

## **New regulation on discounted sales**

On 13 October 2019, **Decree-law 109/2019 of 14 January** came into force, making it the second amendment to Decree-law 70/2007 of 26 March, previously amended by the Decree-law 10/2015 of 16 January

The second amendment was intended to create a greater transparency in the relationship between consumers and sellers.

In the original 2007 wording of the Decree-law 70/2007, Article 5 had the following wording:

*"Article Five*

*(Reference Price)*

- 1. The price reduction announced must be real, by reference to the price previously charged for the same product, or by reference to the price to be charged after the reduction period when it is a product not previously marketed by the economic agent.*
- 2. Price previously charged is understood, for the purposes of this Decree-law, as the lowest price actually charged for the product in the same place of sale, for a continued period of 30 days prior to the beginning of the reduction period."*

As we can see, the original wording did not define what should be understood as *"the lowest price actually charged"*, so the possible and literal interpretation of this regulation was that the lowest price would be the cheapest price for which the consumer could buy the product in the previous 30 days, whether or not it benefited from some promotional discount or a sales price (harmful reality for sellers).

That is to say, if the product had a base price of EUR 5.00 and had had 50% discount in the previous 30 days, the lowest price would be EUR 2.50, so for the promotion to be real, after those 30 days, the promotional price would have to be less than EUR 2.50, otherwise the obligation that *"the price reduction advertised must be real, by reference to the price previously charged for the same product"* i.e. *"the lowest price actually charged for the respective product in the same place of sale, for a continued period of 30 days prior to the start of the reduction period"* would not be fulfilled.

In 2015, Article 5(2) was repealed, and the law only stated that the price reduction would have to be real when the price was compared with a reduction and the lowest price to which the product had been for sale, without any time limit.

Considering this lack of limitation, if the seller was confronted with a possible infringement for non-real price reduction, the promotional price could be compared with any price that had been charged for that product previously, namely a reduced price from a previous price reduction event.

Still, the main consequence of this amendment was to limit the possibility of consumers being able to identify some "manipulation" of prices and thus allowing false price reductions advertisings.

It was because of this that Article 5(1) has been amended again and it was also included a definition of *"lowest price previously charged"*.

Therefore, we now have the following definition: the *"lowest price previously charged"* is *"the lowest price for which the product was sold, outside of any sales or promotion periods, in the 90 days preceding the day on which it is placed to be sold on sale or promotion"*.

In turn, Article 5(1) now has the following wording:

*"1. The price reduction announced must be real, by reference to the lowest price previously charged for the same product or, when it is a product not previously sold by the economic agent, by reference to the price to be charged after the period of reduction"*.

Reading the two amendments in combination, we believe we have a quite clear interpretation: the *"lowest"* price is the one that is charged for the product *"90 days prior to the day it is placed to be sold on sales or promotion"*, not considering the price charged during *"any previous period of sales or promotion"*.

## CONTACTS

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