

Implications of New Pricing Requirements for the Motor Vehicle Industry

The new pricing requirements

The new section 53C of the *Trade Practices Act 1974 (TPA)* has now been in force since 25 May 2009. Yet motor vehicle manufacturers are still struggling to determine how to move forward with their price advertising campaigns because of the current confusion as to the new section's interpretation.

The new section requires corporations to advertise a single figure price which the consumer must pay to acquire the goods and services, that includes all price components to the extent they are quantifiable. This new requirement extends to all representations made such as advertisements or other promotional campaigns, tenders, cost estimates or quotations. Price lists may also be subject to the new pricing requirements if contained on a website which is established for promotional purposes.

The single price figure must be displayed prominently. Where component pricing is used in the advertisement the single figure price must be at least as prominent as the most prominent component pricing amount. The single price must represent the minimum quantifiable cost payable for the goods and services and only include amounts that are in fact quantifiable at the time the representation is made. Excluded from the new pricing requirements are representations made to bodies corporate exclusively and representations relating to services supplied under a contract that also provides for periodic payments such as, for example, leasing arrangements.

ACCC policy and guidelines – issues for motor vehicle manufacturers and retailers

Who does section 53C apply to?

The Australian Competition and Consumer Commission (ACCC) has expressed the view that manufacturer and wholesale distributors as well as individual dealers are caught under the new provision even though manufacturers and wholesalers do not enter into any direct supply arrangements with consumers.

What does 'single price' include?

The definition of 'single price' in section 53(7) of the TPA cites the types of charges which should be included in the single

price. The examples listed only relate to charges that are payable by the entity making the representation. This has led to much speculation in the motor vehicle industry of whether certain components are caught under the new provision at all because components such as registration costs or stamp duty, are neither charged or collected by the manufacturer, nor levied against the manufacturer. However the ACCC has stated that these examples are not exhaustive, and that the single price figure under the new regulation for the motor vehicle industry must include:

- Dealer delivery;
- Registration costs;
- CTP costs; and
- Stamp duty.

How are variable pricing components quantified?

Another concern of the industry is that the pricing components vary greatly between States and Territories, personal circumstances of the consumer and the locality, usage and type of the vehicle and the insurer. For example CTP costs may vary from suburb to suburb and between different insurers. Registration costs vary from State to State and Territory to Territory and differ between commercial and private vehicles. Dealer delivery charges vary from dealer to dealer.

Even though the ACCC accepts that these variations may pose a challenge, it does not consider that those challenges are insurmountable. It expects advertisers to be aware of their target audience and to accurately state the single price figure for the type of buyer in that target market. The ACCC would not express a view as to the specific methods that might be available to manufacturers in determining a final price figure but warns that significant price discrepancies that exist as a result of differences in dealer delivery, registration or other charges may be misleading to consumers, and therefore may constitute a breach of sections 52 and 53 of the TPA.

Price advertising practices

Obviously the lack of guidance from the ACCC as to the specific methods for determining the single price figure has caused much uncertainty amongst motor vehicle manufacturers. The new pricing requirements have forced the motor vehicle industry to review and amend their current advertising practices. One of the main challenges will be to obtain details as to the relevant, applicable costs to consumers and to develop profiles for target markets to which the single pricing figure can be tailored.

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Particular caution is required in relation to internet advertisements as internet websites generally allow any type of consumer to access the promotion.

The possible scenarios for manufacturers will include:

- a. providing no price point;
- b. making arrangements to ensure that each dealer aligns with an advertised drive away price (whilst being careful not to engage in anti-competitive conduct such as price fixing);
- c. confining price advertising to specific localities or geographical areas;
- d. advertising a price based on an 'average' consumer – discussed below.

Average pricing

The advertisement of a single price containing applicable average prices for the target average buyer may be an option for manufacturers to ensure compliance with the new pricing requirements. For example, if a campaign is State or Territory based, price components may be based on the average costs applicable to a particular buyer profile located in that State or Territory, and relevant to the type of vehicle being promoted. However the problem still exists that the actual price payable by the consumer will likely be different from the advertised average price. The price difference may cause the manufacturers' advertisement to be misleading. Accordingly a motor vehicle manufacturer must include appropriate disclaimers in the advertisement to ensure that an average price advertisement is not misleading.

There are various commercial and business reasons for a manufacturer

to consider advertising a price at the lower or higher end of the price variation range. Where the manufacturer chooses to advertise at the lower end of the scale, the use of disclaimers is particularly important. Additionally, any estimated or quantified price should be based on known information that has been reasonably sought from relevant and reliable sources.

Conclusion

Only time will tell whether the new pricing regulation will be beneficial to motor vehicle purchasers. The motor vehicle industry in Australia largely commits a significant amount of time and resources in ensuring that their regulatory obligations are met.

The success of the new pricing regime will depend greatly on the ACCC monitoring the new price advertising practices with diligence, and to consistently and transparently enforce its interpretation of the legislation. It will also be incumbent on the ACCC to appreciate the specific complications for the motor vehicle industry and therefore it must engage with the motor vehicle industry to address these unresolved issues.



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