reference pricing
- volume offers.

2.18 This is not meant to imply that all partitioned price offers are worse than all volume offers in some way: a misleading volume offer in respect of an expensive product might lead to greater harm than a misleading partitioned price in respect of a cheap product. It is a ranking of the **potential** to mislead only. It is intended as a starting point for an assessment that also takes into account, the specific implementation of the price frame in question, the characteristics of the market in question and the actions undertaken by the trader to inform consumers. In other words, it is the starting point in a process that considers not only whether a particular price promotion is misleading but also whether it is harmful.

2.19 The ranking is based upon the results of the behaviour experiment and our interpretation of the behavioural psychology literature review. The behaviour experiment produced a ranking of five price frames ('free' offers and complex pricing were not covered) based on how much financial harm the price frame caused relative to a situation in which there was no price frame. Further details are at Annexe G.

Part two: specific implementations most likely to cause harm

2.20 A price promotion will not be of interest in terms of priority for enforcement action unless it is being used in a misleading manner. For each type of price frame there are particular implementations that we consider are likely to mislead and that are likely to be high priorities for enforcement. These include:

- the use of RRP's that do not reflect a realistic selling price, in circumstances where a significant proportion of consumers think the RRP represents an actual selling price
- the extension of time limited offers at short notice such that some consumers believe, erroneously, that the offer is due to end imminently when it will, in fact, be extended
- omitting to give customers the information they need, in a format they can use, to decide whether a volume offer is better or worse value than a smaller pack or quantity
- making it difficult or time consuming for customers to find out the price of genuine various options and genuinely varying surcharges by not making information about these charges available upfront in the adverts or the shopping process
- omitting to tell customers when the availability of a particular price promotion is limited in circumstances where the customer would otherwise think the offer is more widely available
- implying or stating that a product or a component of a bundle is free when its costs are in fact being covered by the offer price
- omitting to give people easily understood summary measures when they enter into the purchase of complex products – in particular the total minimum financial commitment they are making

- omitting to tell consumers that price comparisons are not like-for-like or that they are not comprehensive in those circumstances where consumers might reasonably assume that they are.

2.21 Understanding whether any of the specific implementations above is or is not likely to mislead and harm a consumer depends in large part on what the consumer thinks an offer might mean. We recognise that this may, in some circumstances, be context specific. To reflect this, the third part of our framework considers the specific characteristics of the market and product in question.

Part three: Market and product characteristics

2.22 Whether any given offer is misleading depends on the specifics of the individual case and in that regard the OFT will take into account a number of other factors in deciding whether a particular advert is an enforcement priority. In particular we will consider the features of the market and the product to which the advert relates. Specifically:

- frequency of purchase: with more frequent purchases a consumer has greater opportunity to learn from their mistakes and become familiar with the offers in the market place
- ease of cross-market price comparisons: markets where like-for-like price comparisons are readily available, such as some of those characterised by good quality price comparison sites, are likely to assist consumers in verifying price claims
- the ease with which a consumer can independently verify quality: the easier it is for a consumer to identify whether a product is high or low quality prior to purchase the less likely they may be to rely on the price for information about quality
- the expense of the item: low value items, especially those bought frequently may present a learning opportunity with less financial harm than do big ticket items bought less frequently

- reasonable consumer expectations: if the majority of consumers are aware of and understand the use of a particular practice, for example, whether there are charges for delivery or that time limited sales are often extended, it is less likely that a consumer will be misled by such a practice
- we would also take into account the size of the market and the overall level of harm likely to arise from the advert.

Part four: Factors making enforcement less likely

- 2.23 Traders who have undertaken specific steps to ensure that their adverts are not misleading and do not harm consumers are less likely to be priorities for enforcement action. In particular following the relevant sections of BIS Pricing Practices Guide and the CAP Code will help to avoid misleading consumers but the OFT is also less likely to take enforcement action against traders who go beyond what is required by existing guidance in those circumstances where additional clarity is required. We discuss these on a practice by practice basis in the report.
- 2.24 In prioritising our work we will also take into account the role of other regulators such as the CAA, Ofgem, Ofcom, ORR and the FSA. Where another regulator is also well placed to take action we would discuss and agree with that regulator who should act.
- 2.25 In setting our priorities we would also take into account the work of the ASA and our role as their statutory regulatory partner.

Structure of the report

- 2.26 The remainder of this report dedicates a chapter to each of the price frames we have considered in detail and a chapter to price comparison businesses. There is some discussion of the complex issue of how consumers learn before we draw our final conclusions and set out the next steps for the OFT.
- 2.27 Each of the chapters dealing with a particular price frame contains a discussion of consumer expectations and attitudes and a consideration

of the impact on consumer decision making. We set out the evidence relating to consumer detriment focusing in particular on two types: purchasing errors (such as paying too much) and emotional detriment (such as annoyance or regret). We then present the findings as they relate to consumers' learning about the use of the particular practice. Finally we set out our core concerns in respect of the practice in question and identify the circumstances in which we would be less likely to prioritise enforcement action against a price promotion using the particular price frame.

- 2.28 Throughout this study we have used a variety of terms which have specific meaning in the context of our consumer research such as 'frequently purchased' or 'bargain hunter'. An explanation of the specific meaning given to these terms in this report is set out in the Glossary at Annexe A.

Use of evidence

- 2.29 In preparing this report we have relied on the best evidence that is available at this point in time. It should be recognised that the field of psychology develops rapidly and new research into price framing is regularly published. We anticipate that the evidence base will change in the future and to the extent that it suggests that any of our findings should be reviewed we will take that evidence into account.
- 2.30 With respect to the behavioural experiment and the psychology literature review, we have been able to rely on direct evidence of the influence of price frames. Our consumer survey, by contrast, has used indirect measures. These indirect measures are useful because direct measures are extremely costly and time consuming to obtain in this context and, in some instances, impossible to observe. For example, direct measures of consumer harm require the researcher to know how much the consumer paid, whether a better deal was available, the size of the saving, and any costs, including the costs of time and hassle, associated with obtaining the cheaper deal. This information would have to be collected for thousands of purchases in hundreds of markets to have any statistical

significance. Clearly, this information is often not available or is extremely costly to collect.

- 2.31 So the consumer survey used indirect measures. While these do not measure **actual** consumer harm we anticipate that they are very closely correlated with consumer harm and, as such, serve a useful purpose in considering the issues covered by this study.

General approach

- 2.32 The discussion of the pricing practices in this report has been divided into seven chapters each dealing with a different pricing practice. These pricing practices are not mutually exclusive: each pricing practice can be and frequently is (see Annexe J) used in conjunction with a number of other pricing practices. To that extent, the discussion of one pricing practice can be relevant to another.
- 2.33 With this in mind, it is helpful to consider some of the overarching general principles that apply to all pricing practices. At the heart of the CPRs is a requirement for traders not to trade unfairly. In the context of price framing there are two features of unfair trading that merit further discussion here: the role of reasonable expectations and the provision of price information of little or no decisional value.

Reasonable expectations

- 2.34 The average consumer's reasonable expectations are particularly important in a consideration of any price promotion. What a consumer might **reasonably** expect may differ from what they are aware of. Reasonableness forms a core component of the OFT's prioritisation of enforcement work: traders should have reasonable justifications for pricing statements. In our view, a trader should take into account consumer's reasonable expectations in the presentation of information about pricing. While consumers may be familiar with some types of price promotion, no consumer reasonably expects to be presented with information which is designed to make their decision more difficult or to take advantage of inherent behavioural biases in their decision making.

- 2.35 Reasonable expectations are relevant to every price frame considered by this report. With respect to partitioned pricing, for example, consumers' reasonable expectations with respect to the nature of extras and the scale of the charges associated with them are relevant. In deciding the price information that needs to be presented to the consumer the trader will need to consider:
- whether the consumer reasonably expects there to be any ancillary charges
 - whether the consumer reasonably expects any ancillary charges to be genuinely optional
 - whether the consumer reasonably expects the costs associated with the ancillary charges.
- 2.36 In considering whether a trader had behaved reasonably with respect to these elements we would take into all the relevant facts. For example, whether the average consumer reasonably expects there to be any ancillary charges reflects not just whether they know that there are ancillary charges (perhaps because they have made a similar purchase previously) but also whether they consider the practice to be reasonable.
- 2.37 Clearly in many instances whether a particular practice is reasonable will be a matter of degree that can only be assessed in its full factual context. Amongst other things, we would take into account whether other traders engaged in the practice, how consumers responded to the practice, and whether the practice offered benefits to the consumer compared with the benefits it offered to the trader.
- 2.38 For example, a heavy item that is difficult to transport and that requires a specialised delivery vehicle might reasonably be expected to be delivered by the trader as it is unlikely that the consumer will be able to make the delivery themselves. In turn, this may mean that any additional charges associated with delivery, even if presented as optional, are not genuinely optional for the majority of consumers. We would also consider whether the charges associated with delivery had been included

in the headline price or otherwise brought to the customer's attention upfront.

Value of price information

- 2.39 A key component of fair trading, in our view, is that price information provided to the consumer should be of decisional value: in other words the price information should be relevant to a transactional decision the consumer might make. Pricing information should assist consumers to make informed and efficient decisions.
- 2.40 The provision of spurious price information is a practice of some concern to the OFT. We note in this regard that Annex Practice 18 of Schedule 1 of the CPRs makes it an offence to provide to consumers information which is designed to make them think the current market price for a product is something other than it actually is. Specifically, Annex Practice 18 states:

' Passing on materially inaccurate information on market conditions or on the possibility of finding the product with the intention of inducing the consumer to acquire the product at conditions less favourable than normal market conditions'.

3 PARTITIONED PRICING

- 3.1 'Partitioned pricing' refers to the practice of advertising a price for a product and adding extra charges during the purchasing process.
- 3.2 Partitioned pricing gives consumers the opportunity to tailor a product or service to closely match their requirements. This means they can choose the features they value most and avoid paying for options they do not require. When used transparently this brings clear economic and efficiency benefits.²
- 3.3 We identify three types of partitioned charges:
- first, fixed compulsory charges, which all consumers have to pay but which are not included in the headline price
 - second, charges for an additional product or service which is optional
 - third, charges for a component of the product or service that is compulsory, but where a range of possible charges for that compulsory component may apply. Most commonly this will include any charges levied for use of a particular payment mechanism (the act of paying is not optional). In some cases there may be no charge for one or more of these options.
- 3.4 Partitioned pricing is the least commonly experienced pricing practice. In the consumer survey 47 per cent of consumers reported encountering a partitioned price in the last 12 months³ and in the newspaper trawl seven per cent of adverts contained a partitioned price.⁴

² See Consumer harm and economic efficiencies paper, Annexe C

³ Table S1/2 Consumer survey data tables, Annexe N. The most commonly experienced practice was volume discounts which 95 per cent of people had encountered.

⁴ See Newspaper trawl summary, Annexe J

- 3.5 Half of the partitioned pricing practices were experienced in a shop but also included a substantial minority of cases online (38 per cent).
- 3.6 Partitioned pricing typically involves products that are purchased infrequently, some 59 per cent of purchases related to products bought once a year or less.
- 3.7 The psychology literature review shows that separating a price into a base price and additional charges leads to higher demand and perceived value, as well as a lower recalled price, lower price estimation and lower search (shopping around) intentions. The psychology research also shows that people tend to stick with the default option for opt-in/opt-out in part because they consider the default option the one most recommended.⁵
- 3.8 The psychology research suggests that partitioned pricing has a number of consequences, these include: a tendency for consumers to reduce the amount of shopping around they undertake, increased difficulty in comparing the final price they will pay on a like for like basis between different traders and a stronger belief that because they are choosing a product based on their particular needs the price will be about the same everywhere.
- 3.9 The reason that partitioned pricing works to increase sales is because consumers 'anchor' on the piece of information they consider most important, for example the advertised price, and adjust insufficiently for any additional charges, thereby underestimating the total price. People also have a desire to be consistent with their previous actions (known as the 'commitment and consistency' principle) which means that even when the price starts to increase they tend to remain committed to the trader.⁶

⁵ Section 3.2 of Ahmetoglu et al, 2010, *Pricing practices: their effects on consumer behaviour and welfare*, Annexe F

⁶ See Glossary, Annexe A

- 3.10 Consumers' tend to focus on the initial price and having chosen the lowest advertised price remain committed to that trader even if the price starts to increase. Consequently, when the upfront price is presented in a misleading way, for example when compulsory components are excluded, this most likely causes consumer harm.
- 3.11 Because consumers focus on the headline price and choose a trader based on the cheapest advertised price traders which include all the compulsory components in the headline price will be at a competitive disadvantage compared with traders that leave out compulsory charges. Depending on the product in question this may lead other traders to adopt similar pricing strategies, that is, excluding compulsory charges from their upfront offer, in an attempt to win customers. This may make it more difficult for consumers to know whether a particular offer represents good value for money for their particular needs.

Consumer expectations and attitudes

- 3.12 In order to assess when partitioned pricing might mislead people and any possible detriment arising from being misled we need to understand what people think about partitioned pricing. This basic outline of what people think about partitioned pricing in general is a useful starting point for assessing what extra information consumers might need if the price frame is used differently from their expectations.
- 3.13 The consumer survey has helped identify how those who had experienced partitioned pricing think about it in general:
- 75 per cent of consumers only became aware that there were going to be price increases once they were part way through the purchasing process. It seems safe to conclude that this proportion had a general expectation that the upfront price would be the final price
 - only 26 per cent of people felt the offer made it clear what was included in the headline price

- 70 per cent of people thought that all compulsory charges should be included in the advertised price, a large minority of whom thought that there should also be a breakdown of costs provided with the headline price
- 80 per cent of people said they would like the most popular options to be included in the upfront price
- when asked what effect optional charges have on comparing prices between suppliers three-quarters of people said that the charges made comparing prices more difficult.

Impact on consumer decision making

- 3.14 In the behavioural experiment, partitioned pricing reduced the amount of shopping around which meant that the first shop visited benefitted from higher sales. This behaviour can be explained in part by the commitment and consistency principle. The endowment effect and loss aversion⁷ also help explain consumers' seeming reluctance to walk away from the offer. Partitioned pricing works by increasing consumers' willingness to pay because they believe themselves already in possession of a good and would be less willing to give it up.
- 3.15 Partitioned pricing is good at attracting people to a particular trader, in our survey a small majority of people who were thinking of or intending to purchase a particular product when they saw an advert containing a partitioned price went to the trader because of the advertised offer. Once at the trader two-thirds of people ended up buying the product that was advertised.
- 3.16 When it became clear that the total price was increasing as they went through the purchasing process only about half of consumers went elsewhere in order to shop around and to get prices from alternative suppliers. This is despite the fact that 75 per cent of consumers had not

⁷ See Glossary, Annexe A

expected the price to rise. This finding is consistent with the psychology literature review which suggests consumers commit to a trader even when prices begin to rise.

'I note they are always looking to add hidden this and hidden that, because sometimes if you book something when you're busy and not concentrating enough, you find you end up paying a bit more'

OFT focus group

- 3.17 Consumers were given a range of options to explain why they did not shop around; the most frequently selected were the convenience of purchasing then and there (26 per cent), being busy or lacking time to shop around (25 per cent) or needing the item urgently (10 per cent). Only 13 per cent of people said they did not shop around because they still thought the final price was an acceptable or good price.
- 3.18 The decision to shop around may also be influenced by consumers' belief about the similarity of the price of extras at different traders. If they think the extra charges will be similar across traders they may be less likely to spend extra time shopping around. Just over a quarter of consumers thought that both compulsory and optional (additional) charges would be virtually identical or very similar across different traders and about one in 10 said they did not shop around because things 'would be the same...with other suppliers'.

'Booking fees always seem to be the same price so I wouldn't compare them'

OFT focus group

- 3.19 The research shows that partitioned pricing is good at attracting consumers to a particular trader and converting those visits into sales. The practice reduces the amount of shopping around.

Consumer detriment

3.20 The previous section shows that partitioned pricing has a clear effect on how people shop. This in itself does not demonstrate consumer detriment. In considering the extent to which partitioned pricing results in consumer detriment we have collected evidence on a range of factors:

- shopping errors – price, retailer and quantity
- emotional reaction
- learning.

Shopping errors

3.21 We use the term 'shopping errors' to refer to errors in terms of buying too many or too few units compared with what the consumer would have bought if the offer was clear. There can also be errors in terms of the choice of trader or the price paid.

3.22 The behavioural experiment found that partitioned pricing led to the highest detriment of all the price frames and caused consumers to make purchasing and searching errors.⁸ The most prevalent error was that subjects bought at the first shop they visited at prices that were too high, that is, at prices where they should have continued their search.

3.23 This finding is supported by the consumer survey in which 57 per cent of people said they would not have bought the same product from the same trader if they had known the final price at the beginning of the purchasing process and about half of consumers said they thought they

⁸ In the behavioural experiment consumer detriment was measured using welfare losses. Welfare losses are a measure of actual monetary earnings in each of the five price frames and the baseline treatment compared to the potential monetary earnings if subjects behaved optimally. See OFT, 2010, *The impact of price frames on consumer decision making*, prepared for the OFT by London Economics in association with Steffen Huck and Brian Wallace (University College London). OFT1226. Annexe G for more details

could have got the same product cheaper just as easily elsewhere. We interpret these results as shopping errors.

- 3.24 Partitioned pricing can make it difficult for consumers to know what the offer includes; almost half of consumers said they paid more for the purchase than they expected to at the start of the purchasing process. However it is worth noting that nearly a third of consumers said they paid roughly what they had expected.
- 3.25 The research shows that many consumers are unsure about what the headline offer includes when the price is partitioned and that partitioned pricing makes comparing prices between traders harder. There is also evidence that consumers feel they have made errors when they encounter partitioned pricing.

Emotional reaction

- 3.26 As well as considering whether partitioned pricing causes people to make shopping errors we have also thought about the emotional reaction to the practice. We have measured this reaction primarily by looking at peoples' attitude to the practice and whether they approve or object to it.
- 3.27 About three-quarters of people objected to partitioned pricing although there was quite a variation in the level of objection depending on a number of factors. These factors included the method of purchase and the frequency of purchase.

'It's a sneaky way of, you know, taking your money without telling you'

OFT focus group

- 3.28 Significantly more consumers who objected to partitioned pricing purchased online or over the phone compared to consumers who did not mind partitioned pricing (55 per cent and 29 per cent respectively). Consumers were less likely to object to partitioned pricing in respect of products bought with high frequency compared to products bought with

medium or low frequency. Eleven per cent of consumers who purchased a product with high frequency approved of partitioned pricing compared with three per cent and five per cent for products bought with medium and low frequency.

- 3.29 The site search tests showed that consumers sometimes found it frustrating when an optional item is pre-selected for them and they have to opt-out. There was some mention of the risk of over-looking a pre-selected item and purchasing an unwanted item and possibly paying more than intended. Some consumers also ended up keeping the additional items as they could not work out how to remove them; this caused substantial frustration:

'Booking online you get forced to buy things as you get frustrated with the website, and how it works, so you just buy it.'

OFT focus group

- 3.30 To the extent that partitioned pricing makes it harder to compare prices it is more likely to cause frustration, wasted time and a belief that one could have got a better deal elsewhere.

Learning

- 3.31 It is possible that over time consumers will ignore or adjust their behaviour to take account of misleading partitioned pricing, that is, they will learn what to expect about additional charges when they see an offer and take different decisions based on that learning. As part of our research we have attempted to discover to what extent people learn about partitioned pricing and whether they are able to use this learning to adjust their behaviour and so achieve better outcomes.
- 3.32 The behavioural experiment showed that as participants gained experience of partitioned pricing the number of errors generally declined, that is, there was some evidence of learning. The improvements occurred at a declining rate so that learning did not completely eradicate the problems associated with the price frame.

- 3.33 This finding was supported by the results from the consumer survey where only a modest proportion of consumers (one in five) said that they would do nothing differently if they came across the same partitioned pricing offer again. We take this to mean that people have learnt that they need to do something differently in the future to get a better deal.
- 3.34 There was also a reasonable awareness of what actions might help get a better deal: of those who said they would do something differently the most popular options were to shop around more and be more careful about choosing optional extras. Also a clear minority of consumers said they would be more prepared to walk away rather than buy.
- 3.35 However, the actual extent to which consumers apply their learning and behave differently remains unclear. The research strongly suggests that consumers are aware of ways in which they can shop more carefully, with the intention of achieving improved value for money, and assert they will do differently.
- 3.36 Yet the research also strongly suggests that in the cases they discussed consumers did not modify their behaviour as a result of previous experience. Only four per cent of the sample were purchasing a product for the first time and 16 per cent were purchasing a product bought at least monthly, that is, a product they bought with high frequency. So almost all consumers appeared to have some prior experience but despite this still said they would do something differently next time.
- 3.37 One way to try and get an approximation of how well people learn is to look at whether those who have frequent experience of partitioned pricing do better than those who have less experience of the practice. This method will only ever give an approximation of whether it is

experience that improves outcomes because it may also be affected by the type and price of the product.⁹

- 3.38 Despite these caveats there is some evidence that consumers do learn about how partitioned pricing works as they experience it more frequently. Consumers making a high frequency purchase were more likely to be aware of the extras when they saw the initial price (30 per cent compared with nine per cent for both medium and low frequency) and 39 per cent of consumers making a high frequency purchase thought the initial price was clear about what was included. Whereas for medium and low frequency purchases consumers are more likely to become aware of the extras during the purchasing process (79 per cent each) and over three-quarters of consumers purchasing medium and low frequency purchases thought the initial price was not clear about what was included.
- 3.39 Although some consumers seem to have a better understanding of what the offer includes with respect to high frequency purchases it is important to note that even for high frequency purchases a small majority of consumers only become aware of the extra charges during the purchasing process and about six in 10 thought the initial price was not clear about what was included. This suggests that while learning does happen it is not perfect and partitioned pricing still causes consumer confusion.
- 3.40 There is evidence that suggests consumers appear to learn how much the final cost will be; about half of medium and low frequency purchases

⁹ We cannot know whether the results seen in the consumer survey are due to the frequency of purchase, the type of product or the expense of the product. Frequently bought items are toiletries and groceries whereas less frequently bought items include flights, holidays and electrical products. The fact that groceries and toiletries tend to have lower prices than holidays and electricals adds a further level of complication to our findings. Consumers may be more comfortable making decisions where they are unsure what the final price will be when the item is cheaper than for more expensive purchases. It is also possible that consumers do not have such a strong response to a change in price from their initial expectation when the product is cheaper.

cost more than expected compared to 36 per cent for high frequency purchases.

- 3.41 The results for high frequency purchases provide evidence that consumers have some limited learning, and adjustment to, partitioned pricing. However 84 per cent of purchases were made with low or medium frequency and included holidays and electrical products which were the categories where partitioned pricing was more prevalent. This suggests that most consumers have fewer opportunities to learn on the products where partitioned pricing is used most extensively and that the consumer detriment created will continue for a sustained period.

Conclusions

- 3.42 Partitioned pricing is effective at changing the way consumers shop and reduces their ability to compare prices across traders. When used in a misleading manner partitioned pricing causes high levels of consumer detriment with many consumers believing they did not get the cheapest price available. There is also evidence of widespread consumer uncertainty about what the initial price includes when it is part of a partitioned price.
- 3.43 Partitioned pricing can offer significant consumer benefits when it allows traders to genuinely tailor their product or service to their customers' needs but the evidence suggests this is not always the case. The OFT considers that it is misleading to not include in the headline price all compulsory charges that the consumer has to pay; rather worryingly our survey showed that a large minority of extras encountered were fully compulsory.
- 3.44 The OFT's view is that a failure to provide upfront information on compulsory charges can constitute a breach of the CPRs contrary to either or both Regulations 5 and 6 of the CPRs, depending on the particular circumstances of the case.

Core concern

3.45 Our core concern about partitioned pricing is that consumers may shop around less and potentially obtain worse value than they otherwise would have done because they are misled by the initial price and do not understand what that price includes. Once they have decided to visit a particular trader they are less likely to walk away even if the price rises unexpectedly.

3.46 The OFT is less likely to consider enforcement action where a trader:

- includes all compulsory charges in the upfront price
- flags with the headline price, and gives information about, compulsory elements of the product or service which have a range of charges, for example payment methods
- clearly displays the total price prior to payment being accepted
- includes any additional charge associated with automatically opting consumers in to extras in the headline price.

3.47 When considering whether to prioritise an advert for enforcement action we would also be less likely to take action when a partitioned price follows the BIS PPG,¹⁰ BCAP¹¹ and CAP codes.¹²

3.48 We think that compulsory components with a range of prices have great potential to mislead consumers. In the BIS PPG it states that 'Any charges which are not included in the basic price, because they are not

¹⁰ Specifically sections 2.2.6, 2.2.7, 2.2.17 and 2.3.1. Available at www.bis.gov.uk/policies/consumer-issues/buying-and-selling/consumer-protection-regulations

¹¹ Specifically sections 3.19 – 3.22. Available at www.cap.org.uk/The-Codes/BCAP-Code.aspx

¹² Specifically sections 3.4, 3.18, 3.19 and 3.20. Available at www.cap.org.uk/The-Codes/CAP-Code.aspx

paid by all customers or are optional, should be clearly described. The amounts and the circumstances in which they are payable should be stated near the basic price, or the consumer should be directed to where in the brochure or website the information is available.¹³

- 3.49 We would reiterate how important this guidance is to help reduce the possibility of a trader misleading their customers. An advertisement is less likely to be a priority for OFT enforcement action against misleading adverts when a trader who pre-selects options for consumers includes any cost associated with that option in the upfront price and, where there are genuinely varying prices depending on the selections consumers must make, flags these with the headline price and directs consumers to a schedule of options and their applicable charges.

¹³ Section 2.2.17. Available at www.bis.gov.uk/policies/consumer-issues/buying-and-selling/consumer-protection-regulations

4 REFERENCE PRICING

4.1 Reference pricing refers to those offers which aim to demonstrate that they offer good value by including a reference to another, typically higher, price. There are four broad types of references:

- 'was' prices which compare an advertised price to a price the trader has formerly charged for the product
- external reference prices (ERPs) which compare an advertised price to a price charged by another trader for the same product
- recommended retail prices (RRPs) which compare an advertised price to a price recommended by the manufacturer
- after sales prices (ASPs) which compare the current advertised price to a price the trader intends to charge in the future.

4.2 About two-thirds of all consumers surveyed had encountered a reference price in the last 12 months¹⁴ and just under a quarter of the newspaper adverts in our newspaper trawl contained a reference price.¹⁵

4.3 Reference prices are frequently used by traders across a wide range of industries to demonstrate to consumers that they should visit a particular trader to save money; either compared with a different time or a different trader. Where reference prices are clearly presented to consumers and the reference price is accurate and in line with consumer expectations, it is an efficient way for a trader to demonstrate price offers which may be valued by consumers and helps reduce search costs associated with getting a good deal.

4.4 Including a reference price in an offer can create an anchor which consumers use as a starting point for estimating the real value of the

¹⁴ Table S1/2 Consumer survey data tables, Annexe N

¹⁵ See Newspaper trawl summary, Annexe J

product. Evidence set out in the psychology literature review shows that a reference price is very effective at encouraging consumers to make a purchase they may not otherwise have made by increasing consumers' perceptions of the value of the product and the inferred saving. This change in perception arises because consumers do not fully adjust their perceptions of the offer away from the reference (or 'anchor'¹⁶) price.¹⁷

- 4.5 The academic literature consistently finds that reference pricing influences people's perceptions of the value of the offer and reduces the effort consumers put into shopping around and comparing prices. Furthermore the evidence suggests that reference pricing can still influence consumers where reference prices are exaggerated or where consumers are sceptical about whether the references are genuine.
- 4.6 The psychology literature review shows that reference pricing affects consumers' intentions to purchase whether the reference price is genuine or not. As a result where the reference price is misleading and consumers are not able to easily identify or verify the reference price (and thereby verify the saving) there is considerable scope for consumer harm. It is important that references are genuine so they do not mislead consumers into making purchases they may not have made if the offer was communicated accurately.

Consumer expectations and attitudes

- 4.7 To understand the circumstances when a reference price may mislead a consumer, resulting in consumer detriment, we need to consider what consumers think when they encounter a reference price. This also provides a good starting point for identifying what additional information may need to be provided to consumers where a reference price frame is used in a way that diverges from consumer expectations.

⁵ See Glossary, Annexe A

¹⁷ See Ahmetoglu et al, 2010, *Pricing practices: their effects on consumer behaviour and welfare*, Annexe F

- 4.8 The consumer survey helped identify how consumers think about reference prices in general:
- 75 per cent thought that the reference price they encountered was genuine
 - 43 per cent of consumers think that a 'was' price will have been available for more than one month, with 60 per cent thinking that it should have been available for more than one month if the offer is to be considered genuine
 - 79 per cent of consumers thought that the sale period should be no longer than the non-sale period
 - 43 per cent of consumers were unaware that the Recommended Retail Price refers to a manufacturers recommended retail price. Roughly one in nine people (11 per cent) thought that an RRP was a previous selling price for the product and nearly a quarter (23 per cent) thought it was the price the trader would sell at when not having a sale.

Impact on consumer decision making

- 4.9 The behavioural experiment found that a meaningless 'was' reference price (in the experiment there was no previous sales period for the reference to refer to) led to a reduction in the extent to which consumers shopped around benefiting the trader with the reference offer. This result was supported in the consumer survey which showed that reference pricing affects consumers' decisions about what product to purchase and where to purchase from.
- 4.10 The consumer survey indicated that reference pricing is particularly effective at drawing consumers to a specific trader or brand. Whilst 63 per cent of consumers were already thinking of purchasing the product, over half of these consumers chose the trader because of the offer. Furthermore three-quarters of all consumers who encountered a reference price ultimately went on to purchase the product.

- 4.11 Perhaps more importantly of the 37 per cent of consumers who were not thinking of purchasing the specific product when they encountered a reference price, almost two-thirds went on to purchase the product from that trader.
- 4.12 These results are in line with the behavioural psychology research which indicates that reference pricing increases purchase intentions amongst consumers.¹⁸
- 4.13 Furthermore, the consumer survey indicates that even where consumers are sceptical about a reference price their behaviour may still be affected by it, with over half of those consumers who did not think the offer was genuine continuing to make the purchase.
- 4.14 In addition to affecting what products consumers purchase and which trader they purchase from, reference pricing also affects how consumers evaluate the offer by reducing the extent to which they shop around and compare prices.
- 4.15 In about half of all cases, consumers assessed the validity of the offer by trusting their instincts or experience rather than direct comparison of prices, either by shopping around or by recall. Of those consumers who thought the reference price was genuine almost half based their belief on their previous experience of what the original price actually was and only a quarter of had shopped around and compared prices for the specific purchase.
- 4.16 We were also interested in what effect consumers felt reference pricing had on how they shopped. A clear majority (87 per cent) felt that although a 'half price' offer was likely to be exaggerated they would still check it out in case it was a bargain. Furthermore 90 per cent of consumers were more likely to buy something if it was advertised as 'half price' as they like to get a bargain. Of those consumers who

¹⁸ See Ahmetoglu et al, 2010, *Pricing practices: their effects on consumer behaviour and welfare*, Annexe F

agreed that half price offers are unlikely to be genuine so not worth checking out, 88 per cent also agreed that when thinking about half price offers they are more likely to buy a reduced item because they like to get a bargain.

- 4.17 Once they have been attracted to an offer about three-quarters of consumers who think the offer is genuine do not shop around to verify if it is a good deal.¹⁹
- 4.18 The research shows that reference pricing has a strong impact on consumers' shopping behaviour making them more likely to purchase from the trader with the offer without comparing prices to verify the discount advertised. Reference prices therefore have the potential to be misleading if the reference price is false or has not applied for the length of time or in the circumstances the consumer expects.

Consumer detriment

4.19 In the previous section we demonstrated that reference pricing affects the way in which people shop, however, this in itself does not demonstrate consumer detriment. In considering the extent to which misleading reference pricing results in consumer detriment we have collected evidence on a range of factors:

- shopping errors²⁰ – price, retailer and quantity
- emotional reaction
- learning.

¹⁹ This group may include people that did not shop around because they felt they did not need to, already possessing knowledge sufficient to decide whether they thought the offer was genuine.

²⁰ See Glossary, Annexe A

Shopping errors

- 4.20 The behavioural experiment found that adding a 'was' price, which in the experiment was meaningless, increased the number of errors participants made in deciding how many products to purchase from each trader. The higher reference price caused participants to over value the offer and purchase too much of the product.²¹
- 4.21 In the consumer survey a large minority (42 per cent) of consumers thought that they could have just as easily got the same product at a cheaper price elsewhere. We have taken this to mean that consumers feel that they may have made a shopping error.
- 4.22 The research shows that reference prices are effective at attracting consumers to a particular trader and that a large minority think they could have got a lower price elsewhere suggesting consumers are more likely to make shopping errors as a result of reference pricing.

Emotional reaction

- 4.23 As well as shopping errors, we also need to consider whether reference pricing results causes an emotional reaction by consumers. Negative emotional reactions may include feelings of frustration where consumers have spent time checking out offers which turn out not to be available or feelings of anger or regret where consumers subsequently find out that a purchase they made was not as good as they had thought. To judge their emotional reaction we have considered consumers' attitude to reference prices.
- 4.24 Whilst it is clear that reference pricing may affect consumers' transactional decisions it is less evident that consumers are annoyed or angered by this practice. Less than 20 per cent of consumers objected

²¹ See OFT, 2010, *The impact of price frames on consumer decision making*, prepared for the OFT by London Economics in association with Steffen Huck and Brian Wallace (University College London). OFT1226. See Annexe G for more details.

to reference prices being used in adverts with the remainder being almost equally split between those who did not mind reference pricing and those who approved of it.

'It's a bit cheeky to make you think something is more luxurious than it is. But you can't be an expert in everything'

OFT focus group

- 4.25 Those consumers who objected to reference pricing were less likely to be convinced that offers they saw were genuine. Overall 75 per cent thought the offers were genuine, but of those consumers who objected to reference pricing just 42 per cent believed the offers they saw were genuine. Among those consumers who object to reference pricing a high proportion of consumers did not believe the offer was genuine, yet half of those who objected still made a purchase from that trader.

Learning

- 4.26 It is possible that over time consumers learn how to judge reference price offers in general or in relation to particular traders. As well as learning about whether offers are genuine consumers also need to be able to apply that knowledge and ignore exaggerated reference prices or adjust their estimation of the value of an offer in order to achieve better outcomes.
- 4.27 The evidence on learning with respect to reference pricing is mixed. The behavioural experiment provided some evidence that consumers faced with artificial reference prices learn over time, but not well enough to offset the errors caused by the price frame.
- 4.28 Some, but not all, of the research identified in the psychology literature review also indicates that the effect of using reference prices (that is, the increased valuation of the size of the saving) decreases with familiar brands and with inexpensive or frequent purchases. The consumer survey indicates that consumers who are purchasing a product which is only bought infrequently (maximum once a year) are more likely to have been influenced by the reference price when deciding which trader to

choose than those purchasing products bought at least once a month – 63 per cent and 46 per cent respectively.

- 4.29 The consumer survey showed that 37 per cent of people who bought the product despite not believing that the offer was genuine said this belief was because 'the retailer always has sales'. This shows that even when consumers appear to have learnt which traders have very frequent sales they do not fully adjust their behaviour to take account of their learning, although of course such sales might represent genuinely good bargains.
- 4.30 There is further evidence that learning is not perfect: just over half of those consumers who thought the offer was not genuine went on to purchase the product and a large minority (44 per cent) of consumers who thought they could have got the same product at a cheaper price just as easily elsewhere said they would do nothing differently if faced with the same offer again. Even among those consumers who did not believe the offer they encountered was genuine (one in four) only a third said they would compare more prices if faced with the same offer again and almost 40 per cent said they would do nothing differently.
- 4.31 It appears that even where consumers are aware that they may have suffered financial detriment from purchasing a product advertised using a reference price or are sceptical about whether such an offer is genuine, they do not adjust their behaviour to overlook the offer and are still attracted by the reference price. In other words they do not adjust their behaviour based on learning about reference pricing.

Conclusions

- 4.32 Reference pricing is very effective at encouraging consumers to visit a trader to check out an offer and ultimately purchase a product. Even when people do not believe the offer is genuine just over half buy the product from the trader.
- 4.33 The research provides clear evidence that reference pricing reduces the extent to which consumers shop around and compare prices. By

affecting the searching behaviour of consumers, fictitious or misleading reference pricing can result in consumers paying higher prices and purchasing more of a product than they would have if they had fully understood the offer. The evidence shows that although consumers learn, this learning is not complete and does not protect them from suffering detriment from false or misleading reference pricing.

- 4.34 We consider a reference price may mislead and harm consumers where the reference price is fictitious or not easily verifiable or where consumer expectations regarding the reference price, for example the price establishment period, are not in line with the reality of the offer.

Core concern

- 4.35 Our core concern about the use of reference pricing is that consumers will be misled if they use an inaccurate reference price as an indication of value or quality. The research shows that consumers use the reference price when estimating the value of the offer so we would have concerns where the reference price is not indicative of the usual or normal selling price. For example:

- an RRP that is not set at a level at which a reasonable quantity of the product can sell is likely to mislead consumers
- indicating higher prices which do not reflect the usual selling price or have not been established in line with consumer expectations may also mislead consumers.

- 4.36 With respect to the use of RRP, traders may wish to ensure that manufacturers can provide them with substantiation that the RRP represents a genuine selling price and has been properly price established. The use of RRP as a reference price without such substantiation leaves the trader open to the risk that the RRP is fictitious or otherwise misleading.

- 4.37 Clearly, a reference price can only be a priority for enforcement action if it is likely to have breached the CPRs. We discuss reference prices in the

context of the CPRs in the legal framework section of this report at Annexe D.

4.38 When considering whether to prioritise an advert for enforcement action we would be less likely to take action around reference prices where the trader:

- ensures that RRP that are presented to consumers reflect actual sale prices
- price establishes 'was' prices in all outlets that go on to use the 'was' reference price
- states the date and name of the trader for any ERP comparison and keeps the advert current as far as the medium allows
- price establishes 'was' prices relative to the length of the sale period, such that the sale period is no longer than the non sale period, subject to a minimum 28 days' price establishment period.

4.39 We would also be less likely to prioritise enforcement action where a reference price follows the guidance in Part 1 of the BIS PPG²² and the CAP and BCAP Codes.²³

4.40 The research shows that consumers have limited understanding about what an RRP is and that consumers have strong expectations about the establishment and accuracy of reference prices. This means the OFT believes there is a high chance of consumers being misled by advertisements which use RRP and other forms of reference prices in a way which departs from consumer expectations.

²² Available at www.bis.gov.uk/policies/consumer-issues/buying-and-selling/consumer-protection-regulations

²³ Specifically sections 3.39 and 3.40 of the CAP and BCAP codes: www.cap.org.uk/The-Codes/CAP-Code.aspx and www.cap.org.uk/The-Codes/BCAP-Code.aspx

5 BAIT PRICING

- 5.1 Bait pricing is the practice of traders offering a limited volume of stock at the offer price which is obviously too small to meet the expected demand in response to the offer.²⁴ After drip pricing, bait pricing is the second least commonly experienced pricing practice; 52 per cent of consumers have experienced a bait price in the last 12 months.²⁵ In our newspaper trawl the suggestion of bait offers were reasonably common: 21 per cent of newspaper adverts contained a bait price.²⁶
- 5.2 The psychology literature review provided only limited evidence about the effect of bait pricing with just one study addressing the practice directly. However the review has considered other work which addresses the individual components of baiting sales, specifically the bait (the offer price) and the subsequent unavailability of the good, which together can be used to infer conclusions about the effect of the practice.²⁷
- 5.3 Bait pricing is effective at increasing sales due to the 'commitment and consistency' principle. This principle dictates that once people have committed to an action they are more likely to be consistent with that course of action. In this case, the action is the choice of trader and the decision to buy the product in question. The commitment and

²⁴ Bait pricing is not the same as 'loss leaders' where a trader makes a genuinely attractive offer to entice people to shop, hoping they will also buy other items; and it is also not the same as a genuine offer, with initial volumes available in line with reasonable expectations, but proved unexpectedly popular.

²⁵ Table S1/2 Consumer survey data tables, Annexe N

²⁶ In the newspaper trawl we classed an advert as containing a bait price when it included the words 'from' or 'up to', it may have been that adequate stock was actually available for these offers so this figure should be seen as an upper bound. See Newspaper trawl summary, Annexe J

²⁷ See Ahmetoglu et al, 2010, *Pricing practices: their effects on consumer behaviour and welfare*, Annexe F

consistency principle implies that once consumers have chosen which trader to visit, they are likely to remain committed to it even if the product is not available at the price they originally saw advertised or not available at all.

- 5.4 Academic research²⁸ goes on to show that the most common response when a consumer finds a product is not available is to buy a substitute product from the same trader.
- 5.5 The psychology literature suggests that bait pricing may have a substantial negative financial impact on consumers. Furthermore even if a bait offer does not lead to a sale it may still waste consumers' time and effort and may be detrimental to competitors who miss out on sales and store traffic they might otherwise have attracted.²⁹
- 5.6 It is also possible to infer from the psychology research that so called bait and switch practices are likely to be harmful to consumers, particularly when salespeople encourage the consumer to switch to a more expensive product.³⁰
- 5.7 The OFT has not discovered any possible efficiencies associated with bait pricing. Based on the psychology literature review this makes us believe that bait pricing has a high **potential** to cause consumer detriment. Evidence on the actual use of baiting sales by traders and consumers understanding of them is drawn from our consumer survey.

²⁸ See page 24 of Ahmetoglu et al, 2010, *Pricing practices: their effects on consumer behaviour and welfare*, Annexe F

²⁹ See section 3.5 of Ahmetoglu et al, 2010, *Pricing practices: their effects on consumer behaviour and welfare*, Annexe F

³⁰ See Ahmetoglu et al, 2010, *Pricing practices: their effects on consumer behaviour and welfare*, Annexe F

Consumer expectations and attitudes

- 5.8 In order to assess when bait pricing might mislead people and possible detriment arising from being misled we need to understand what people think about the practice. This basic outline of what people think about bait pricing in general is a useful starting point for assessing what extra information consumers might need if the price frame is used differently from their expectations.
- 5.9 The consumer survey has helped identify what people expect when they encounter bait pricing:
- consumers generally had high expectations that the advertised product would be available, only 20 per cent suspected it might have sold out and the remaining 80 per cent expected it to be available. This expectation is likely to be in large part due to the fact that in 83 per cent of cases consumers reported that the offer did not specify that only a limited number of products were available at the reduced price
 - when asked to think about a price offer which was advertised at a reduced price and then found to be no longer available at that price almost 80 per cent of people agreed that they would be likely to assume the offer was genuine, on the basis that bargains are likely to sell out quickly. Whilst 60 per cent of consumers said they would be suspicious of the offer was not genuine
 - when asked what changes to the wording of the advert, if any, would be helpful about half of consumers said that the advert should state if stocks are limited at the advertised price. Approaching a third said the advert should state how many products are available at the advertised price and about a third said the advert should state the end date for the offer
 - about a third of consumers said that the offer should not be displayed or shown if there was no stock left.

Impact on consumer decision making

- 5.10 In the behavioural experiment participants reported that the bait price enticed them to go quickly to the shop with the best advertised deal so as not to miss out. Participants' chose the retailer to visit based on the advertisement. The psychology literature tells us that the act of choosing a trader to purchase from raised the participants' willingness to pay because they expected to get the advertised deal and envisaged owning the good. Once it became apparent that the advertised offer was unavailable not buying the good at a higher price or leaving without purchasing a product may have been perceived as a loss. As with drip pricing, loss aversion and/or the endowment effect drives consumer behaviour in respect of baiting sales.
- 5.11 Despite the participants in the behavioural experiment reporting anger and frustration if they missed out on the offer, they reported that they may buy something anyway.
- 5.12 By its very nature bait pricing works by tempting people with an extremely good offer. The evidence shows that people will decide to visit a trader because of the offer (in the consumer survey 60 per cent of consumers who were already thinking about or intending to purchase the product said they had gone to the trader because of the price offer) and when they discovered that the product was not available at the reduced advertised price, about a third made a purchase from the same trader.

'Maybe the £39 tickets have gone, but they've deliberately left it on there to entice you in'

OFT focus group

- 5.13 It is possible that a clear idea of the selling prices offered by other traders may moderate consumers' behaviour when they discover that a particular offer is unavailable. In particular, if a consumer knows that the final price which they are presented with is higher than another local trader's price this may encourage them to walk away. However, this depends on consumers knowing what other prices are available, that is,

shopping around before they commit to a particular trader. We used the consumer survey to examine the extent to which people shopped around when they encountered bait advertising.

- 5.14 Having seen the offer more than half of people compared the price with that of another trader. However, the stage of the shopping process at which consumers made the comparison was fairly evenly split between before and after seeing the offer (25 per cent and 30 per cent respectively).
- 5.15 The psychology literature review and consumer survey provide clear evidence that consumers' shopping decisions are affected by bait pricing in terms of the choice of trader, the decision to buy an alternative product when the first is unavailable and even to a limited extent the decision to shop around.

Consumer detriment

- 5.16 In considering the extent to which bait pricing results in consumer detriment we have collected evidence on a range of factors:
- shopping errors³¹ – price, retailer and quantity
 - emotional reaction
 - learning.

Shopping errors

- 5.17 In the behavioural experiment bait pricing was the third most detrimental practice, after partitioned (drip) pricing and TLOs, in terms of consumer

³¹ See Glossary, Annexe A

detriment.³² The experiment showed that consumers bought too much at the first shop. Consumers picked a store from which they expected a good deal and this in itself raised their willingness to pay for the good. Consumers' valuation of the good is increased by the endowment effect which occurs because of anticipated or imagined ownership of the product.³³

5.18 The consumer survey found that just under half of all people thought they could have got the product more cheaply elsewhere.³⁴ Interestingly 60 per cent of people who purchased from a different trader thought they could have got the product cheaper elsewhere suggesting that even when consumers changed traders they did not think they had got the lowest price possible, albeit some people might not necessarily look for the cheapest price. This is not necessarily surprising given that we asked people about a situation where they had found an advertised price was unavailable. Perhaps more importantly, 12 per cent of consumers said they didn't know whether they could have got the product cheaper elsewhere, which may, in part, reflect the effect that baiting sales have on consumers' decision to shop around.

5.19 The consumer survey provides very strong evidence about the benefit of shopping around. Of those consumers who did not switch to a different trader two-thirds ended up buying the same or a similar product at a higher price. Of those consumers who did switch trader 78 per cent bought the same or a similar product at the same or a lower price. This

³² In the behavioural experiment consumer detriment was measured using welfare losses. Welfare losses are a measure of actual monetary earnings in each of the five price frames and the baseline treatment as compared to potential monetary earnings if subjects behaved optimally. See OFT, 2010, *The impact of price frames on consumer decision making*, prepared for the OFT by London Economics in association with Steffen Huck and Brian Wallace (University College London). OFT1226. Annexe G

³³ See Glossary, Annexe A

³⁴ The statistics in this paragraph include those who answered 'don't know'. Unless otherwise noted the statistics quoted elsewhere exclude 'don't know' answers.

suggests that those who did not switch trader might be more likely to make shopping errors.

- 5.20 Despite the clear benefit of switching in terms of getting a lower price, a third of consumers did not switch to a different trader. Almost 40 per cent did switch while the remaining 30 per cent did not buy anything. Whilst it is possible that some consumers may not have made a journey just to check out the offer it seems reasonable to expect that some consumers will have suffered a wasted journey/time as a result of the baiting sale.

Emotional reaction

- 5.21 As well as considering whether baiting sales cause people to make shopping errors we have also thought about the emotional reaction to the practice. We have measured the emotional reaction by looking at peoples' attitude to the practice, in particular whether they approve or object to it, as well as asking how consumers felt when they discovered the price was not available. Overall there was quite a high level of objection, about two-thirds of consumers objected to the practice of bait pricing, although this level of objection varied with a number of factors.
- 5.22 Consumers who chose the trader because of the specific offer were more likely to object to bait pricing than those who were already thinking of the purchasing from that trader (77 per cent compared with 67 per cent respectively), this is perhaps unsurprising as the offer was responsible for their initial choice of trader and may reflect annoyance at a wasted journey or an error if they bought something.
- 5.23 There was also a difference in the level of objection depending on how frequently the product was purchased. Those purchasing a product with medium or low frequency were more likely to object than those who bought a product with high frequency. In the consumer survey, consumers were more likely to choose a trader because of the specific offer when they purchased a product with low or medium frequency than when they purchased a product with high frequency. In the latter

case the consumer may go to the trader regularly anyway and as a result be less likely to feel annoyance at a wasted journey.

- 5.24 The approval figures in the consumer survey may be due to the frequency of purchase, the type of product or the cost of the product or a combination of all three dimensions.³⁵
- 5.25 Consumers reacted very negatively to finding the product was not available: 81 per cent felt surprised, disappointed, annoyed and/or deceived. As might be expected, a higher proportion of consumers who were expecting the offer to be available reported these feelings than those who anticipated the offer might be sold out. It should be noted that 80 per cent of people expected the offer to be available.

'...if you ever see 'from' [prices for tickets] it's never there – you will never find something, I feel disappointed'

OFT focus group

Learning

- 5.26 In the behavioural experiment, participants were able to learn about baiting sales and adjust their behaviour in response. Even with this learning, however, consumers continued to suffer worse outcomes under baiting sales compared with the decisions they made in the absence of any price frames.

³⁵ We cannot know whether the results seen in the consumer survey are due to the frequency of purchase, the type of product or the expense of the product. Frequently bought items include toiletries and groceries whereas less frequently bought items include flights, holidays and electrical products. The fact that groceries and toiletries tend to have lower prices than holidays and electricals adds a further level of complication to our findings. Consumers may be more comfortable making decisions where they are unsure what the final price will be when the item is cheaper than for more expensive purchases. It is also possible that consumers do not have such a strong response to a change in price from their initial expectation when the product is cheaper.

- 5.27 The first step in the learning process is to recognise when a volume limited (or bait) offer has been used in a misleading manner. This is, clearly, difficult for most consumers to assess. Consequently, the credibility of baiting sales is high even when they are found to be unavailable with 79 per cent of people agreeing that they would assume the initial reduction was probably genuine because good offers do sell out quickly.
- 5.28 In the consumer survey just under three-quarters of people said that they would do something differently if they saw a baiting sale again. Around a third of consumers said they would compare more prices and 14 per cent said they would be more prepared to walk away – these were two of the most frequently selected options apart from do nothing differently (27 per cent).
- 5.29 However, the credibility of baiting sales is further apparent in that 14 per cent of people said that they would react more quickly to a similar advertisement next time; this shows that it is very difficult for consumers to know which adverts to be wary of and which adverts to trust.
- 5.30 Although consumers seem to know what actions they can take to improve the chances of getting a good deal the extent to which they do is unclear. Sixty-nine per cent of consumers who were buying a product they bought at least monthly said they would do something differently next time even though they had previous experience of purchasing the product.
- 5.31 One way to try and get an approximation of how well people learn is to look at whether those who have frequent experience of bait pricing do better than those who have less experience of the practice. The consumer survey showed no difference in outcomes between people who experienced a bait price on a product they bought with low frequency compared with those consumers who experienced the bait price on a product purchased with high frequency. All consumers struggle to achieve a good outcome and almost three-quarters say they

would do something differently the next time they experience bait pricing.

- 5.32 There is some indication that consumers' with more experience of a product are less annoyed by baiting sales. Those buying the product with medium and low frequency were more likely to object to the practice than those buying the product with high frequency. Those purchasing a product with high frequency were more likely not to mind either way. The proportion of consumers who were annoyed when a product was not available was also lower for high frequency purchases than for medium and low frequency purchases. These results might show that consumers learn to expect that the products advertised using baiting sales might not be available. However this is not the same as saying that consumers learn to take account of baiting sales and subsequently adjust their behaviour so as to avoid any detriment.
- 5.33 Products purchased with high frequency in our survey are groceries and toiletries which are usually fairly low value as individual items. This may mean that consumers are less concerned with baiting sales because they do not pay as much attention to those purchases and the lower cost means the endowment effect and loss aversion might be less powerful than for higher priced goods.
- 5.34 Consumers who purchased a product with high frequency were less likely to expect the product to be available than those who purchased a product with low frequency. This result might suggest that experience of baiting sales generates scepticism about the offers. However it is important to note that 75 per cent of those who were buying a product with high frequency still expected the offer to be available, compared with 86 per cent of those buying a product with low frequency, suggesting the extent of consumer scepticism is low and that the change in perception due to experience is also low.
- 5.35 The behavioural experiment suggests that consumers learn to adjust for baiting sales to some extent although they still suffered detriment as a result of bait pricing. We conclude that consumers are unlikely to be able

to learn sufficiently well to overcome the problems caused by baiting sales.

Conclusions

- 5.36 Bait pricing has a clear effect on consumers' shopping decisions, most people expect the advertised offer to be available and choose the trader based on the advertised offer. Once they get to the trader and find that the advertised offer is not available a third still purchased a product from the same trader. There are also high levels of emotional detriment in terms of consumers being frustrated and annoyed by the practice.
- 5.37 The OFT believes that the fact that such a high proportion of consumers think that an offer will be available means it is potentially very easy to mislead consumers if an advertisement does not make it clear if a product has very limited availability.

Core concern

- 5.38 Our main concern about bait pricing is that once prospective customers have invested time and effort in searching for or travelling to a specific offer they are still likely to buy the product at a higher price, or a higher priced alternative, from that trader. Even those who walk away may have wasted time, effort and perhaps money. The OFT believes that not advising consumers if stocks are particularly limited at the advertised offer price is likely to mislead any consumer who thinks the promotion is generally available and not subject to limited stock.
- 5.39 Unlike some of the other pricing practices discussed in this report baiting sales fall within Annex Practice 5 of Schedule 1 of the CPRs. The Annex Practices are automatically considered unfair and as such do not require an assessment of the effect on the average consumer. Annex Practice 5 covers: 'making an invitation to purchase products at a specified price without disclosing the existence of any reasonable grounds the trader may have for believing that he will not be able to offer for supply, or to procure another trader to supply, those products or equivalent products at that price for a period that is, and in quantities that are, reasonable

having regard to the product, the scale of advertising of the product and the price offered (bait advertising).¹³⁶

- 5.40 The related practice of Bait and Switch where traders refuse to show the advertised product, rather than use legitimate sales techniques to encourage consumers to purchase other products³⁷ falls within Annex Practice 6 of Schedule 1.³⁸ For offers that invite the consumer to visit the traders website (such as television adverts, sponsored links and some banner ads), traders can most obviously demonstrate the availability of the product where the offer is easy to find from the landing page.
- 5.41 For a fuller discussion of how baiting sales might be considered under Regulation 5 and 6 of the CPRs please see the legal framework at Annexe D.
- 5.42 The OFT would be less likely to take enforcement action where a stock limited offer follows the BIS PPG,³⁹ BCAP⁴⁰ and CAP Codes.⁴¹ In

³⁶ See p21, OFT/BERR, 2008, *Guidance on the Consumer Protection from Unfair Trading Regulations 2008*. Available at: www.offt.gov.uk/business-advice/treating-customers-fairly/protection

³⁷ For more details see Legal framework, Annexe D

³⁸ Annex Practice 6 states: 'making an invitation to purchase products at a specified price and then: (a) refusing to show the advertised item to consumers, (b) refusing to take orders for it or deliver it within a reasonable time, or (c) demonstrating a defective sample of it, with the intention of promoting a different product (bait and switch).'

³⁹ Specifically sections 3.2.1, 3.3.1 and 3.4.2 – 3.4.4. Available at www.bis.gov.uk/policies/consumer-issues/buying-and-selling/consumer-protection-regulations

⁴⁰ Specifically sections 3.24 and 3.28 – 3.30. Available at <http://cap.org.uk/The-Codes/BCAP-Code.aspx>

⁴¹ Specifically sections 3.22, 3.28 – 3.30, 8.9 and 8.10. Available at www.cap.org.uk/The-Codes/CAP-Code.aspx

particular we would draw traders' attention to sections 3.28 and 3.29 of the CAP code which state:

'3.28 Marketing communications that quote a price for a featured product must state any reasonable grounds the marketer has for believing that it might not be able to supply the advertised (or an equivalent) product at the advertised price within a reasonable period and in reasonable quantities. In particular:

3.28.1 if estimated demand exceeds supply, marketing communications must make clear that stock is limited

3.28.2 if the marketer does not intend to fulfil orders, for example, because the purpose of the marketing communication is to assess potential demand, the marketing communication must make that clear

3.28.3 marketing communications must not mislead consumers by omitting restrictions on the availability of products; for example, geographical restrictions or age limits.

3.29 Marketers must monitor stocks. If a product becomes unavailable, marketers must, whenever possible, withdraw or amend marketing communications that feature that product.⁴²

⁴² www.cap.org.uk/The-Codes/CAP-Code.aspx

6 VOLUME OFFERS AND FREE OFFERS

- 6.1 Volume offers, such as '3 for 2' or '£5.99 each, 2 for £10' are offers where the unit price changes with volume purchased. The additional item is typically, but not necessarily, the same product.
- 6.2 Volume offers often overlap with free offers such as 'Buy One Get One Free' (BOGOF) and '33 per cent extra free'. Accordingly, this chapter also covers free offers.⁴³
- 6.3 Consumers frequently encounter and purchase volume offers –95 per cent of consumers in our consumer survey had experienced a volume offer in the last 12 months and 82 per cent reported purchasing a specific volume offer at least once a month - mainly groceries, toiletries and healthcare products.⁴⁴
- 6.4 In contrast, volume offers did not appear frequently in a sample of newspaper advertisements that we surveyed (just five per cent of advertisements analysed), and where they did feature, they were less likely to be used in conjunction with another pricing practice.⁴⁵
- 6.5 Where volume offers are clear and the underlying unit price has not been temporarily inflated to facilitate the offer, these offers have clear benefits to consumers by way of the product's lower unit cost. Indeed 77 per cent of consumers view volume offers as a good opportunity to stock up on the product when it is cheaper.

⁴³ However, note that the word 'free' is also often used in conjunction with some of the other pricing practices too, such as Complex Pricing (for example, a free mobile phone with a mobile broadband package). The core concern and guidance we cite in this section equally applies when the word 'free' is used in conjunction with the other pricing practices.

⁴⁴ See Consumer survey data tables, Annexe N

⁴⁵ See Newspaper trawl summary, Annexe J

'BOGOF – I buy seven and put them under the bed!'

OFT focus group

- 6.6 The attraction of volume offers may not just be due to the actual value they represent. As we discuss below, volume offers can have powerful effects even when they do not represent good value because they may play on a consumer's desire to obtain a 'good' deal and unrealistic assessments of needs.
- 6.7 Consequently, potential harm can arise where the underlying unit price has been manipulated – for example increased for the period of the offer or the period immediately preceding the offer. Such practices are likely to mislead consumers about the saving they are making, and inflate their willingness to pay, resulting in them being over-charged for the quantity they purchase. The extent to which any given volume offer is likely to mislead depends, in part, on consumers expectations about what the offer represents.

Consumer expectations and attitudes

- 6.8 Our consumer survey found that when faced with a volume offer, rather more than half of consumers (63 per cent) report working out the saving compared to the pre-offer price, although more than a third (37 per cent) do not. Consumers in our focus groups generally assumed that the unit price of each item in the volume offer would be cheaper than the unit price of each individual item if bought separately; they expected to make a saving but many did not check the volume price against the individual price or really know if they were making a saving.
- 6.9 Some consumers in our focus groups who did try to work out the unit price reported frustration at trying to work out the unit price versus the volume price to check if there was a genuine saving, and anger if it did not represent a saving.
- 6.10 Given this frustration, and the fact that more than a third of consumers in our survey do not calculate the saving the volume offer represents, it

is perhaps unsurprising that the majority of consumers (81 per cent) would like the advertised price to state the cost per item. Around two-thirds of consumers would like to see the value of the saving over any previous price, stating when and where it was available, and around two-thirds would like to see the average individual price each item was on sale for during the month prior to the offer.

- 6.11 Notwithstanding the findings above, volume offers are generally popular with consumers, to a far greater degree than the other pricing practices considered in this study. Our consumer survey found that consumers are more likely to approve of volume offers (49 per cent) or not mind either way (35 per cent), rather than object (16 per cent). Approval is more likely from consumers aged 16-34 than those aged 35 and over.
- 6.12 A similarly popular view of free offers prevailed in our focus groups which found that consumers generally view something advertised as 'free' as very appealing.

'The 'Free' in bold red lettering attracts you straight away'

OFT focus group

- 6.13 Consumers view 'free' offers less favourably when the free element is a necessary component of the product (for example, free lenses with a pair of glasses). When the 'free' offer is part of a one-off purchase (such as free cosmetics bag with every five cosmetic items purchased) they are viewed more favourably. Like volume offers, consumers at the focus groups would like the normal unit price of the free item to be displayed.

Impact on consumer decision making

- 6.14 The psychology studies of volume offers find a powerful effect of volume offers on consumer decision making. Multiple-unit discounts were found to increase sales by up to 40 per cent more than single-unit promotions of the same value. They were also found to increase purchase intentions (possibly only for large bundles) and switching to the volume offer, even when consumers were not buying enough of the product to qualify for the discount. The studies found that the effect

was the same even when the unit price was given, suggesting that it is not due to consumers' inability to calculate the discount.⁴⁶

- 6.15 This is supported by the OFT's behavioural experiment, which found that consumers buying volume offers⁴⁷ tend to buy at the first store they visit and therefore search too little for the best deals. Consumers buy the offer even if it is better for them to purchase fewer units, suggesting either that the offer has an attraction beyond the reduced price or that consumers are unable to work out the optimum number of units for them.
- 6.16 The attraction of volume offers is further supported by the consumer survey. Of the 60 per cent of people who had been thinking of or intending to make a purchase (the remainder were browsing), just over a quarter went to the retailer specifically because of the volume offer. The remainder were already thinking of purchasing from that retailer. Furthermore, a large majority of consumers (86 per cent) went on to purchase from that particular retailer.
- 6.17 Perhaps more interestingly 40 per cent of people were just browsing when they encountered the volume offer, but 86 per cent still went on to make the purchase from that particular retailer. This indicates a high uptake of this type of offer even amongst consumers with no prior intention to purchase the product.
- 6.18 The attractiveness of volume offers may be due to the fact that they might represent good value so it is instructive to consider to what extent consumers verify the value of the offer and to what extent they take the retailer's offer at face value. Nearly two-thirds of consumers (63 per

⁴⁶ See Ahmetoglu et al, 2010, *Pricing practices: their effects on consumer behaviour and welfare*, Annexe F

⁴⁷ Volume offers are termed 'complex offers' in the behavioural experiment. See OFT, 2010, *The impact of price frames on consumer decision making*, prepared for the OFT by London Economics in association with Steffen Huck and Brian Wallace (University College London). OFT1226. Annexe G for more details

cent) in our consumer survey report working out the saving compared to the pre-offer price and a similar number work out the cost per item (64 per cent). This suggests that the majority of consumers do attempt to verify the value of the offer, although a third do not.

- 6.19 Furthermore, fewer consumers who compared the price of volume offers compared them with the cost of the same product in another retailer (38 per cent) than compared it with previous prices they had observed (57 per cent,) or similar products for sale (60 per cent), at the same retailer.

'I know in my head how much they are and think 'is this a saving or not?'

OFT focus group

- 6.20 Consumers also showed limited inclination to be more cautious in the future with 69 per cent, the highest across all practices, reporting that they would do nothing differently if faced with the same offer again. We interpret this as reflective of the confidence that consumers have in volume offers, which affects the extent to which their behaviour is affected by them.
- 6.21 It is clear that volume offers are attractive to consumers and entice them to visit particular retailers and buy the offer. Whilst just over 60 per cent make some effort to verify the offer, a third do not. Furthermore relatively few consumers are prepared to change their purchasing behaviour in the future reflecting an overall confidence in the value offered by volume offers. These consumers may therefore be susceptible to harm in those circumstances where volume offers represent less good value than the offer implies.

Consumer detriment

- 6.22 Volume offers have a clear effect on how people shop. However, this does not automatically imply detriment. We have categorised potential

detriment into two types: shopping errors⁴⁸ (price, choice of retailer and/or quality) and emotional reaction. We have also considered consumers' ability to overcome potential detriment through learning.

Shopping errors

- 6.23 In the behavioural experiment, although when faced with a volume offer consumers tended to search too little for the best deal (often buying at the first shop they visited), the number of purchasing errors and problems with searching too little were low relative to the other pricing practices in the experiment.⁴⁹
- 6.24 We also assessed the extent of purchasing errors in our consumer survey. More than a third of consumers in our survey (35 per cent) thought they could have bought the same product for a lower price just as easily elsewhere, an opinion held even more strongly by those aged 16-34 (42 per cent).⁵⁰ It seems reasonable to think that if consumers feel they could have got a product more cheaply elsewhere that this may represent a purchasing error, although for some consumers price may not always be the most important factor in people's purchasing decision.
- 6.25 With respect to 'free' offers, some consumers in our focus groups recounted being attracted to a long term contract by the offer, when the contract itself was poor value.

⁴⁸ See Glossary, Annexe A

⁴⁹ See OFT, 2010, *The impact of price frames on consumer decision making*, prepared for the OFT by London Economics in association with Steffen Huck and Brian Wallace (University College London). OFT1226. Annexe G

⁵⁰ These percentages were calculated including those who answered 'Don't Know'

Emotional reaction

- 6.26 As outlined above, the majority of consumers approve or do not mind volume offers and only 16 per cent of consumers surveyed object to them. The focus groups found similar approval of free offers.
- 6.27 The percentage of consumers who approve of volume offers is higher for the group of consumers who made a purchase, with 53 per cent likely to approve of this type of offer compared to 49 per cent of consumers overall.
- 6.28 The focus groups provided some illumination as to why some consumers may object to this type of practice, with consumers reporting frustration at trying to work out the unit price versus the volume price to check if there was a genuine saving.
- 6.29 Furthermore, whilst many consumers consider that they benefit from volume offers (for example, a large majority of consumers in our survey (77 per cent) view volume offers as an opportunity to stock up, about half of consumers thought they often bought too much and that products may be wasted as a result.

'Strawberry punnets were 'buy one get one free', I would rather they were half price, then I'd definitely buy because the free one would probably go off before it could be eaten'

OFT focus group

- 6.30 In general, volume offers and free offers did not appear to result in significant emotional reaction, relative to other practices. This is reinforced by the fact that over half of those who objected to this type of offer would still do nothing differently if faced with the same offer in the future.

Learning

- 6.31 Our behavioural experiment found that repeated encounters with volume offers helped reduce the number of purchasing and search errors,

suggesting that consumers could learn with time.⁵¹ This is also supported by our psychology literature review which found that price and value estimations are likely to be better for more frequently purchased products due to subconscious learning.⁵²

- 6.32 Therefore in the retail environment given the frequency of purchase of the type of products commonly advertised using volume offers (when discussing a specific volume offer, 82 per cent referred to a product which they purchase at least once a month or more) it might reasonably be expected that consumers have the opportunity to learn about volume offers with time.
- 6.33 Central to the issue of learning is awareness. Whilst the majority of consumers in our survey were aware of whether or not they could have got a cheaper price just as easily elsewhere, it is worth noting that nearly a fifth of consumers did not know. This group of consumers is likely to be unaware that they may have made purchasing errors in the past and therefore will be less likely to learn. Prospects are better for the 35 per cent of consumers⁵³ who said that they thought they could have got a better value deal just as easily elsewhere.
- 6.34 Awareness of errors is not sufficient for learning as we also need to consider whether consumers intend to change their behaviour. Our consumer survey found that 31 per cent of consumers would do something differently when faced with a similar volume offer next time.

⁵¹ See OFT, 2010, *The impact of price frames on consumer decision making*, prepared for the OFT by London Economics in association with Steffen Huck and Brian Wallace (University College London). OFT1226. Annexe G

⁵² See Ahmetoglu et al, 2010, *Pricing practices: their effects on consumer behaviour and welfare*, Annexe F

⁵³ These findings include those who answered 'don't know'. Unless otherwise stated, 'don't know's' are excluded from the statistics presented as they account for a small proportion of the responses.

A combination of awareness and an intention to change their behaviour does indicate a degree of learning for a minority of consumers.

- 6.35 A caveat to our findings here is that the majority of consumers surveyed about volume offers chose to discuss a volume offer they had encountered with respect to a low value item (groceries/toiletries) that they purchased with high frequency. It is not possible to disentangle the effects that are due to the price frame from the effects that are due to the type of product and the effects due to frequency of purchase. This general problem is discussed in more depth in chapter 3 at paragraph 1.37 and footnote 10.
- 6.36 For free offers, consumers in our focus groups considered that they do learn with time when they have entered into a poor deal but their ability to quickly adjust their purchasing behaviour is often constrained by being tied into a lengthy contract.

Conclusions

- 6.37 Consumer engagement with volume offers suggests a high degree of acceptance of the pricing practice and a high degree of in-store shopping around, for example comparing the offer with the price of a similar product or a previous price that is remembered.
- 6.38 When manipulated, however, a volume offer may well lead to purchasing errors. Shopping around between traders is low and acceptance and trust in volume and free offers is high, therefore a misleading volume offer is likely to result in purchasing errors and financial loss. We set out our core concerns in relation to the use of volume pricing and free offers below.

Core concern

- 6.39 Our main concern with volume offers and products offered 'for free' is that consumers will conclude that such an offer represents better value than a smaller quantity of the same product when in fact it does not and

as such spend more and obtain poorer value than they would otherwise have done.

6.40 The OFT is more likely to consider enforcement action where a trader:

- temporarily inflates the unit price of a volume deal (for example, BOGOF, 3 for 2, etc) to facilitate the offer
- presents larger packs as being better value than smaller packs when they represent a higher per unit price
- implies (perhaps by omission) that a component of a deal is 'free' relative to a contemporaneous assessment of the offer when in practice the price establishment of the 'free' offer is historic⁵⁴
- does not provide additional advice to consumers in circumstances where the meaning of the 'free' offer is ambiguous.

6.41 When considering whether to prioritise an advertisement for enforcement action we would also be less likely to take action where a volume offer and/or an advertisement using the word 'free':

- follows the BIS PPG,⁵⁵ BCAP and CAP Codes⁵⁶ and
- follows the Price Marking Order.⁵⁷

⁵⁴ For example, Product A sells for £10. The price subsequently falls to £8. In addition to the stand-alone offer for Product A the trader offers a bundled deal of Product A plus Product B for £10 and describes Product B as Free. On a contemporaneous assessment of the offer Product B is not free.

⁵⁵ Specifically paragraphs, 1.4.5, 1.10.2, 1.8.1, 1.8.2, and 1.10.1–1.10.6, and 2.2.21. Available at www.bis.gov.uk/policies/consumer-issues/buying-and-selling/consumer-protection-regulations

⁵⁶ Specifically paragraphs 3.21 and 3.23–3.26. Available at www.cap.org.uk/The-Codes/CAP-Code.aspx and www.cap.org.uk/The-Codes/BCAP-Code.aspx

⁵⁷ See www.legislation.gov.uk/uksi/2004/102/contents/made

7 COMPLEX PRICING

7.1 We define complex pricing as pricing offers where the unit price is difficult or, sometimes, impossible to discern because it depends on a multifaceted or compound offer. There are two main types of complex pricing offers:

- multi-part pricing – where the product comprises two or more parts, each with a separate unit price. An example is a mobile phone that has separate prices for the handset, call time, text messages and internet access
- bundled or tied pricing – where there is a single headline price comprised of a bundle of different products which may be available separately (bundled pricing) or not (tied pricing). Examples include dual fuel (electricity and gas) bills, and media packages that include broadband access, television services and fixed line telephony.

7.2 It is, of course, possible to define complexity more broadly than this by reference to offers that are complicated but that do not necessarily have the features identified above. The definition we have adopted here reflects this study's specific focus on price framing. It does not imply that other forms of complicated offers are not of interest to the OFT nor does it imply that traders can use other forms of complicated offers without having to consider whether they are compliant with the CPRs.

7.3 Over half of consumers in our survey (56 per cent) have encountered a complex price offer in the past 12 months, most notably in the markets for energy, mobile phones and media packages.⁵⁸

7.4 Like all of the price frames considered in this study, complex pricing offers can offer significant benefits to consumers by allowing prices to be better tailored to individual consumption profiles. Where products are natural complements and it is likely that consumers will want to

⁵⁸ See Consumer survey data tables, Annexe N

purchase them together, bundling products can be efficient for consumers.

- 7.5 However, some products, such as financial services and utilities, require consumers to deal with very complex products or pricing structures and often a significant number of choices. Potential harm could arise where the price is obfuscated in an attempt to artificially raise consumer search costs. Faced with increasingly complex products and increasing constraints on their time, consumers may choose to make decisions by limiting their search (and therefore not necessarily purchasing the best value package for them), deferring to an intermediary for advice, employing a heuristic technique ('rule of thumb'), or forgoing the purchase because of the time and effort required to fully research and evaluate the offer.
- 7.6 In some cases employing a 'rule-of-thumb' is a sensible shortcut for consumers to deal with the numerous potential purchasing decisions they face. However, if traders exploit consumers' tendency to focus on the headline price by deliberately making the headline price (or some other price component) very prominent and other elements of the product or price far less prominent (for example, elements which may affect the total cost over the product's lifetime), this may cause harm by inflating the consumer's willingness to pay.
- 7.7 Bundled offers are successful because consumers generally infer savings from bundled offers and find a single bill convenient. Psychology studies have found that, compared to unbundled prices, a mixed bundle offer increases consumer's evaluations of the offer, purchase intentions, and lowers their estimate of the cost of the bundle.⁵⁹
- 7.8 These studies have also found that consumers find it difficult to understand differences in complex tariffs and that they are unwilling to spend the time doing the necessary calculations. Therefore complex

⁵⁹ See Ahmetoglu et al, 2010, *Pricing practices: their effects on consumer behaviour and welfare*, Annexe F

practices may prevent or discourage consumers from adequately analysing the costs and benefits in order to choose the best option for them.

Consumer expectations and attitudes

- 7.9 Our concerns with complex pricing stem from the difficulties consumers may have in understanding and comparing offers. This differs from several other practices considered in this study, where our concerns stem directly from a price frame being used in a way which does not reflect consumer expectations.
- 7.10 By asking consumers about how the pricing of these offers could be improved, the consumer survey helped identify how consumers feel about these types of offers:
- 47 per cent of consumers thought that standardising the information for comparison in advertisements would make it easier to compare prices and value. This was even higher (58 per cent) among those shopping for gas or electricity
 - there was also strong support for all suppliers using the same terminology in advertisements (45 per cent), particularly for TV, broadband and media packages (54 per cent)
 - about a third of consumers supported independent price comparison sites that cover all the suppliers in the market
 - 30 per cent would like all suppliers to state the amount of a typical monthly bill in their adverts (again this figure was even higher among those purchasing TV, broadband and media packages).

Impact on consumer decision making

- 7.11 Our consumer survey found that complex offers are good at attracting consumers to a trader and enticing them to buy the bundled product. Whilst nearly two-thirds of consumers (65 per cent) were already thinking of or intending to purchase the product (or switch suppliers),

well over half of these consumers (59 per cent) chose the trader because of the price offer. Of those consumers that had been thinking of or intending to purchase the product when they encountered the offer, 63 per cent went on to make the purchase from that trader.

- 7.12 Furthermore, despite the fact that these types of products are often relatively expensive or involve a commitment to monthly payments, 38 per cent of those consumers who were just browsing when they encountered the offer went on to make the purchase from that trader.
- 7.13 Complex pricing offers seem particularly good at attracting online consumers. Of those buying a complex pricing offer online, 72 per cent chose the trader because of the price offer, compared to 40 per cent of those buying in-store.
- 7.14 Whilst complex pricing is good at attracting consumers to a particular trader and offer, consumers do seem willing to shop around, and to shop around quite extensively. Of those who had experienced a complex offer in the last 12 months, 75 compared prices between suppliers (rising to 89 per cent of those who bought online).
- 7.15 Furthermore, when consumers do shop around, they often compare several prices; of those that did compare prices, 41 per cent compared four or more suppliers). Most notably they spend a considerable amount of time comparing prices – far longer than for any other pricing practice, which is likely (at least in part) to be due to the complex nature of the offers meaning that they take longer to compare and the nature of the products. Of those who made comparisons, half spent over an hour comparing prices, and 12 per cent spending over five hours comparing prices. Those buying a mobile phone package spent more time on average comparing prices, with only nine per cent of those who compared prices spending less than 30 minutes shopping around, compared to 19 per cent across all products.

'I think you do have to spend a bit of time on it, I think you're not going to get the best deal unless you're prepared to put the effort in as a consumer.'

7.16 Overall our survey found that complex offers are fairly good at attracting consumers, particularly online consumers, but before making their purchasing decision consumers are willing to shop around and compare prices. This is in contrast to the findings of the psychology review. The extent to which their comparisons help them achieve a good deal is examined in the next section.

Consumer detriment

7.17 The fact that consumers are attracted by complex pricing offers does not necessarily mean that they are misled. In considering the extent to which complex pricing results in consumer detriment we have collected evidence on a range of factors:

- shopping errors – price, trader and quantity
- emotional reaction
- learning.

Shopping errors⁶⁰

7.18 The consumer survey found that almost half (49 per cent) of consumers found it difficult to decide which supplier to use or which product to purchase, compared to 35 per cent who found it easy.

7.19 Looking at the difficulties consumers encountered when deciding which supplier to use or product to purchase, just over a third had difficulties calculating the total costs associated with the contract, 30 per cent found it difficult to find the right information, 28 per cent found there were too many options to consider, and just over a third found it generally too confusing or complicated. Other difficulties included

⁶⁰ See Glossary, Annexe A

different traders using different terms for the same thing (33 per cent), no like-for-like comparisons available (26 per cent) and different suppliers all claiming to be the best value (24 per cent).

'Things should be simplified. Often when you buy something you have to go through about ten pages before getting to the final price, which takes a really long time. If you were in a shop you wouldn't go to ten different tills!'

OFT focus group

- 7.20 Furthermore, despite quite extensive shopping around, a large minority of consumers in our survey (40 per cent) said that they did not get sufficient information to decide which supplier offered the best price. This could suggest that although consumers are obtaining a large quantity of information when shopping around, the quality is not adequate for them to judge which supplier offers them best value. This is supported by the fact that even though half of those consumers who compared prices spent over an hour doing so, about a fifth of consumers (21 per cent) simply did not know whether they could have got the product cheaper elsewhere. We would anticipate this to be closely correlated with consumers not getting the best deal.
- 7.21 When asked about all price offers in general, just over half of consumers (52 per cent) said that they have sometimes bought something they might not have done because of a lack of clarity over what was included in the advertised price.
- 7.22 Overall it seems that most consumers struggle with high levels of complexity despite considerable effort in shopping around on their part. This confusion was echoed by some consumers in our focus groups, who also reported feeling defeated and that they had wasting time trying

to understand the elements of the package. These consumers were generally distrustful of complex pricing offers.⁶¹

Emotional reaction

- 7.23 As well as considering whether complex offers cause people to make shopping errors we have also thought about the emotional reaction caused by the practice. One indication of emotional reaction is peoples' attitude to the practice, in particular whether they approve or object to it.
- 7.24 Overall there was a relatively high level of objection amongst consumers to complex pricing, with 68 per cent objecting and only six per cent approving, although this level of objection varied with a number of factors.
- 7.25 Consumers were particularly likely to object where they had experienced the offer in the gas and electricity sector. However, consumers were more accepting of complex offers when they related to products they purchase frequently. Just under half (49 per cent) objected when they were making a high frequency purchase, compared to 70 per cent for low frequency.
- 7.26 Objections raised by consumers in the focus groups and survey included difficulties in both calculating the total cost over the contract period and finding sufficient information, there being too many options to consider, the decisions being generally too complicated and confusing and time wasted comparing offers or trying to understand them.

Learning

- 7.27 The first step in the learning process is to recognise when a complex offer has been misleading. A large minority of consumers (43 per cent)

⁶¹ See OFT, 2010, *The consumer's view of the Advertising of Pricing*, prepared for the OFT by Ipsos MORI. Annexe H

recognised that they could have got the same product at a lower price just as easily elsewhere.⁶² However, complex offers appear to present a significant challenge for consumers when it comes to improving their behaviour. Despite consumers putting effort into shopping around and comparing prices, 40 per cent said that they did not feel that they obtained sufficient information to decide which supplier offered the best price. As discussed, we consider this to mean that the quality of information is not adequate to judge which is the best deal. This may be expected to inhibit consumers' ability to learn.

- 7.28 Given the difficulties consumers have experienced in finding the best deal, it is perhaps not surprising that only 35 per cent of consumers would do nothing differently if faced with the same offer again. About a quarter of consumers would compare more offers (26 per cent) and just over a fifth would gather more information (22 per cent). We think this suggests that some consumers think they could do better next time.
- 7.29 Nevertheless, given the degree to which consumers already shop around prior to purchase, it is questionable whether comparing more prices or obtaining more information would improve the deal they obtain. This is supported by findings from the focus groups, which indicated that consumers felt it was possible to make the same mistake twice due to the complexity of the offer.
- 7.30 The extent to which consumers can learn is also affected by the nature of the markets and products in which complex price offers are used. Consumers surveyed were more likely to have encountered a complex offer on a product they do not purchase frequently (84 per cent encountered a complex offer when purchasing a product they purchase once a year or less). Since these purchases are infrequent, the opportunities for learning may be limited.

⁶² This percentage was calculated including those who answered 'Don't Know'

Conclusions

- 7.31 Purchasing products in a package can be efficient and convenient for consumers and allow pricing to be tailored to individual consumption profiles. The products and services which tend to use complex pricing offers are not purchased very frequently and the difficulties understanding and comparing prices mean they are not very popular with consumers. Nevertheless they are good at attracting consumers to particular traders and products, particularly online.
- 7.32 Despite consumers' extensive effort to shop around and compare prices, they often find the offers confusing and find it difficult to decide which product to purchase or supplier to choose, resulting in shopping errors. It appears that complex offers do not prevent consumers shopping around (indeed consumers seem to put in more effort with complex offers), but price obfuscation by traders may raise consumer search costs, resulting in consumer detriment.

Core concern

- 7.33 Our core concern with complex pricing offers is that the inherent complexity of some products or offers is presented in such a manner as to obfuscate the full commitment the consumer is making and is deliberately presented in such a way as to make it difficult for the consumer to shop around and compare prices.
- 7.34 The OFT is less likely to consider enforcement action where a trader:
- states the full minimum financial commitment involved in subscribing to the offer
 - provides information in a manner that allows comparison between products, for example, including the average minimum monthly charge.

7.35 When considering whether to prioritise an advertisement for enforcement action we would also be less likely to take action where a complex pricing offer follows the CAP⁶³ and BCAP Codes.⁶⁴

⁶³ Specifically section 3.21 available at www.cap.org.uk/The-Codes/CAP-Code.aspx

⁶⁴ Sections 3.21 and 3.23 available at www.cap.org.uk/The-Codes/BCAP-Code.aspx

8 TIME LIMITED OFFERS

- 8.1 Time limited offers (TLO) are offers which state a specific period of availability as part of the advertised offer, for example: sales which finish at the end of the month or special prices which are available for one day only. TLOs are frequently used by traders across a wide range of industries to try and increase the number of visitors to a shop or website during a particular period. Almost 80 per cent of consumers have experienced a TLO in the last 12 months⁶⁵ and in our newspaper review one in six adverts contained a TLO.⁶⁶
- 8.2 A TLO will often be combined with another pricing practice, most commonly reference pricing. Either element of the offer can be misleading but in this chapter we focus on the time related claim, reference pricing is discussed in Chapter 4.
- 8.3 In the consumer survey TLOs were most frequently experienced when purchasing groceries (31 per cent of respondents' interviews were based on an experience buying groceries); electrical products and clothes and fashion were also frequently mentioned.
- 8.4 When TLOs are used to demonstrate good deals which are genuinely only available for the length of time stated they are an efficient way of communicating with consumers about the price offer and can help reduce the search costs associated with finding a good deal.
- 8.5 TLOs can create a feeling of scarcity about the product on offer. Evidence outlined in the psychology literature review shows that scarcity increases perceptions of the value of the offer, purchase behaviour and willingness to buy. Time constraints can increase perceptions of the

⁶⁵ Table S1/2 in Consumer survey data tables, Annexe N

⁶⁶ See Newspaper trawl summary, Annexe J

offer's value and drive consumer choices towards high quality/low risk brands.⁶⁷

- 8.6 Academic literature has mixed findings on TLOs – two studies⁶⁸ found that they increase purchase intentions, increase the probability of choosing and increased the perceived deal value for the product, but one study⁶⁹ did not find this effect (the inconsistency is probably due to other factors such as scepticism and product category).⁷⁰
- 8.7 The literature also suggests that the effects of TLOs apply to high discount offers (20 per cent or 50 per cent reduction) but not low discount offers (five per cent). Shorter time limits increase purchase intentions but too short a time limit increases perceptions of inconvenience and decreases perceived deal value and purchase intentions.
- 8.8 The psychology literature review shows that TLOs make people more likely to purchase a particular product; all TLOs have this general effect irrespective of whether they are genuine or not. This finding highlights why it is important that the claims associated with TLOs are accurate so they do not mislead people into buying a product which they would not have bought if there was not a TLO associated with it.

⁶⁷ Section 3.7 of Ahmetoglu et al, 2010, *Pricing practices: their effects on consumer behaviour and welfare*, Annexe F

⁶⁸ Inman et al., 1997; Swain et al., 2006 as referenced in Ahmetoglu et al, 2010, *Pricing practices: their effects on consumer behaviour and welfare*, Annexe F

⁶⁹ Devlin et al., 2007 as referenced in Ahmetoglu et al, 2010, *Pricing practices: their effects on consumer behaviour and welfare*, Annexe F

⁷⁰ See Ahmetoglu et al, 2010, *Pricing practices: their effects on consumer behaviour and welfare*, Annexe F

Consumer expectations and attitudes

8.9 In order to assess when TLOs might mislead people and possible detriment arising from being misled we need to understand what people think about TLOs in general. This will give us a useful starting point for assessing what extra information consumers might need if the price frame is used differently from their expectations.

8.10 The consumer survey has helped identify how people think about TLOs in general:

- almost two-thirds of people in the consumer survey did not believe that TLOs were genuine⁷¹
- when asked how they would assess whether an offer was genuine almost 80 per cent said the trader, brand or product were the most important factors. Consistent with the findings in the psychology literature review (see paragraph 8.7) the amount of the price reduction was also mentioned by 39 per cent of people
- the majority of people (70 per cent) agreed that they would be suspicious that the offer would continue after the end date

'It never ends. It says it ends on bank holiday Monday and it never ever does'

OFT focus group

Impact on consumer decision making

8.11 The behavioural experiment found that TLOs reduced the amount of shopping around and so were beneficial to the first shop visited; this

⁷¹ In our consumer survey, we asked consumers how likely they were to believe three types of general TLOs to be genuine ('Hurry while stocks last', 'Sale ends Friday' and 'Closing down'). Thirty-seven per cent of consumers were not likely to believe any of these to be genuine, and 30 per cent were not likely to believe two out of three of these offers were genuine

finding was supported in the consumer survey which showed that over half of consumers did not compare prices with other traders at all.

- 8.12 Even though consumers express a high level of suspicion about whether TLOs are genuine, the offers are still effective at drawing people to a particular trader: of those who were thinking about or intending to purchase a product (almost 60 per cent of all consumers who encountered a TLO), just under half went to that trader specifically because of the price offer.
- 8.13 Once they have attracted people to traders the TLOs also lead to sales: of those who experienced a TLO almost two-thirds went on to purchase the offer.⁷²
- 8.14 The consumer survey showed that TLOs attracted consumers and a good number of those consumers then purchased the product on offer, often without comparing the offer with other options available.
- 8.15 We were interested in what effect consumers felt TLOs had on how they shopped: a clear majority agreed that TLOs can pressure people into making hasty purchases they may later regret. This was despite the fact that when asked about different TLOs in general terms, about two-thirds of consumers thought the offers were not likely to be genuine.⁷³
- 8.16 This suggests consumers are aware of the potential pitfalls of TLOs and are generally sceptical that such offers are always genuine. Despite this scepticism consumers will often investigate such offers and often take advantage of them without shopping around.
- 8.17 When telling us about a recent experience of a TLO, consumers did not show high levels of circumspection. Overall 52 per cent did not make a

⁷² That is 64 per cent of respondents who experienced time limited pricing and reported their subsequent purchasing decision.

⁷³ Consumer assessment of whether a TLO was genuine or not genuine, averaged over three example offers.

price comparison with any other trader; even amongst those who said they generally always or often shop around 45 per cent did not compare the TLO with prices offered by other traders.

- 8.18 Consumers showed limited inclination to be more cautious or do more shopping around in the future, with 63 per cent reporting that they would do nothing differently if they were faced with the same offer again. It may be the case that consumers do not know whether a particular TLO was genuine so the proportion who would not do anything differently does not truly reflect those who have got a good deal through a TLO.
- 8.19 In order to assess the harm associated with TLOs it is important to consider those who said they would do something differently next time. A quarter of all consumers said that next time they experienced a TLO they would compare more prices, not feel pressured into buying something before they were ready or both. This suggests that those people felt their shopping decision had been affected by the perceived pressure to buy straight away associated with TLOs.
- 8.20 The research shows that TLOs have a substantial impact on consumers' shopping behaviour and makes them more likely to buy from the trader with the offer. This means there is the potential for consumer detriment if TLOs are misleading. Detriment may arise if TLOs make consumers think the offer will be available for a shorter time than is actually the case thereby pressuring them into making a quick purchasing decision which they may later regret or by artificially increasing their perception of the value of the deal.

Consumer detriment

- 8.21 The previous section demonstrated that TLOs have a clear effect on how people shop. This in itself does not demonstrate consumer detriment. In considering the extent to which TLO results in consumer detriment we have collected evidence on a range of factors:
- shopping errors – price, trader and/or quantity

- emotional reaction
- learning.

Shopping errors

- 8.22 In the behavioural experiment TLOs generated the second highest detriment after drip pricing.⁷⁴ TLO was the price frame in which subjects made the most purchasing errors. The most prevalent error was that subjects bought at the first shop they visited at prices that were too high, that is, at prices where they should have continued their search.⁷⁵
- 8.23 The consumer survey helps us assess whether consumers feel they did not do as well as possible. While we recognise this is not necessarily a direct measure of shopping errors as consumers may sometimes be mistaken, we feel it is sufficiently reliable to provide a useful measure of errors in this context.
- 8.24 Consumers do have some scepticism about how genuine TLOs are and they are aware that TLOs can cause them to make a different purchase than if they had more time to consider the options carefully: 86 per cent agreed that time limited offers can pressure people into making a hasty purchase that they might later regret. In spite of this scepticism, the same proportion agreed that they would check out the offer as they like to get a bargain.

⁷⁴ In the behavioural experiment consumer detriment was measured using welfare losses. Welfare losses are a measure of actual monetary earnings in each of the five price frames and the baseline treatment as compared to potential monetary earnings if subjects behaved optimally. See OFT, 2010, *The impact of price frames on consumer decision making*, prepared for the OFT by London Economics in association with Steffen Huck and Brian Wallace (University College London). OFT1226 at Annexe G for more details.

⁷⁵ See OFT, 2010, *The impact of price frames on consumer decision making*, prepared for the OFT by London Economics in association with Steffen Huck and Brian Wallace (University College London). OFT1226. Annexe G

- 8.25 Consumer scepticism does not seem to prevent shopping errors; 35 per cent of consumers said they could have just as easily got the same product cheaper elsewhere.⁷⁶ It seems reasonable to think that this, to some extent, reflects a shopping error for these consumers.
- 8.26 It is worth noting that price was not always the most important factor in peoples' decisions;⁷⁷ this means that although some people may think they could have got the product cheaper elsewhere this may not represent a shopping error if they chose the trader for reasons other than price.
- 8.27 However, this does not detract from the fact that some consumers make shopping errors when faced with TLOs. If we exclude those consumers who did not compare prices because 'the price was not particularly important', 33 per cent think they could have got the product just as easily for a lower price elsewhere.
- 8.28 TLOs work quite well to generate a feeling of scarcity which the psychology literature review suggests will increase peoples' purchase behaviour and willingness to buy (see paragraph 8.5), 42 per cent agreed that they would worry about missing out if they didn't purchase straight away. Consumers' feeling that they have to act quickly to get a good deal is likely to reduce the amount of time spent verifying an offer which makes the possibility of an error more likely.

Emotional reaction

- 8.29 As well as considering whether TLOs cause people to make shopping errors we have also thought about the emotional reaction caused by the practice. We have measured the emotional reaction primarily by looking

⁷⁶ These findings include those who answered 'don't know'. Unless otherwise stated, 'don't knows' are excluded from the statistics presented as they account for a small proportion of the responses.

⁷⁷ 11 per cent of people said they did not compare prices because 'the price was not particularly important'.

at peoples' attitude to the practice and whether they approve or object to it. People seem fairly indifferent to the practice; half of those surveyed said they neither approve nor disapprove of TLOs, there was a fairly even split between the remainder (27 per cent approved, 22 per cent objected).

- 8.30 In contrast to some pricing practices, the extent to which consumers approved of TLOs showed a strong association with frequency of purchase. Where consumers came across an advertisement with a TLO and the goods in question were ones bought frequently they were far more likely to approve of this type of advertisement than for products bought infrequently (32 per cent high frequency and 23 per cent low frequency).
- 8.31 In the consumer survey frequently bought items were most commonly groceries or toiletries whereas less frequently bought items included furniture, electrical goods and flights or holidays. This means that we are not able to identify whether the fact that more people approve of TLOs for high frequency purchases is because they buy the product frequently or because of the type of product bought.
- 8.32 It is also important to note that groceries and toiletries tend to have lower prices than furniture and electricals, this adds a further level of complication to our findings. It is possible that consumers are more comfortable making decisions under time limited pressure about things at lower prices than about more expensive purchases so they have higher approval of TLOs for cheaper products. The approval results in the consumer survey may be due to the frequency of purchase, the type of product or the cost of the product or a combination of all three dimensions.

Learning

- 8.33 It is possible that over time consumers will ignore or adjust their behaviour to take account of misleading TLOs, that is, they will learn about how they affect them and take different decisions based on that learning. As part of our research we have attempted to discover the

extent to which people learn about TLOs and whether they are able to use this learning to adjust their behaviour and so achieve better outcomes.

- 8.34 The behavioural experiment found that when confronted with TLOs, it was difficult for participants to adjust their search strategy and on balance concluded that there was no learning at all with respect to TLOs. We might expect learning to be easier in reality than in the experiment because consumers have the opportunity to notice if TLOs turn out to be repeated over time or are replaced by even lower prices. However, the fact that in the consumer survey 35 per cent⁷⁸ of people thought they could have got the product for a lower price elsewhere suggests that consumers struggle to adjust their behaviour to take account of the influence of the TLO.
- 8.35 The consumer survey also showed that of those who thought that TLOs in general were unlikely to be genuine (37 per cent of respondents) almost two-thirds still made a purchase of a product advertised using a TLO. This raises the important point that even when consumers have learnt about TLOs in general they have no way of assessing in advance of the end date whether a particular TLO is genuine and taking advantage of it.
- 8.36 This assessment of whether TLOs are genuine can only be done on a case by case basis and while it may be possible to learn about particular traders who frequently have TLOs which are extended it is virtually impossible for consumers to apply any general principles to traders who only occasionally extend TLOs.
- 8.37 It is extremely difficult to measure with precision how well people learn about TLOs and adjust their behaviour accordingly. Given the results concerning frequency of purchase, however, we can be reasonably

⁷⁸ These findings include those who answered 'don't know'. Unless otherwise stated, 'don't know's' are excluded from the statistics presented as they account for a small proportion of the responses.

confident consumers had encountered such offers before, perhaps on numerous occasions. Despite this experience the research suggests that while some learning about TLOs does take place it is not perfect and at least a third of consumers still say they would do something differently the next time they see a TLO.

Conclusions

- 8.38 The combined findings of the research suggest that TLOs have a clear influence on consumers' transactional decisions; in particular, by giving an impression of scarcity it makes people far more likely to check out the offer. There is also some evidence to show that the effects of the TLOs are not cancelled out by consumer learning.
- 8.39 We consider a TLO might mislead consumers when due notice of any extension, that is, notice in advance of the end date being extended, is not given.

Core concern

- 8.40 Our core concern about TLOs is that consumers may shop around less and potentially obtain less good value than they otherwise would have done due to time pressure that they did not need to experience because the offer was subsequently extended.
- 8.41 This is a particular problem where traders, through the extension of TLOs, in effect create a series of 'must buy now' offers one after another. For example:
- extending a TLO at short notice may mislead those customers who believed the offer was going to end at the stated time
 - repeatedly extending a TLO may mislead those consumers who think TLOs are never extended, or not usually extended.
- 8.42 In addition to the general provisions of the CPRs there are some Annex Practices that directly address TLOs. The banned practices (Annex Practices 7 and 15) set out in Schedule 1 CPRs are likely to be relevant.

- 8.43 Annex Practice 7 concerns false statements that a product is only available for a very limited time or on particular terms for a limited time. This is done in order to elicit an immediate decision and deprive consumers of sufficient opportunity or time to make an informed choice.
- 8.44 Annex Practice 15 concerns false statements that the trader is about to cease trading or move premises when he is not.
- 8.45 For a fuller discussion of the CPR legal framework relating to time limited offers see Annexe D.
- 8.46 In the case of TLOs we have two particular concerns that may not be addressed by adherence to the BIS PPG and CAP Code. First, consumers are often attracted to a trader because of a TLO as they are worried about missing out on a good deal and because of the time pressure created by the offer they do not shop around to verify the offer. Second that even if consumers are aware that TLOs may not always be genuine they have no way of verifying if a particular TLO is genuine.
- 8.47 When considering whether to prioritise an advert for enforcement action we would be less likely to take action where a trader:
- gives consumers' due notice that a TLO is going to be extended
 - where appropriate, tells consumers how many times an offer has been extended.
- 8.48 We would also be less likely to prioritise enforcement action where a TLO follows the BIS PPG, BCAP and CAP Codes.⁷⁹

⁷⁹ Specifically section 3.31 in the CAP and BCAP Codes. Available at www.cap.org.uk/The-Codes/CAP-Code.aspx and www.cap.org.uk/The-Codes/BCAP-Code.aspx

9 PRICE COMPARISON SITES

- 9.1 Consumers use price comparison sites to compare offers across a wide range of products and services including insurance products, travel, electrical products, mobile phones, broadband, and energy providers. Some sites focus on specific products such as car insurance or flights, whereas others cover a wide range of consumer products such as electricals and clothing.
- 9.2 There has been a huge expansion in the number of price comparison sites (PCS) over the past decade (although some recent consolidation).⁸⁰ Most of the increase in PCS usage by consumers has occurred over the last five years – by the end of 2009, 62 per cent of internet users (24 million adults) had used a PCS to purchase a financial product or to obtain quotes.⁸¹ Four PCS dominate visitor traffic, with one PCS particularly popular with consumers.⁸²
- 9.3 Car and home insurance are the products most often purchased or researched on a PCS,⁸³ followed by travel insurance and financial products such as savings account, credit cards, life insurance and mortgages.
- 9.4 PCS are not homogeneous in the way they collect and prioritise listings – some have direct relationships with traders, others use search engine technology to find relevant products and prices, some 'scrape' prices off

⁸⁰ Mintel Special Report, Oct 2009, Web Aggregators

⁸¹ Mintel Special Report, Oct 2009, Web Aggregators

⁸² In a three-month period in 2009, 80 per cent of visits were to four PCS websites: Moneysupermarket.com 38 per cent, Confused.com 16 per cent, Gocompare.com 15 per cent, Comparethemarket.com 11 per cent (Mintel Special Report, Oct 2009, Web Aggregators)

⁸³ Fifty-two per cent of internet users who own a car insurance policy and 32 per cent of those with home insurance have used a PCS to purchase their policy or obtain quotes (Mintel Special Report, Oct 2009, Web Aggregators, Oct 2009)

other trader's sites and one has recently entered the market using an auction model.

- 9.5 PCS can generate revenue from a variety of sources: commission paid by traders represented on the PCS; income from advertisements displayed on the site; income from information obtained through the operation of the site and through charging the user a fee.

Benefits and difficulties

- 9.6 PCS differ in principle from the other pricing practices in this study in that they are aimed at helping consumers make easy comparisons across products and brands when shopping around. When prices on a price comparison site are reliable (that is, reflective of the true cost of the product and up-to-date), the consumer should also experience the benefit of intensified pricing rivalry between traders, resulting in lower prices.

- 9.7 However, we had heard reports that in some areas there might be problems with websites offering price comparisons. These reports had varying degrees of substantiation so we investigated them further by way of an online consumer survey of 1000 heavy internet users⁸⁴ and a web trawl of some leading PCS.⁸⁵

- 9.8 Our specific areas of interest were:

- the extent to which consumers understand that price comparison sites may not offer a comprehensive market search
- the extent to which consumers understood that the search results returned may in part reflect assumptions made on the consumers behalf

⁸⁴ See Annexes P, Q and R for further details

⁸⁵ See Annexe K for details

- the extent to which they understand that search results may not be like-for-like products or services
- the extent to which consumers considered that the prices they saw were reliable – in particular the availability of stock (which raises the same issues considered in Chapter 5 on baiting sales) and whether extra charges were added by the supplier to the basic price quoted on the price comparison site (which raises the same issues considered in Chapter 3 on partitioned pricing).

9.9 We also had specific concerns about two practices of which we had some evidence but on which consumer research was unlikely to shed any further light as consumers were unlikely to be aware of specific instances of the practice:

- the presentation of sponsored links or paid for editorial as if they were independent and impartial recommendations from the price comparison service
- some price comparison businesses disguising fees levied by the price comparison business as fees levied by the supplier.

9.10 The results of our research are discussed below.

Our Research⁸⁶

9.11 Our study found that a large majority (81 per cent) of online consumers surveyed had used a PCS (73 per cent in the last 12 months⁸⁷) and appreciated the 'window shopping' opportunity without commitment to purchase that PCS provided. Most use them to compare products or services but not necessarily to make a purchase; only 15 per cent of those surveyed both compared and purchased through a PCS.

⁸⁶ Quotes cited in this section were comments made by internet users in our online survey

⁸⁷ This includes those respondents who answered 'Don't know'

9.12 Consumers mainly use a PCS because it is the quickest way to compare prices (74 per cent of those surveyed), make savings (59 per cent) and find the best deals (55 per cent). A large majority (81 per cent) of those surveyed considered that PCS are useful as part of a wider search. The majority of PCS users surveyed (61 per cent) used two or three sites for to compare a specific product asked about, and over half then followed up and investigated between one and three of the results they found (a minority investigated five or more - 28 per cent). Some consumers said they use the PCS as a bargaining tool to negotiate on price with their current supplier.

'I wanted to stick with the same supplier and get a cheaper price, so I used the price comparison site to find the cheaper price and quoted this to the company over the phone'

OFT focus group

9.13 Consumers seem to be quite well aware of how PCS are funded. A majority held the view that PCS receive a fee from suppliers to feature on their listings and a majority said that they sell advertising space⁸⁸. About a third thought that the PCS received a commission when the consumer purchases a product.

9.14 In addition to these general attitudinal and behavioural findings we used our consumer research to explore the four key areas of interest set out above. Addressing these in turn:

Comprehensive search

9.15 A clear majority of the consumers surveyed who had used PCS in the last 12 months and thought they have drawbacks (72 per cent) were aware that not all suppliers are necessarily listed on PCS and more than

⁸⁸ Based on Q18 a multiple response question in our online survey of internet users

a third (39 per cent) believed that PCS are not independent or impartial.⁸⁹

'Not all companies are on comparison sites'

OFT focus group

Use of assumptions

- 9.16 A large minority of the consumers surveyed who had used PCS in the last 12 months and thought they have drawbacks (44 per cent) knew that PCS may make assumptions on behalf of the customer which may not match the consumer's preferences.

Like for like comparisons

- 9.17 The evidence regarding like-for-like comparisons is limited. The main concern around like-for-like comparisons is that consumers who assume that all search results are like-for-like when they are not will simply purchase the cheapest option, which may not necessarily reflect the best overall deal for them. The majority (56 per cent) of consumers who had used a PCS in the last 12 months did not end up purchasing a product a PCS search listed as cheapest, although a large minority (44 per cent) did. Our view of this evidence is that consumers are often trading off price against other features of the product, such as brand familiarity and trust.

'50% of our car insurance sales are not the cheapest quote'

(A leading PCS)

⁸⁹ The statistics in para 1.15 and 1.16 reflect responses to Q12B of the online survey of internet users

Experience of partitioned pricing and baiting sales

- 9.18 The consumers we surveyed who have used PCS in the last 12 months and considered PCS to be good for some products most often said they were good for insurance products, energy tariffs and travel. Consumers most often said PCS were poor for financial products, mobile telephony and media packages and low value consumer products (although over half of consumers who have used a PCS in the last 12 months said they are good for these products).
- 9.19 The main reasons cited by those who said they had had a poor experience were: extra charges being levied on click-through to the supplier; major suppliers missing from the PCS; and the suppliers listed on the PCS being unknown brands. Indeed, nearly two-thirds (64 per cent) of those who considered that PCS are poor for some products cited the added extras they get charged on click-through to the supplier as the reason.

'The price looked cheap but when I got referred to the supplier's site there were add-ons that made it more expensive'

OFT focus group

- 9.20 A large minority (43 per cent) of the consumers surveyed who had used a PCS in the last 12 months and think they have drawbacks were aware that prices are not always up to date. Indeed of those consumers who thought PCS were poor for some products, 47 per cent stated that one reason they are poor is that the prices quoted by the supplier can be different from those quoted on the PCS for exactly the same product
- 9.21 It is interesting to compare these results with the answers given by those respondents who hadn't used a PCS in the past 12 months. These consumers cited a variety of reasons for not using PCS such as a preference to do their own comparisons, a preference for speaking to suppliers directly and a preference for not shopping online. In short, their answers reflected a general preference for other forms of shopping rather than specific concerns with price comparison services.

- 9.22 On balance, it would appear that the consumers in our survey are adopting a relatively savvy approach to the use of PCS that recognises both the advantages of these sites and the disadvantages. There is a relatively high level of awareness of some of the weaknesses associated with the price comparison business model and we would expect this to assist consumers in protecting themselves from any potential harm that may arise. Notwithstanding these results we asked consumers whether they would like to see any improvements to the way price comparison services were presented.
- 9.23 Two-thirds (66 per cent) of consumers supported the idea of a PCS stating clearly which suppliers they receive payments from, and over half (53 per cent) would like the main suppliers covered by the site to be listed in order to make the sites more reliable. About a third (32 per cent) said a government accreditation scheme for this sector would make PCS more reliable.
- 9.24 Consumers are used to PCS being free of charge and expect this to continue – three-quarters would not be willing to pay a small fee to use a PCS even if it were fully comprehensive and completely independent.
- 9.25 It is important to raise a caveat in respect of these conclusions. Our survey focussed on heavy internet users and it is possible that this group are more likely to shop online and more likely to be familiar with online PCS. Further research, using a wider base of consumers and looking at specific products may reveal different results to those presented here. In particular, the work of the FSA with relation to price comparisons for insurance products will provide vital additional research in this area.

CPRs legal framework

- 9.26 Price comparison sites operated by traders have to comply with the CPRs. Compliance is required both by the trader operating the PCS and those traders whose products or services are advertised on the site. Both must avoid breaching the CPRs, though liability will depend on the particular circumstances of the case and in some circumstances both may be liable.

9.27 In contrast, individuals or other parties which provide price comparison information purely on a non-professional basis⁹⁰ may not be considered as engaging in commercial practices and may not have to comply with the provisions though this will depend on the facts of the particular case.

9.28 Price comparison sites should not mislead consumers as to:

- the identity or independence of the trader operating the site, or the identity of a trader advertising on the site or on whose behalf the PCS is acting. It should not falsely represent itself as a consumer (for example by posting favourable recommendations from fictitious consumers on its comments board) or fail to identify where a trader has paid for prominence on search returns or on the site more generally⁹¹
- the price or characteristics of a trader's product or that of its competitors and the results that may be expected from use of the product. Prices displayed on a PCS should be accurate and up-to-date. There should also be clarity on the constituent elements that make up the headline price (for example, whether the price includes accessories, delivery or postal charges) and the date that the prices apply. The PCS should also make clear any difference between the parameters the consumer entered in their search and those used by the PCS in conducting the search.

9.29 A more detailed discussion of the legal framework and the application of the CPRs to price comparison sites is available at Annexe D.

9.30 The OFT is less likely to consider enforcement action where a trader:

⁹⁰ That is, they are not concerned with promotion, sale or supply

⁹¹ Consumer's perception and understanding of advertorials and affiliate links were not examined by the consumer research in order to establish whether they have an effect on consumers and are misleading and harmful. The CPR principles that consumers should not be misled as to the identity or independence of traders operating or advertising on the site, apply equally to these formats. A fuller discussion is at Annexe D.

- takes reasonable steps to ensure that consumers understood the basis on which a comparison was being made and endeavoured to ensure that the comparison they made was accurate
- takes reasonable measures to ensure that the price quoted on their site is available and there are no compulsory add-on costs from the provider
- provides a clear link to consumers to allow them to see any assumptions that have been made
- clearly and separately identifies as an 'intermediary fee' any charges levied on the consumer by the PCS itself
- provides easily accessible, clear information to consumers on how they are funded, in particular highlighting any recommended hyperlinks or editorial content which has been sponsored
- provides easily accessible, clear information to consumers on how often their prices/deals/searches are updated
- clearly lists the suppliers that have been compared
- advises consumers where search results do not match the consumer's specific request.

9.31 When considering whether to take enforcement action we would also be less likely to take action where a PCS which compares insurance products follows FSA recommendations⁹² and the good practices guide published by the Association of British Insurers in conjunction with the British Insurance Brokers Association.⁹³

⁹² www.fsa.gov.uk/pages/Doing/Regulated/Promo/thematic/review_gi_comparison.shtml

⁹³ www.abi.org.uk/Media/Releases/2009/12/The_ABI_publishes_Good_Practice_Guide_to_help_customers_buying_insurance_online.aspx

10 LEARNING

- 10.1 The extent to which consumers learn about misleading practices and the degree to which they use that learning to adjust their shopping habits is central to an assessment of enforcement priorities. Consumer learning can lessen the impact of harmful practices if consumers learn to avoid them, thereby exerting competitive pressure on businesses to change.⁹⁴ This will mean those businesses who have a reputation for dealing fairly with consumers will thrive, while those that treat them poorly will gain a poor reputation and exit.
- 10.2 Studying learning in a shopping environment, however, is particularly difficult. The degree of complexity combined with the fact that learning takes place over time (potentially quite an extended time period) means that empirical work is subject to very significant problems.
- 10.3 There are, to our knowledge, no long-term panel studies of consumer learning that control for the wide range of moderating factors, such as brand and frequency of purchase. It follows that our knowledge of learning is pieced together from a variety of different sources and that it is necessarily imperfect. Notwithstanding this, we consider it is possible to make a reasonable assessment – based upon a small number of key factors – as to whether a consumer is likely to learn quickly and painlessly and whether they are able to adjust their shopping behaviour as a result.

Learning as knowledge

- 10.4 When we refer to learning in this report we are describing a consumers' ability to improve their stock of knowledge about a particular price frame in a way that improves their ability to deal with it in the future. This description embodies two important assumptions: first that learning can be vicarious as well as based on personal experience and second; that an

⁹⁴ Of course where a mistake leads to irrevocable and significant detriment (for example, buying the wrong pension) learning may not be sufficient to prevent serious harm.

increased stock of knowledge translates into improved understanding. While the first assumption may be uncontroversial the second may not hold in all circumstances: indeed there are some well founded examples of additional information worsening consumers' purchasing behaviour not improving it.⁹⁵

- 10.5 It is also important to note that an improved understanding of the use of price frames will not necessarily mean that a consumer is in a position to use that information to improve their shopping around. Time constraints and the extent to which a particular offer can be subjected to independent verification will necessarily limit the consumers' ability to turn better understanding into better deals.

The evidence on learning

- 10.6 We have drawn our evidence base on learning from a variety of sources including the research work undertaken for this study but also work done by other researchers looking at other markets such as airline tickets and energy tariffs.
- 10.7 Each of the chapters discussing a specific price frame has presented the evidence in relation to learning about that specific pricing practice. Here, we concentrate on a discussion of certain themes about learning and present the more general evidence on the issues.
- 10.8 One way of approaching the question of learning is to ask consumers whether they think they could have done better and whether they would do anything differently next time and then compare those answers with how much exposure they had to the type of offer in question.
- 10.9 The table below sets out the proportion of consumers who thought they could have got better value just as easily elsewhere and the proportion who said they would do something differently if they were purchasing

⁹⁵ Wilson, C and Waddams, C, 2007, *Do Consumers Switch to the Best Supplier?* CCP Working Paper 07-6. Available at: www.uea.ac.uk/ccp/publications/workingpapers2007

the same type of product with the same offer again. It then compares those two metrics with the percentage who were inexperienced first time buyers and the percentage who bought the product frequently.

Table 10.1. Proportion of respondents who thought they could have got better value just as easily elsewhere and the proportion that would do something differently if faced with the same offer again

	Awareness ⁹⁶		Intentions ⁹⁷	Familiarity ⁹⁸	
	Yes	DK	Do something different	First time purchase	2 or 3 times a year or more
Price frame					
Partitioned (drip) pricing	51%	12%	82%	4%	41%
Reference pricing	36%	14%	40%	3%	61%
Baiting sales	48%	12%	73%	3%	57%
Volume offers	35%	19%	31%	2%	94%
Complex offers	43%	21%	65%	10%	17%
Time limited offers	35%	16%	37%	4%	59%

Source: OFT, 2010, *The consumer's view of the Advertising of Pricing*, prepared for the OFT by Ipsos MORI. Annexe H

⁹⁶ The question asked was: In the end, do you think you could have got the same product for a lower price just as easily elsewhere? See Consumer survey questions, Annexe O

⁹⁷ The question asked was: If you came across the same product with the same price offer again, what would you do differently, if anything? See Consumer survey questions, Annexe O

⁹⁸ The question asked was: How often do you purchase this type of product? See Consumer survey questions, Annexe O

- 10.10 Read together these numbers present an interesting picture, albeit a snapshot, of consumer learning. Taking first the proportion of people who thought they could have got a lower price just as easily elsewhere: this is an important group of consumers because the first step in learning is to recognise that they have obtained poor value. So, although the proportion who answered 'Yes' to this question have had a less than perfect experience this time around they are at least on the road to a better outcome next time. More worrying is the group of people who answered 'Don't Know' – they may or may not have obtained good value but the individual does not know and therefore cannot be certain whether they need to do something differently in future.
- 10.11 Bearing these results in mind, it is instructive to consider how many consumers would do something differently next time. While the first step in learning is for a consumer to identify that they can do better the next step is for them to identify that there may be things they can do differently next time. The figures are surprisingly high: in all instances over 30 per cent of people thought they would do something differently and in the case of drip pricing the proportion is more than 80 per cent.
- 10.12 Taken at face value these figures suggest that consumers believe there is more they can do to obtain better deals. The figures on how frequently the product in question is purchased provide an important perspective on these figures. Only a very small proportion of the survey respondents were purchasing the product for the first time – four per cent or less in each case with the exception of 10 per cent for complex pricing. Clearly these individuals have not had any prior opportunity to learn from experience (although we cannot exclude the possibility of vicarious learning). With the exception of complex offers, the proportion purchasing the product two or three times a month or more, however, is high – surprisingly so given the finding that consumers still appear to have much to learn and intend to do something differently next time.⁹⁹

⁹⁹ Of course, a consumer will not necessarily encounter a given pricing practice with every purchase they make – but frequency of purchase is likely to be highly correlated with exposure to that pricing practice.

- 10.13 We put the apparent contradiction down to so called cognitive dissonance, the difference in people's minds between how they think they act and how they actually act. Consumers may intend to do something differently next time but will not necessarily do so. This may be because they under-estimate the constraints they will face (such as time constraints), that they forget or that they are simply over-optimistic either about their own willingness to put in more effort or about their capabilities to apply their knowledge in a way that improves their outcomes.
- 10.14 People often intend to learn, particularly after they have experienced a significant financial loss. Consumers in an earlier OFT survey said they would be less likely to use the same company in future, and to a lesser extent, to purchase the same product.¹⁰⁰ Both effects increased with the size of detriment: for detriment above £1,000, 65 per cent said their likelihood of using the firm again was affected a great deal, compared with 41 per cent of all those with problems. Consumers also said they would get more information about the supplier and product, and be generally more careful.
- 10.15 This is broadly consistent with the findings of the consumer research for this study which found that people who experienced problems generally believed they would learn from the experience and change their behaviour in future. Furthermore, depending on the price frame, consumers said that in future they would do more shopping around, spend more time discussing the details with sales people, place more focus on the businesses' reputation or not buy similar items or use that particular business again.
- 10.16 Not surprisingly, empirical studies of whether people actually change their behaviour following a purchasing error (as opposed to saying they will) are few. Researchers studying the behaviour of people buying

¹⁰⁰ OFT, 2008, *Consumer Detriment* OFT 992. Available at: www.offt.gov.uk/OFTwork/publications/publication-categories/reports/consumer-protection/oft992

shares on the stock market found that investors learn to avoid costly biases,¹⁰¹ and unsophisticated investors,¹⁰² investors who trade more and investors who start out earning consistently poor returns learn faster.¹⁰³

10.17 More generally, research shows that that consumers learn but at a slowing rate. The behavioural experiment¹⁰⁴ tested subjects' repeated purchasing behaviour under different pricing conditions. It found that purchasing errors and consumer welfare losses generally declined as experience increased, although at a slowing rate such that experience and learning did not completely eradicate the problem.

10.18 Evidence from other research into learning has found that knowledge decays with time:

- in the credit card market, making a late payment – and paying a fee – reduces the probability of a late payment in the subsequent month by 44 percent. But there is a 'forgetting effect' so that a late payment charge from the previous month is more influential than an

¹⁰¹ Specifically, the disposition bias – propensity to sell stocks they have experienced gains on, and hold on to stocks they have experienced losses on.

¹⁰² Financial sophistication is defined based on factors such as average portfolio value, whether or not they trade options and past returns, amongst others.

¹⁰³ Seru, A., Shumway, T. and N. Stoffman, 2009. *Learning by Trading*. The Review of Financial Studies (2010) 23(2): 705-739. Study uses complete trading records of investors in Finland from 1995-2003 and controls for innate investor ability and survivor bias.

¹⁰⁴ See OFT, 2010, *The impact of price frames on consumer decision making*, prepared for the OFT by London Economics in association with Steffen Huck and Brian Wallace (University College London). OFT1226. Annexe G

identical charge paid a year ago.¹⁰⁵ Overall, forgetfulness partially offsets learning, but the net effect of learning is still positive.¹⁰⁶

- the OFT's study of personal current accounts found that consumers either do not learn from incurring charges for having insufficient funds in their account or that their financial circumstances make incurring charges unavoidable: of those accounts paying a charge for insufficient funds in 2006, more than 57 per cent also did so in 2005.¹⁰⁷

10.19 The available evidence also suggests that consumers understand more quickly when information is transparent than when it is obfuscated. Providing consumers' purchasing flights with an upfront schedule of the costs associated with surcharges improved consumers' understanding of the variability of those charges between airlines.¹⁰⁸

10.20 The evidence relating to whether consumers learn to overcome behavioural biases, such as those described in the psychology literature review, is more mixed although it is clear that learning is certainly not universally effective.¹⁰⁹ More specifically, studies have found that:

¹⁰⁵ The monthly likelihood of a fee payment increases as previous fee payments recede further into the past (holding all else equal).

¹⁰⁶ Agarwal et al, 2008, *Learning in the credit card market*, NBER Working Paper No. 13822.

¹⁰⁷ The Office of Fair Trading, 2008, *Personal Current Accounts in the UK: An OFT market study* OFT 1005. Available at: www.offt.gov.uk/OFTwork/markets-work/completed/personal/

¹⁰⁸ OFT, 2009, *Evaluation of a sample of Consumer Enforcement Cases*. OFT 1139. Available at: www.offt.gov.uk/OFTwork/publications/publication-categories/reports/Evaluating/oft1139

¹⁰⁹ Rabin, 1996, *Psychology and Economics*. Journal of Economic Literature, Vol. 36, No. 1. (Mar., 1998), pp. 11-46. Also see: Einhorn & Hogarth, 1978, *Confidence in judgement: persistence in the illusion of validity* Psychological Review

1978, Vol. 85, No. 5, 395-416 for a discussion of why people fail to learn from feedback they get over time.

- it may not be essential for consumers to 'correct' their behavioural biases.¹¹⁰ As long as consumers learn they have the bias, they make allowances in their behaviour. This will, in turn, limit the extent to which business can exploit such biases. The implication is that educating consumers about their biases, even if it does not change the bias, may be sufficient to remove much of the associated consumer detriment
- confirmation bias¹¹¹ can affect how well consumers use the information they have¹¹² - the same ambiguous information given to people with differing initial beliefs can reinforce those differing beliefs.

10.21 One benefit of allowing consumers to make mistakes is that there may be wider benefits from any learning that the mistakes create. Such experiences may teach consumers skills that are transferable across many of their day-to-day decisions in markets. This may, in turn, enhance consumers' involvement in markets. Experimental evidence confirms that consumers can transfer learning from one market to another. So called 'learning spillovers' have been found to be greater for closely related situations and when participants had higher quality information about the market. Notwithstanding these findings, the mechanics of learning – and the heuristics people use in real economic interactions – are still unclear.¹¹³ For example, even when people

¹¹⁰ DellaVigna, S, 2009, *Psychology and Economics: Evidence from the Field* Journal of Economic Literature 2009, 47:2, 315–372

¹¹¹ See Glossary, Annexe A

¹¹² Lord, C. G., L. Ross and M. R. Lepper, 1979, *Biased assimilation and attitude polarization: The effects of prior theories on subsequently considered evidence*. Journal of Personality & Social Psychology 37(11): 2098-2109.

¹¹³ Huck, S. and Jehiel, P. and Rutter, T., 2007, *Learning spillover and analogy-based expectations: a multi-game experiment*. ELSE Working Papers (234). Available at: <http://eprints.ucl.ac.uk/14462/>

understand the limits in their abilities they may not apply this knowledge to improve their behaviour.¹¹⁴

10.22 Overall, it seems that more experienced people are less likely to make mistakes and encounter problems than inexperienced ones but that the degree of learning will depend on the circumstances and is, in any event, likely to be imperfect. Even with experience it may be difficult for people to adjust for mistakes made because of behavioural biases. Consequently, while learning, including vicarious learning, certainly may assist consumers, and hence act to reduce the overall harm from misleading adverts, it is highly unlikely to eliminate harm altogether. That said, the evidence on consumer learning suggests that there are good grounds for focussing enforcement work on those markets, products and adverts where consumers are least likely to learn.

Reflecting learning in our framework

10.23 The degree to which consumers learn (or might reasonably be expected to learn) will form a key part of our assessment of our enforcement priorities. As discussed in the Introduction, our framework is in four parts – the third part of this framework deals explicitly with learning. It recognises that consumers are more likely to learn in some markets and with some products than others and sets out the key criteria for assessing this. For ease of reference the criteria are set out again below:

- frequency of purchase: with more frequent purchases a consumer has greater opportunity to learn from their mistakes and become familiar with the offers in the market place
- ease of cross-market price comparisons: markets where like-for-like price comparisons are readily available, such as some of those

¹¹⁴ Griffin, D. and A. Tversky, 1992, *The weighing of evidence and the determinants of confidence*. *Cognitive Psychology* 24(3): 411-435. People tended not to calibrate their predictions to account for overconfidence bias.

characterised by good quality price comparison sites, are likely to assist consumers in verifying price claims

- the ease with which a consumer can independently verify quality: the easier it is for a consumer to identify whether a product is high or low quality prior to purchase the less likely they may be to rely on the price of the product for information about its quality
- the expense of the item: low value items, especially those bought frequently may present a learning opportunity with less financial harm than do more expensive items bought less frequently
- reasonable consumer expectations: if the majority of consumers are aware of and understand the use of a particular practice, for example, whether there are charges for delivery, it is less likely that a consumer will be misled by such a practice
- we would also take into account the size of the market and the overall level of harm likely to arise from the advert.

Conclusion

10.24 It is clear that different consumers learn to different degrees and that they learn better in some markets and with some price frames than they do with others. It is also clear that learning in some markets will involve mistakes as vicarious learning is limited. When mistakes are made sometimes they will be very costly to the consumer and sometimes less so.

10.25 Consumer learning may not prevent a misleading advert from being a breach of the CPRs. The fact that some, or even most, consumers have realised that an advert has misled them in the past does not create a safe harbour for traders. Nevertheless, it is a sensible criterion on which to prioritise enforcement work and it is unlikely that the OFT will prioritise enforcement work in markets where consumers learn quickly with little detriment incurred and when they can subsequently adjust their behaviour to avoid further problems.

A GLOSSARY

Anchor	Psychology research suggests that people assess an offer by starting with a reference point and then making adjustments as further information is considered. In general people tend to focus too heavily on the reference point, the 'anchor', and make insufficient adjustments when the overall price changes from that reference, therefore underestimating the total cost.
Commitment and consistency principle	The psychology principle that once people have committed to an action, they are more likely to be consistent with that particular deed.
Confirmation bias	The tendency for people to place less emphasis on information that does not support their current viewpoint.
Consumer detriment (behavioural experiment)	In the behavioural experiment consumer detriment was measured using welfare losses. Welfare losses are a measure of actual monetary earnings in each of the five price frames and the baseline treatment compared to the potential monetary earnings if subjects behaved optimally.
Endowment effect	The endowment effect refers to the fact that people seem to value a good or service more once ownership of it has been established. In other words, people place a higher value on objects they own (or have decided to own) than objects that they do not.

Heuristic	A 'rule of thumb', educated guess, intuitive judgment, or experience-based technique to solve a problem as rapidly as possible.
High frequency purchase	Product purchased at least once a month or more.
Loss aversion	A psychological effect related to the endowment effect, in which people place a higher value on something they own, or imagine they own. They demand more to give up an object than they would be willing to pay to acquire it.
Low frequency purchase	Product purchased once a year or less.
Medium frequency purchase	Product purchased less than once a month but more than once a year.
PCS	Price comparison site.
Price obfuscation	A lack of clarity or transparency over the costs associated with a particular product or service.
Purchasing errors (behavioural experiment)	In the behavioural experiment purchasing errors were said to have occurred if participants either bought 'too many' units or 'too few' units than was optimal.
Search errors (behavioural experiment)	In the behavioural experiment search errors were said to have occurred when participants searched too little or too much compared with the optimal.

Shopping errors	Errors in consumers shopping decisions arising as a result of the price frame. The errors can occur through buying too many or too few units compared with what the consumer would buy if the offer was clear, and/or an error in the choice of retailer or the price paid.
Welfare loss	See 'consumer detriment'

B LIST OF CONSULTEES AND CONTRIBUTORS

As part of our stakeholder engagement we met and/or received written submissions from traders, consumers, other regulators and trade associations, including:

ABTA
ACS
Advertising Standards Authority
Air Transport User's Council
Aldi
Amazon
Apple
Arnold Clark Automobiles
ASOS
Association of British Insurers
Avis
B&Q
BISL Ltd
Boots
British Airways
British Bankers' Association
British Brands Group
British Insurance Brokers Association
British Retail Consortium
British Shops and Stores Association
British Vehicle Rental and Leasing Association
BSkyB
Carpetright
Cheapflights.com
Civil Aviation Authority
Comet
Comparethemarket.com
Confused.com
Consumer Council for Northern Ireland
Consumer Credit Counselling Service
Consumer Focus

Costcutter
Debenhams
Dell
Department for Business, Innovation and Skills
DFS
DSGi
Dunelm Mill
East Midlands Trains
Easyjet
Enterprise rent-a-car
Eurostar
Express Gifts - Findel plc
Federation Against Software Theft Ltd
Financial Services Authority
Flybe
Furniture Village
Gap
Gocompare.com
Google
Halfords
Hewlett Packard
HMV
Home Retail Group
House of Fraser
Iceland Group
Inon
Institute of Sales Promotions
Intellectual Property Office
InterContinental Hotels Group
ISBA
Jet2.com
John Lewis Partnership
Keith Harris Carpets
Kelkoo
Lastminute.com
Leicestershire Trading Standards Service

Lloyds Pharmacy
Local Government Regulation
Madhouse
Majestic Wine
Martin McColl
Matalan
Moneysupermarket.com
Morrisons
Next
Norfolk Trading Standards Service
Ofcom
Office of Rail Regulation
Ofgem
P&G
Pinsent Masons LLP
Retail Motor Industry Federation
Ryanair
Ryman
Sainsbury's
SCS
Shop Direct Group
Society of Ticket Agents and Retailers
Specsavers
Sportsdirect.com Retail Group
Superdrug
Tesco
The Carpet Foundation
The Co-operative Group
The Law Society
Thetrainline
Thomas Cook
Ticketmaster
TJ Hughes
Trading Standards Service Pricing Focus Group
Travis Perkins
TUI Travel

UK Cards Association
Virgin Atlantic
Virgin Media
Virgin Trains
Western Carpets
WH Smith
Which?
Whitbread - Premier Inn
Wilkinson
Wine and Spirits Trade Association