



The Advertising Association

Response to the European Commission Consultation on Price Indications Directive

September 2006

Preamble

The Advertising Association (AA) is a federation of 31 trade bodies and organisations representing the advertising and promotional marketing industries, including advertisers, agencies, the media and support services in the UK. It is the only body that speaks for all sides of an industry that was worth almost £19 billion in 2005. Further information about the AA, its membership and remit, can be found at the following location: <http://www.adassoc.org.uk/>

The AA welcomes the invitation to make comment on the Commission consultation on the implementation of Directive 1998/6/EC on consumer protection in the indication of prices of products offered to consumers - or the 'Price Indications' Directive. The scope of the consultation is wide but the Advertising Association shall limit itself to commenting only on the questions in the consultation relating to advertising.

Introduction

As a general comment, the AA is not aware of any problems for the industry or consumers arising from the UK Government's implementation of this Directive. The legislation has been implemented flexibly and industry codes have been adjusted to reflect the rules on price indications. Few complaints relating to unit pricing have been received by the Advertising Standards Authority.

The AA welcomes the 'Better Regulation' approach taken by the Commission to EU legislation in general and the specific move to review the consumer acquis already in place to ensure that it works harmoniously with the new Unfair Commercial Practices Directive (UCP) currently being implemented in the Member States.

Response to Specific Questions

The AA response to the questions relating to advertising in the consultation is as follows:

For which products should there be an obligation to indicate the unit price?

The AA sees no reason at all to change the status quo in this area. There is no indication that, as suggested by the Communication, there has been any negative effect on the internal market in this area due to the broad discretion given to Member States on which goods should carry a unit price reference. Additionally, the UCP Directive contains a general duty not to behave unfairly. This will ensure that, although Member States may not have similar rules on which items should include the unit price in their advertising, they must consider whether any omission is unfair. This will ensure a uniform level of consumer protection, whilst allowing cultural differences in advertising to be taken into account.

The Communication suggests 3 options for change in this part of the Directive. Both option 1 and option 2 envisage a list, which would either be positive or negative in nature, detailing

the products which need/need not be accompanied by the unit price in advertising. Since, at present, Member States have divergent views on which products would appear on these lists, it is difficult to envisage any meaningful agreement on their content at EU level. If either of these options were chosen, it is likely that the lists would be a result of an unsatisfactory compromise which limited subsidiarity for Member States and imposed a rigid interpretation of the Directive which would be favourable to neither business nor consumer.

The AA rejects the use of options 1 and 2 in any review of which products must be accompanied by the unit price in advertising.

Option 3 suggests limiting the discretion of Member States in this area by laying down guidelines which would reduce the flexibility of implementation currently enjoyed by the Member States. The AA reiterates its comment that there is no proven negative effect on the internal market in this area and therefore no need to limit the discretion that Member States have when implementing this Directive. It also reiterates its comment that the UCP Directive will ensure adequate consumer protection in this area.

The AA rejects the use of option 3 in any review of which products must be accompanied by the unit price in advertising.

Should specific rules on advertising be maintained in this context?

The AA agrees that the UCP Directive ensures adequate protection for consumers and that it may be possible to repeal article 3(4) of the Price Indications Directive. The Communication suggests two options:

- *Option 1:* argues that article 3(4) could be repealed and the national competent authorities left to decide whether advertisements mentioning the selling price – but not the unit price – of products covered by the Directive are likely to affect the economic behaviour of the average consumers to their detriment;
- *Option 2:* argues that article 3(4) of the Directive could be repealed and a corresponding provision could be added to the black list of practices which are always considered unfair under the UCP Directive. This would include a core list of products for which the omission of the unit price in advertising would always be considered unfair.

It is the AA's opinion that in the interest of Better Regulation, the repeal of article 3(4) of the Unit Pricing Directive is welcome. Regarding the best approach to be taken, the AA favours option 1, which allows Member States to apply the consumer detriment test when deciding whether the omission of a unit price is unfair. Option 2 would be of limited usefulness as a core list of products in the annex to UCP would go out of date rapidly and would, to a certain extent, diminish consumer protection in comparison to option one.

The AA supports the repeal of article 3(4) and the use of option 1 in this area.

Conclusion

The aim of the UCP Directive is to give a uniform level of protection to consumers across the EU, whilst giving Member States the flexibility to decide how that protection is to be provided and traders the legal certainty to trade across borders provided by the mutual recognition clause.

It is logical that existing legislation, which the UCP Directive may supersede to a certain extent, will require updating to ensure that consumer protection rules are rationalised and excessive detail is removed. This approach is in line with the Commission's Better Regulation aims. The AA therefore supports the possible repeal of advertising rules contained in the Price Indications Directive in favour of the use of provisions of the UCP Directive.

However, it seems inconceivable that any revision of the Price Indications Directive should contain provisions which erode the subsidiarity of Member States and add extra layers of unnecessary detail to the consumer acquis. Suggestions for exhaustive product lists and a limitation of the discretion currently enjoyed by Member States in the implementation of the Price Indications Directive are therefore completely unacceptable and the AA cannot support proposals for their use put forward in this Communication.

In summary, the AA position on the advertising questions which form part of this consultation is:

- there should be a repeal of the article in the Price Indications Directive dealing with advertising;
- the competent authorities in each Member State should be left to decide whether the omission of a unit price constitutes an unfair commercial practice, as defined by the UCP Directive;
- there is no need for either a positive or negative list of products which must or must not carry the unit price when advertised, as the provisions of the UCP Directive as outlined above already address this issue.

For further information on this response, please contact:

Kerry Neilson
Head of European Public Affairs,
The Advertising Association,
7th Floor North,
Artillery House,
Artillery Row
London
SW1V 1RT

Tel: 0044 207 340 1100

Email: kerry.neilson@adassoc.org.uk