



LAW REFORM COMMISSION

Discussion Paper on "The law pertaining to display of price"

[LRC_ R&P 178, February 2024]

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EXECUTIVE SUMMARY

Discussion Paper on “The law pertaining to display of price” [LRC_ R&P 178, February 2024]

We inhabit an era where transparency is often heralded as a panacea for an array of socio-economic issues. In a marketplace, the freedom to make informed decisions is fettered by the lack of transparent pricing. The display of price is a cornerstone in the consummation of modern commerce, underlying the legal relations and obligations between merchant and consumer. The absence or inaccuracy of such display is not a mere clerical fault, but, in essence, constitutes an obfuscation of a vital piece of the commercial social contract.

Concealed or misleading pricing undermines the consumer’s ability to make informed choices, creating an information asymmetry that is deleterious to market competitiveness and consumer welfare. Businesses engaging in opaque or deceptive pricing practices gain an unfair competitive advantage, thereby distorting market mechanisms. A dearth of comprehensive, uniform legislation pertaining to price display can result in regulatory loopholes that are exploited to the detriment of consumers. The burgeoning rise of e-commerce introduces a new set of challenges. “Price on demand” policies can cloak discriminatory pricing strategies, thereby eroding the principle of equality before the law.

The aim of this Discussion Paper is to examine the law concerning display of price in Mauritius, in the European Union and in other jurisdictions including the United Kingdom, Australia, France, New Zealand, South Africa, Seychelles, Italy and the Philippines. Reforms have subsequently been proposed for a stronger legal framework that would better reflect evolving commercial practices in Mauritius. Some of the relevant reforms proposed concern: (i) the requirement to display both promotional price and original price on announcement of a price reduction; (ii) the inclusion of all mandatory charges in the selling price for customers to be able to see the actual price that they need to pay; (iii) situations where one single item is displayed with more than one price concurrently; (iv) inadvertent and obvious error in displayed price; (v) displayed price which has been altered, defaced, covered, removed or obscured by an unauthorised person; (vi) the display of price in both local and foreign currency in Mauritius in certain circumstances; (vii) the display of price on online platforms and prohibition of “price on demand” policies; (viii) the increase in penalty for the offence of failing to properly display price and (ix) awareness campaigns with regards to display of price.

INTRODUCTION

1. Price label of goods is an important subject for consumers as it informs the latter about the value of the goods that they wish to purchase and allows them to compare prices to ultimately make an informed buying decision.¹
2. Accordingly, since 1998, in Mauritius, like in many other jurisdictions, there is a legal obligation on businesses to display the prices of goods that they offer for sale.² Nevertheless, since the imposition of the legal obligation, that is, more than two decades later, the market for consumer goods has experienced significant change, driven by factors such as globalisation and the emergence of online shopping.³
3. As a result, many jurisdictions, including Mauritius, have had to revisit and reform their legislation and relevant practices relating to the display of prices. However, in comparison to other jurisdictions, Mauritian law still has certain aspects concerning price display that remain unaddressed. Those aspects, among others, concern: (i) the requirement to display both promotional and original prices on announcement of a price reduction; (ii) the insertion of all mandatory charges in the selling price for consumers to be able to see the actual price that they need to pay; (iii) situations where one single item is displayed with more than one price concurrently; (iv) careless and obvious error in displayed price; (v) displayed price which has been altered, defaced, covered, removed or obscured by an unauthorised person; (vi) the display of price in both local and foreign currency in Mauritius in certain circumstances; and (vii) the display of price on online platforms.
4. Therefore, with the aim of strengthening and expanding consumer protection measures, applying more consistent sanctions for infringements of certain consumer rights and increasing transparency in online marketplaces, this Discussion Paper:
 - (a) evaluates the current law in Mauritius concerning display of prices;

¹ John T. Gourville and Dilip Soman, ‘Pricing and the Psychology of Consumption’ [2002] Harvard Business Review < <https://hbr.org/2002/09/pricing-and-the-psychology-of-consumption> >

² Section 7 of the Consumer Protection (Price and Supplies Control) Act 1998

³ Dung H. Nguyen, Sander de Leeuw, and Wout E.H. Dullaert, ‘Consumer Behaviour and Order Fulfilment in Online Retailing: A Systematic Review’ [2018] 20 IJMR 258

- (b) analyses the law pertaining to price display in the European Union, the United Kingdom, Australia, New Zealand, France, Seychelles, South Africa, Italy and the Philippines;
 - (c) compares the current law of Mauritius to other jurisdictions; and
 - (d) before concluding, proposes relevant reforms that can be bought under Mauritian law.
5. The imperative for reforming the legislation governing the display of prices in Mauritius is underscored by the evolving dynamics of modern commerce and the necessity for enhanced consumer protection. Current trends, such as the rise of e-commerce and the prevalence of non-transparent pricing practices like “price on demand”, highlight significant gaps in existing legal frameworks. These gaps jeopardise the principles of fairness and transparency, foundational to consumer trust and efficient market operation. The absence of stringent regulations and clear guidelines on price display not only leads to consumer confusion but also paves the way for discriminatory pricing and unfair trade practices. The proposed reforms aim to address these challenges by mandating the clear, upfront display of prices, including all ancillary costs, and prohibiting opaque pricing models. This legislative overhaul is crucial for ensuring that consumers in Mauritius are equipped with the necessary information to make informed purchasing decisions, thereby fostering a more equitable and competitive marketplace. Moreover, harmonising national laws with international best practices in price display will bolster Mauritius’s standing as a consumer-friendly and transparent market, enhancing its appeal to both local and international consumers. This reform is not merely a regulatory update; it is a vital step towards safeguarding consumer rights and nurturing a robust, transparent, and fair trading environment in Mauritius.

A. THE LAW IN MAURITIUS PERTAINING TO DISPLAY OF PRICE

6. Subject to section 7 of the Consumer Protection (Price and Supplies Control) Act 1998, and relevant sections of the Value Added Tax Act 1998, every person selling taxable goods should affix a label in a conspicuous place on a specimen of the goods, indicating the selling price of the goods.⁴ It should be noted that the selling price must be expressed in Mauritian currency and in Arabic numerals.⁵
7. Any person who fails to properly indicate the selling price shall commit an offence and shall, on conviction, be liable to a fine not exceeding 300,000 rupees and to imprisonment for a term not exceeding 5 years.⁶ Moreover, in addition to fine and imprisonment, the Court may order the suspension or revocation of any trading licence held by or issued to the person.⁷
8. Furthermore, according to relevant regulations, the price of any articles or goods exposed for sale in markets/fairs around Mauritius shall be conspicuously affixed in Mauritian Rupees on the article.⁸
9. Besides, every person who manufactures, exposes or sells bread or who offers bread for sale on his trade premises should display in a conspicuous place a notice indicating the type, weight and price of the bread manufactured, exposed or offered for sale.⁹
10. In addition, every person who participates in fairs that are organised for a limited number of days and who sells: (i) books, and educational materials (ii) home accessories, sanitary ware, furniture, home appliances, gardening accessories, lightings, paints, security

⁴ Section 7 of the Consumer Protection (Price and Supplies Control) Act 1998 and Value Added Tax Act 1998

⁵ Regulation 6 of the Consumer Protection (Price Label) Regulations 1998

⁶ Section 7(3) of the Consumer Protection (Price and Supplies Control) Act 1998

⁷ Section 32 of the Consumer Protection (Price and Supplies Control) Act 1998

⁸ Regulation 6(2) of The City Council of Port Louis (Engineer Market/Fair) Regulations 2019; Regulation 6(2) of the Beau Bassin Rose Hill (Markets and Fairs) Regulations 2017; Regulation 6(2) of the Municipal Council of Curepipe (Markets) Regulations 2016; Regulation 6(2) of the District Council of Savanne (Market) Regulations 2016; Regulation 9(2) of the District Council of Grand Port (Jawaharlall Nehru Square Open Market) Regulations 2019; Regulation 6(2) of the Pointe aux Sables Market/Fair Regulations 2016; Regulation 6(2) of the City Council of Port Louis (Central Market) Regulations 2016

⁹ Regulation 5 of the Consumer Protection (Control of Manufacture and Sale of Bread) Regulations 2018

accessories, kitchen wares, or any other related items to a house, (iii) motor vehicles, motorcycles, auto cycles, associated accessories and care products, spare parts and tyres; (iv) jewellery and related items; (v) Information and Communication Technologies related products; (vi) food items, cooking utensils cosmetics, pharmaceuticals, and other food and health related products; (vii) locally made handicrafts; or (viii) building materials, equipment, scaffoldings, safety gear and tools, should affix the selling price of their products.¹⁰

11. Moreover, the Consumer Protection (Product Advertisement and Promotion) Regulations 2012 provide that where goods are advertised or promoted, the price displayed or announced in relation to the goods should be expressed in Mauritian currency and in Arabic numerals.¹¹
12. According to section 4 of the Fair Trading Act 1979, it is an offence to advertise any product in such a manner which has the effect or is likely to have the effect of (i) subjecting consumers to undue pressure to enter into any consumer transaction or (ii) misleading or confusing consumers with respect to any matter in connection with any consumer transaction.¹²
13. Anyone who contravenes section 4 of the Fair Trading Act, shall, on conviction, be liable to a fine not exceeding 200,000 rupees and to imprisonment for a term not exceeding 2 years.¹³ Besides, any person who is convicted more than once under section 4, shall on the second every subsequent conviction be liable to a fine not exceeding 500,000 rupees together with a term of imprisonment not exceeding 5 years.¹⁴
14. Based on the analysis made above, there are several legislations in Mauritius which provide for, in relevant circumstances, the selling prices of products to be clearly displayed. However, compared to other jurisdictions, there are some remaining gaps in our law concerning display of price which need to be addressed in order to better reflect evolving

¹⁰ Regulation 3(5) of the Consumer Protection (Control of Fairs) Regulations 2016

¹¹ Regulation 3 of the Consumer Protection (Product Advertisement and Promotion) Regulations 2012

¹² Section 4 of the Fair Trading Act 1979

¹³ Section 13 of the Fair Trading Act 1979

¹⁴ Section 14 of the Fair Trading Act 1979

commercial habits and put an end to misleading pricing practices. One of the primary shortcomings in the Mauritian context is the lack of comprehensive regulation concerning the display of prices in both physical and digital marketplaces. While traditional brick-and-mortar stores are subject to certain regulations, the burgeoning domain of e-commerce often operates in a regulatory grey area. This disparity creates an uneven playing field, where consumers may be adequately protected in one sphere but left vulnerable in another. Furthermore, the enforcement mechanisms and penalties in Mauritius for non-compliance with price display regulations are often perceived as inadequate. Without stringent enforcement and substantial penalties, compliance becomes less of a priority for businesses, thereby weakening the effectiveness of the legal framework. Additionally, there is a need for specific regulations addressing the issue of 'price on demand' practices. Such practices can lead to discriminatory pricing and undermine the principle of transparency in commercial transactions.

15. To address these gaps, Mauritius needs to embark on a robust legislative reform that not only updates existing laws but also introduces new provisions tailored to contemporary commercial realities. Such reforms should be designed to protect consumers from misleading pricing while also accommodating the innovative and dynamic nature of modern commerce. This legislative overhaul is essential for Mauritius to ensure a fair, transparent, and competitive market environment that aligns with international standards and best practices.

B. DISPLAY OF PRICE LAW IN THE EUROPEAN UNION AND IN OTHER JURISDICTIONS

European Union Directives

16. In the European Union, the selling price (that is, the final price including value-added tax and all other taxes)¹⁵ of all products offered by traders to consumers must be indicated in an unambiguous, easily identifiable and clearly legible manner.¹⁶ However, traders are not required to indicate the price of (i) goods being sold at auction; (ii) works of art; and (iii) antiques.¹⁷
17. Furthermore, any announcement of a price reduction must clearly indicate the price previously applied by the trader, that is, the “prior price”.¹⁸ The prior price means the lowest price applied by the trader during a period of time not shorter than 30 days prior to the application of the price reduction.¹⁹
18. Besides, the European Union has adopted regulations requiring online retailers operating within the European Union to display the total price of goods and services, including all taxes and fees, at the beginning of the ordering process.²⁰
19. In the European Union, online retailers are also required to provide clear and concise information about delivery and payment methods, as well as any additional charges that

¹⁵ Article 2 of the Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers

¹⁶ Article 4 of the Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers

¹⁷ Article 3 of the Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers

¹⁸ Article 6a of the Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers

¹⁹ *ibid*

²⁰ Article 8 of the Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights

may be incurred during the ordering process.²¹ The information must be presented in a way that is easy to understand and accessible to all consumers.²²

20. The above-mentioned requirements were introduced in response to growing consumer concerns about hidden costs and misleading pricing practices in online sales.²³

United Kingdom

21. In the UK, whether on the high street or online, the Price Marking Order 2004 requires sellers to display the full selling price, of all products they offer to sell to consumers.²⁴

22. Sellers must also show a unit price for products sold in bulk.²⁵ Unit price implies price per kilogram, litre and so forth. Besides, products sold from bulk include (i) certain products marked with an indication of quantity or pre-packed in a constant quantity, (ii) fresh fruit and (iii) vegetables.²⁶ Therefore, for example, a bag of 10 oranges costing £5 in the UK must display the unit price as 50p per orange.

23. These price indications must be unambiguous, easily identifiable, clearly legible and must include VAT and any other taxes.²⁷ Furthermore, any additional postage, package or delivery charge of a product must be indicated.²⁸ In addition, all pricing information must be given close to the product, or in the case of distance contracts (such as online or mail order, and advertisements) close to a picture or written description of the product.²⁹

²¹ Article 8(2) of the Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights

²² *ibid*

²³ Kristina Dosen, ‘Prices displayed in online sales are regulated at EU level’ (Fiscal Solutions, 12 April 2023) < <https://www.fiscal-requirements.com/news/2161> >

²⁴ Article 4 of the Price Marking Order 2004

²⁵ Article 5(1) of the Price Marking Order 2004

²⁶ Article 5(2) of the Price Marking Order 2004

²⁷ Article 7(1) of the Price Marking Order 2004

²⁸ Article 7(3) of the Price Marking Order 2004

²⁹ Article 7(1)b) of the Price Marking Order 2004

24. Moreover, the price must be so placed so as to be available to consumers without the need for them to seek assistance from the trader or someone on his behalf in order to ascertain it.³⁰

25. In the UK, the indication of selling price and unit price should be in sterling.³¹

26. However, if a trader indicates his willingness to accept foreign currency in payment for a product, he should, in addition to the required price indications in sterling:

(a) give an indication of the selling price and any unit price required for the product in the foreign currency in question together with any commission to be charged; or

(b) clearly identify the conversion rate on the basis of which the foreign currency price will be calculated together with any commission to be charged; and

indicate that such selling price, unit price or conversion rate as the case may be does not apply to transactions via a payment card to be applied to accounts denominated in currencies other than sterling, the conversion rate for which that will be applied by the relevant payment scheme which processes the transaction.³²

Australia

27. The Competition and Consumer Act 2010 is the national, generic, legislation for consumer protection in Australia, which applies in each State and Territory of Australia, and to all Australian businesses, whether online or in-store.³³

³⁰ Article 7(1)c) of the Price Marking Order 2004

³¹ Article 6(1) of the Price Marking Order 2004

³² Article 6(2) of the Price Marking Order 2004

³³ Competition and Consumer Act 2010

28. The law commenced on 1 January 2011, replacing 20 different consumer laws across the Commonwealth and the states and territories, although certain other Acts continue to be in force.³⁴
29. Australian businesses must display the total price of a good or service, subject to relevant sections of the Competition and Consumer Act 2010.³⁵ The total price must include all charges payable, and taxes, duties, levies or fees (such as goods and services tax or airport tax).³⁶ However, it doesn't need to include optional charges such as delivery fees.³⁷ Besides, in circumstances, where the price displayed or advertised is only part of the total price (for example, a price which does not include additional charges such as delivery or booking fees), the total price must be as noticeable as the “part price”.³⁸
30. Any displayed price must be clear and must stand out so that it is easily noticed by a consumer.³⁹
31. Furthermore, online Australian businesses must include pre-selected optional extras in the advertised price of goods and services.⁴⁰ Consumers may then choose to deselect them as they go through the buying process.⁴¹ For example, an airline website advertises a flight for AU\$500 and as the consumer makes the purchase, the optional carbon offset fee of AU\$10 is pre-selected. According to the Australian law, the flight must be advertised at AU\$510 up front. During the purchase process, the consumer can de-select the fee to reduce the flight cost to AU\$500.
32. Moreover, if a business displays the same item with more than one price then it must sell the item for the lowest displayed price or withdraw the item until the price is corrected.⁴²

³⁴ Australian Competition and Consumer Commission, < <https://www.accc.gov.au/about-us/accc-role-and-structure/legislation-we-enforce/exceptions-under-commonwealth-state-and-territory-legislation> >

³⁵ Section 48 of the Competition and Consumer Act 2010

³⁶ Section 48(7) of the Competition and Consumer Act 2010

³⁷ Section 48(2) of the Competition and Consumer Act 2010

³⁸ Sections 48(3) and 48(5) of the Competition and Consumer Act 2010

³⁹ Section 48(5) of the Competition and Consumer Act 2010

⁴⁰ Section 48(7)(a) of the Competition and Consumer Act 2010

⁴¹ *ibid*

⁴² Section 47 of the Competition and Consumer Act 2010

33. In Australia, it should be noted that prices of products must be displayed in Australian dollar.⁴³

New Zealand

34. In New Zealand, (a) grocery stores with a floorspace above 1,000 square metres and (b) online sellers - must display the unit price (that is, the price per litre, kilogram or gram⁴⁴) as well as the purchase price of some of the grocery products that they offer to sell.⁴⁵ The grocery products include bread, dairy products, eggs or egg products, fruit, vegetables, meat, fish, rice, sugar and manufacturer-packaged food.⁴⁶

35. The unit price of a product must be displayed using numerals and a dollar sign.⁴⁷

36. Furthermore, the unit price must be displayed: (a) clearly and legibly; (b) prominently, and (c) in close proximity to the purchase price displayed for the product, so that its connection to the product is clear.⁴⁸

37. It should be noted that in New Zealand, the unit price need not be displayed in an audio advertisement or in an advertisement that uses visual images produced electronically and shown as a moving picture.⁴⁹

38. Other than the requirement to display the unit price of some grocery products, in New Zealand, there is no law which explicitly provides that it is mandatory to display the price of all products. Nevertheless, it should be taken into consideration that almost all businesses

⁴³ Section 47(4)(c) of the Competition and Consumer Act 2010

⁴⁴ Regulation 11(2) of the Consumer Information Standards (Unit Pricing for Grocery Products) Regulations 2023

⁴⁵ Regulation 6(1) of the Consumer Information Standards (Unit Pricing for Grocery Products) Regulations 2023

⁴⁶ Regulation 6(3) of the Consumer Information Standards (Unit Pricing for Grocery Products) Regulations 2023

⁴⁷ Regulation 12(1)(a) of the Consumer Information Standards (Unit Pricing for Grocery Products) Regulations 2023

⁴⁸ Regulation 12(3) of the Consumer Information Standards (Unit Pricing for Grocery Products) Regulations 2023

⁴⁹ Regulation 14 of the Consumer Information Standards (Unit Pricing for Grocery Products) Regulations 2023

(online or in-store) in New Zealand that sell goods and services use computerised check-out and barcoding systems and are consequently members of GS1 New Zealand.⁵⁰

39. GS1 is an international, not-for-profit organisation, operating in 150 countries (including Mauritius), which provides authentic, globally recognised barcodes for products available online or in-store.⁵¹

40. If a business is a member of GS1 New Zealand, it should mandatorily display the prices of products in a way that they can be read and easily linked with the product⁵² and it should consequently not charge above the price displayed.⁵³

41. Accordingly, in New Zealand, a business which is not a member of GS1 New Zealand does not have to advertise or display its prices. However, whether a business displays or does not display prices, it needs to comply with the Fair Trading Act of New Zealand when making representations to consumers about the price of their goods. In accordance with the Fair Trading Act, price claimed by businesses should not be inaccurate, exaggerated, or misleading.⁵⁴ On breach of the Fair Trading Act, companies can be fined up to NZ\$600,000 for each breach and an individual up to NZ\$200,000.⁵⁵ Where a company is a repeat offender, directors and those involved in the management of the company can be banned from involvement in the management of any company for a period of up to 10 years.⁵⁶

42. In 2017, in New Zealand, a retailer, was fined NZ\$800,000 for misleading discount sales and price promotions that breached the Fair Trading Act.⁵⁷ Similarly, in 2016, a company was required to pay a fine of NZ\$390,000 for misleading its consumers over the price and terms of its bundled electricity and unlimited broadband offer.⁵⁸

⁵⁰ Ministry of Business, Innovation and Employment, ‘Consumer Protection’ < <https://www.consumerprotection.govt.nz/general-help/common-consumer-issues/misleading-prices-or-advertising/> >

⁵¹ The Mauritius Chamber of Commerce and Industry, ‘GS1 Mauritius - The Global Barcode Experts’ < <https://www.mcci.org/en/our-services/gs1-mauritius/products-and-services/> >

⁵² Code of Practice of GS1 New Zealand

⁵³ *ibid*

⁵⁴ Section 13 of the Fair Trading Act 1986

⁵⁵ Section 40 of the Fair Trading Act 1986

⁵⁶ Section 46D of the Fair Trading Act 1986

⁵⁷ *Commerce Commission v Bike Retail Group and Bikes International Limited* [2017] NZDC 2670

⁵⁸ *Commerce Commission v Trustpower Limited* [2016] NZDC 18850

France

43. France as well as all other states within the European Union have implemented relevant EU rules and regulations concerning price display into their respective national legislation.⁵⁹
44. Every business in France, from the grandest Paris jeweller to the lowly provincial grocer, is under an obligation to inform potential buyers about the price of their products by means of marking, labelling, display or any other appropriate means.⁶⁰ The prices must be displayed in a visible and legible manner, before the purchase, whether in the window or inside the store.⁶¹ The prices must be indicated in euros, all taxes included, and the VAT rate must be mentioned.
45. Where the price cannot reasonably be calculated in advance due to the nature of the good, the trader must provide the method of calculating the selling price and, where applicable, any additional transport, delivery, postage or other costs.⁶² Also, where the additional costs cannot reasonably be calculated in advance, the business should mention that they may be payable.⁶³
46. In addition, any online announcement of a price reduction must also display the lowest price charged by the trader thirty days before the announcement.⁶⁴ This implies that online traders need to apply the “was/now pricing” rule in every price reduction. The “was price” denotes the lowest price used thirty days before the price reduction or, exceptionally, when there are several successive reductions, the lowest price applied before the first reduction.⁶⁵ The “now price” is the current price of the item.

⁵⁹ Sebastian Nessel, ‘Consumer Policy in 28 EU Member States: An Empirical Assessment in Four Dimensions’ [2019] 42 JCP 455

⁶⁰ Article L112-1 of the Code de la Consommation

⁶¹ Article L111-1 of the Code de la Consommation

⁶² Article L112-3 of the Code de la Consommation

⁶³ *ibid*

⁶⁴ Article L112-1-1 of the Code de la consommation

⁶⁵ *ibid*

47. The above-mentioned “was/now pricing” rule does not apply to price reductions on highly perishable products which rapidly spoil, or to price comparisons between a professional and its competitors on a given market.⁶⁶
48. In case of non-compliance with the rules of price display, administrative fines ranging from €3,000 to €15,000 for an individual and €15,000 to €75,000 for a legal entity, can be imposed.⁶⁷
49. Furthermore, an offender can be punished by two years’ imprisonment and a fine of € 300,000, if the Court regards the price displayed or the method of calculating the price or the promotional nature of the price as a misleading commercial practice, according to the *Code de la Consommation*.⁶⁸

Seychelles

50. In Seychelles, a retailer should not display any goods for sale without displaying to the consumer a price in relation to those goods.⁶⁹
51. The price should be:
- (a) annexed or affixed to, written, printed, stamped or located on, or otherwise applied to the goods or to any band, ticket, covering, label, reel, shelf or other thing used in connection with the goods or on which the goods are mounted for display or exposed for sale; or
 - (b) represented in any other way, from which it may reasonably be inferred that the price is the price applicable to the goods; or
 - (c) published in relation to the goods or services in a catalogue available to the public, if
 - (i) a time is specified in the catalogue as the time after which the goods or services will not be sold or provided at that price, and that time has not passed; or

⁶⁶ *ibid*

⁶⁷ Article 131-1-1 of the Code de la consommation

⁶⁸ Article L132-2 of the Code de la Consommation

⁶⁹ Section 20(1) of the Consumer Protection Act 2010 (Seychelles)

(ii) in any other case, the catalogue may reasonably be regarded as not out-of-date.⁷⁰

52. It should be taken into account that retailers, in Seychelles, are not required to display a price:

(a) for goods that are displayed predominantly as a form of advertisement of the supplier, or

(b) of goods or services in an area within the supplier's premises to which the public does not ordinarily have access.⁷¹

53. Furthermore, subject to relevant sections of the Consumer Protection Act of Seychelles, if a single product has more than one price displayed simultaneously, the customer will pay for the product at the lowest price displayed.⁷²

54. Nevertheless, if a price that was once displayed has been fully covered and obscured by a second displayed price, that second price shall be regarded as the displayed price and the customer should pay for the second price irrespective of whether the second price is higher or lower than the first price.⁷³

55. Moreover, if in addition to displaying a price in respect of any goods or services, a supplier has advertised or displayed a placard or similar device announcing that prices are, will be or have been reduced by –

(a) a monetary value, generally or in relationship to any particular goods or services, the displayed price shall be regarded as the price immediately displayed in relation to the goods or services, minus the announced monetary reduction; or

(b) a percentage value, generally or in relation to any particular goods or services, the displayed price shall be regarded as the price immediately displayed in relationship to the goods or services, minus an amount determined by multiplying that price by the percentage shown,

⁷⁰ Section 20(3) of the Consumer Protection Act 2010 (Seychelles)

⁷¹ Section 20(2) of the Consumer Protection Act 2010 (Seychelles)

⁷² Section 21(1) of the Consumer Protection Act 2010 (Seychelles)

⁷³ Section 21(4) of the Consumer Protection Act 2010 (Seychelles)

unless the supplier has applied two or more prices immediately to the goods or services concerned and the difference between the highest and the lowest of those applied prices is equivalent to the advertised or placarded reduction in price.⁷⁴

56. It should be noted that all prices displayed should be expressed in Seychelles currency.⁷⁵

57. Where, after a formal hearing, the Fair Trading Commission of Seychelles determines that a person has contravened any requirement or prohibition with regards to display of price the Fair Trading Commission may order that person –

(a) in the case of an individual, to pay a penalty of a sum not exceeding SR 100,000 (approximately US\$ 7500); or

(b) in the case of a person other than an individual, to pay a penalty of a sum not exceeding SR 400,000 (approximately US\$ 30,000).⁷⁶

58. In determining an appropriate penalty, the Fair Trading Commission should have regard to the following - (a) the nature, duration, gravity and extent of the contravention; (b) any loss or damage suffered as a result of the contravention; (c) the behaviour of the respondent; (d) the market circumstances in which the contravention took place; (e) the level of profit derived from the contravention; (f) the degree to which the respondent cooperated with the Fair Trading Commission; and (g) whether the respondent has previously been found in contravention of this Act.⁷⁷

South Africa

59. Section 23 of the Consumer Protection Act 2008 of South Africa provides that “a retailer must not display any goods for sale without displaying to the consumer a price in relation to those goods”⁷⁸ and a retailer must not require a consumer to pay a higher price for any goods than the displayed price of those goods.⁷⁹

⁷⁴ Section 21(7) of the Consumer Protection Act 2010 (Seychelles)

⁷⁵ Section 20(3) of the Consumer Protection Act 2010 (Seychelles)

⁷⁶ Section 67(1) of the Consumer Protection Act 2010 (Seychelles)

⁷⁷ Section 67(3) of the Consumer Protection Act 2010 (Seychelles)

⁷⁸ Section 23(3) of the Consumer Protection Act 2008 (South Africa)

⁷⁹ Section 23(6) of the Consumer Protection Act 2008 (South Africa)

60. In addition, Section 23(5) of the Consumer Protection Act considers a price to be displayed if the price expressed in South African Currency (ZAR) is:

- (a) annexed or affixed to, written, printed, stamped or located upon, or otherwise applied to the goods or to any band, ticket, covering, label, package, reel, shelf or other thing used in connection with the goods or on which the goods are mounted for display or exposed for sale;
- (b) in any way represented in a manner from which it may reasonably be inferred that the price represented is a price applicable to the goods or services in question; or
- (c) published in relation to the goods in a catalogue, brochure, circular or similar form of publication available to that consumer, or to the public generally, if –
 - (i) a time is specified in the catalogue, brochure, circular or similar form of publication as the time after which the goods may not be sold at that price, and that time has not yet passed; or
 - (ii) in any other case, the catalogue, brochure, circular or similar form of publication is dated, and in the circumstances may reasonably be regarded as not out of date.⁸⁰

61. It should be noted that a retailer is not required to display the price of goods or services if:

- (a) the goods and/or services are primarily used as a form of advertisement; or
- (b) the goods and/or services are kept in an area to which the public does not ordinarily have access.⁸¹

62. Furthermore, where good or services are displayed with multiple prices, the consumer is entitled to pay the lower or lowest of the displayed prices.⁸²

⁸⁰ Section 23(5) of the Consumer Protection Act 2008 (South Africa)

⁸¹ Section 23(4) of the Consumer Protection Act 2008 (South Africa)

⁸² Section 23(6) of the Consumer Protection Act 2008 (South Africa)

63. Nevertheless, if a price, which had previously been displayed, has since been fully covered and obscured by a new displayed price, the latter will be regarded as the valid displayed price.⁸³
64. Besides, if a price as displayed contains an inadvertent and obvious error, the supplier is not bound by it after correcting the error in the displayed price and taking reasonable steps in the circumstances to inform consumers to whom the erroneous price may have been displayed of the error and the correct price.⁸⁴
65. In addition, a supplier is not bound by a price displayed in relationship to any goods or services that has been altered, defaced, covered, removed or obscured by an unauthorised person.⁸⁵
66. It should be emphasised that in the case of online transactions, the Electronic Communications and Transactions Act (“ECTA”) 2002⁸⁶ applies and not the Consumer Protection Act 2008 (South Africa).⁸⁷
67. Under section 43(1) of the ECTA 2002, online retailers are required to provide the consumer with a sufficient description of the goods that they are offering for sale.⁸⁸ The description should include the full price of the goods, including any additional extras such as transport costs, taxes and any other fees or costs.⁸⁹

⁸³ Section 23(8) of the Consumer Protection Act 2008 (South Africa)

⁸⁴ Section 23(9) of the Consumer Protection Act 2008 (South Africa)

⁸⁵ Section 23(10) of the Consumer Protection Act 2008 (South Africa)

⁸⁶ Electronic Communications and Transactions Act (“ECTA”) 2002

⁸⁷ Section 23(1)(b) of the Consumer Protection Act 2008 (South Africa)

⁸⁸ Section 43(1) of the Electronic Communications and Transactions Act 2002 (South Africa)

⁸⁹ *ibid*

Italy

68. In Italy, in order to improve consumer information and to facilitate price comparison, subject to certain exceptions, products offered by traders to consumers should, in addition to the selling price bear an indication of the unit price.⁹⁰
69. The selling price includes the final price, valid for one unit of the product or for a given quantity of the product, inclusive of VAT and any other tax.⁹¹ The unit price denotes the final price, including VAT and any other tax, valid for a quantity of one kilogram, one litre, one metre, one square metre or one cubic metre of the product or for a single unit of different quantities, if it is generally and habitually used for the marketing of specific products.⁹²
70. However, the unit price is not required to be shown if it is identical to the selling price.⁹³ Moreover, for products which are not subject to any preliminary packaging and are measured in the presence of the consumer, only the unit price should be indicated.⁹⁴
71. In addition, the prices of petroleum products at automatic petrol/fuel filling stations should be displayed in a visible way from the roadway.⁹⁵
72. The obligation to indicate the price of products should be waived where such indication (i) would not be useful because of the products’ nature or purpose or (ii) would be liable to create confusion.⁹⁶
73. Besides, according to the Italian Consumer Code, online sellers should provide detailed information on the features of the goods or services and a clear indication of their prices, including all taxes, duties and delivery costs in plain and intelligible language prior to the ordering process.⁹⁷

⁹⁰ Article 14 of the Italian Consumer Code 2005

⁹¹ Article 13 of the Italian Consumer Code 2005

⁹² *ibid*

⁹³ Article 14(2) of the Italian Consumer Code 2005

⁹⁴ Article 14(3) of the Italian Consumer Code 2005

⁹⁵ Article 15(5) of the Italian Consumer Code 2005

⁹⁶ Article 16 of the Italian Consumer Code 2005

⁹⁷ Article 52 of the Italian Consumer Code 2005

Law Reform Commission of Mauritius [LRC]

Discussion Paper on “The law pertaining to display of price”
[LRC_R&P 178, February 2024]

74. Over the past years, the Italian Competition Authority (“ICA”), the enforcer of the Italian Consumer Code, has taken vigorous action to counteract unfair commercial practices concerning pricing in Italy.
75. For instance, in January 2023, the ICA fined Yoox, an online fashion retailer, 5.25 million euros, for advertising reductions on products on which the final sale price was “substantially the same” as the pre-discount price and for blocking orders from customers who had previously returned more than a certain amount of purchases.⁹⁸
76. In addition, in 2023, the ICA started investigations on the basis of the documentation provided by the Guardia di Finanza (Tax Police) concerning the infringements ascertained on fuel prices and following inspections at the premises of the companies Eni Spa, Esso Italiana Srl, Italiana Petroli Spa, Kuwait Petroleum Italia Spa and Tamoil Italia Spa, it emerged that the companies have adopted unfair commercial conducts attributable to a lack of diligence in the controls over the fuel distributor network.⁹⁹ In several cases, a discrepancy was found between the advertised price and the higher price actually applied, and in others, the omission to display the price charged was found.¹⁰⁰
77. In November 2022, the ICA fined Mediamarket € 3.6 million for misleading practices in the context of the sale of certain high-tech products. In particular, the company advertised certain products as being on promotion without specifying that they were sold exclusively in conjunction with accessory products or services such as pre-installed screen protectors, pre-installed software or additional guarantees.¹⁰¹ These additions resulted in the consumer paying a higher price than that advertised, which was only discovered at the time of payment.¹⁰²

⁹⁸ Alvise Armellini, ‘Italian watchdog fines online retailer YNAP more than \$5 mln’ (13 January 2023) < <https://www.reuters.com/business/retail-consumer/italian-watchdog-fines-online-retailer-ynap-more-than-5-mln-2023-01-13/> >

⁹⁹ Autorità Garante della Concorrenza e del Mercato, Italian Competition Authority, < <https://www.agcm.it/dotcmsdoc/bollettini/2023/5-23.pdf> >

¹⁰⁰ *ibid*

¹⁰¹ Autorità Garante della Concorrenza e del Mercato, Italian Competition Authority, ‘PS12233 - Italian Competition Authority: Mediamarket fined 3.6 million euro for unfair commercial practice’ (Press Release, 3 November 2022) < <https://en.agcm.it/en/media/press-releases/2022/11/PS12233> >

¹⁰² *ibid*

The Philippines

78. Article 81 of the Consumer Act of the Philippines states that “it shall be unlawful to offer any consumer product for retail sale to the public without an appropriate price tag, label or marking publicly displayed to indicate the price of each article and said products shall not be sold at a price higher than that stated therein and without discrimination to all buyers.”¹⁰³
79. It is worth mentioning that Article 81 of the Act does not explicitly provide that it applies to both in-store and online sellers.
80. As a result, the Department of Trade and Industry (“DTI”) of the Philippines regularly does campaigns to remind businesses and the society as a whole about the applicable law and the penalty for non-compliance with the law.¹⁰⁴
81. For example, in 2021, the DTI launched an online campaign against the “*PM sent culture*”?¹⁰⁵ According to the DTI, the “PM Sent Culture” is a shady practice of online sellers who send the prices of their products through a private message to prospective buyers who ask how much their products are.¹⁰⁶
82. In addition, as more online businesses emerge during the pandemic, the DTI issued national guidelines for e-commerce transactions to ensure that online sellers have the capabilities to facilitate online transactions to buyers to purchase in a safe and secure manner.¹⁰⁷

¹⁰³ Article 81 of the Consumer Act of the Philippines 1992

¹⁰⁴ <https://philstarlife.com/news-and-views/722751-dti-online-sellers-product-prices-online-platforms?page=3>

¹⁰⁵ Department of Trade and Industry of the Philippines, ‘Don’t be an evil seller’ < https://www.facebook.com/photo.php?fbid=263157632522856&set=a.10159248780130116&type=3&ref=embed_post >

¹⁰⁶ *ibid*

¹⁰⁷ Department of Trade and Industry of the Philippines, ‘DTI issues national standard guidelines for e-commerce transactions’ (18 January 2021) < https://www.dti.gov.ph/archives/news-archives/e-commerce-transactions-guidelines/?TSPD_101_R0=6d517fba3a8d727f537e21448a68fe62jhs000000000000000cf199e88ffff00000000000000000000000000000061a04a7d00e15e4f6208bb0fac92ab20004d28d486399310906c4bf336fda961b9e625fb88d8ff8473235e73e8a2ccd68f08aebcf1b10a280085c2c96e6cdd4b9ba7b0b959aa33ddf4ade91a65856fc22799bf3f3c576a52badff2ca2d79d885f3 >

The “Pre-purchase” portion of the guidelines states that “Price(s) should be displayed with the applicable currency and product reviews, comparisons, and ratings that can be used to assist customers in making an informed decision.”¹⁰⁸

83. The DTI also urges the public to file a complaint against online sellers or stores that violate the law through its complaints page or the local police.¹⁰⁹

84. The DTI also warned online sellers who insist on sending private messages to consumers inquiring on the price of a product that: (a) they can be subjected to fines ranging from P200 (approximately US\$4) to P5,000 (approximately US\$89) and to imprisonment of not less than one month but not more than six months, on first conviction; and (b) they can have their business permit and licence revoked, on second conviction.¹¹⁰

¹⁰⁸ *ibid*

¹⁰⁹ < <https://interaksyon.philstar.com/trends-spotlights/2020/06/01/169660/pm-is-the-key-dti-reminds-online-sellers-to-display-prices-on-online-platforms/> >

¹¹⁰ < <https://news.abs-cbn.com/business/05/04/22/pm-sent-dti-tightens-price-tag-rule-on-e-commerce> >

C. COMPARISON OF MAURITIUS TO OTHER JURISDICTIONS

85. Based on the analysis made above, it can be said that the law concerning display of price in Mauritius is not well-established, compared to what can be observed in other jurisdictions.
86. For instance, whilst the Mauritian law does not have any legal provision concerning display of price online, the European Union and in certain countries such as South Africa¹¹¹ and Italy¹¹², such a law is already recognised.
87. Furthermore, laws addressing (i) display of prior price on announcement of a price reduction, (ii) the inclusion of all charges in the selling price for customers to be able to see the actual price that they need to pay; (iii) differing prices displayed concurrently for one single item and so on, are well established in other jurisdictions, but non-existent in Mauritius.
88. In addition, the amendment of relevant legislations concerning display of price is constant and progressive in other jurisdictions, compared to Mauritius.
89. Therefore, taking inspiration from other jurisdictions, the Commission is recommending some reform proposals.

¹¹¹ Section 43(1) of the Electronic Communications and Transactions Act 2002 (South Africa)

¹¹² Article 52 of the Italian Consumer Code 2005

D. REFORM PROPOSALS

Recommendation 1: Price Display Online

90. The selling and buying of products through social media or any other online platforms, that is e-commerce, is a relatively new, emerging, and constantly evolving business management and information technology area.¹¹³ E-commerce has therefore revolutionised the way many businesses work.¹¹⁴
91. In Mauritius, e-commerce gained popularity and many businesses started using online platforms to reach their target markets and to eventually sell their products, mainly as a result of the COVID-19 outbreak, which caused more than two months confinement in 2020 and in 2021.¹¹⁵
92. Many individuals have made e-commerce a viable alternative to in-store shopping,¹¹⁶ as it eliminates the transportation costs that customers would have otherwise paid to visit physical shops and it allows customers to do shopping at any time while sitting comfortably in their house.¹¹⁷
93. However, it is often the case that online sellers do not display the prices of products that they are offering to sell. Prospective buyers interested in those products should request for the prices of those products and then those buyers receive the infamous line “*PM sent*” from the seller implying that the seller sent the price in a private message.
94. Unindicated prices may cause frustration among buyers as it is bothersome and time consuming to send a message to the seller instead of directly knowing the price beforehand.

¹¹³ Big Commerce, ‘E-commerce: The History and Future of Online Shopping’ < <https://www.bigcommerce.com/articles/ecommerce/> >

¹¹⁴ *ibid*

¹¹⁵ International Trade Administration, U.S. Department of Commerce, ‘Mauritius - Country Commercial Guide’ < <https://www.trade.gov/country-commercial-guides/mauritius-ecommerce> >

¹¹⁶ Aonerank ‘Benefits of e commerce for customers, digital marketing learning’ [2019] < <https://www.aonerank.com/digital-marketing-learning/benefits-ecommerce-customers/>. >

¹¹⁷ Ghada Taher, ‘E-Commerce: Advantages and Limitations’ [2021] 11(1) International Journal of Academic Research in Accounting Finance and Management Sciences 161

95. Furthermore, it should be noted that some online sellers tend to constantly change the prices of their products based on the volume of demand that they receive or simply based on the individual purchasing capacity/standard of living of potential buyers who request for the prices.
96. One of the main causes of unindicated price by online sellers is the absence of a provision in our law that explicitly provides that online sellers should display the price of products that they sell on online platforms.
97. Therefore, Commission is proposing that amendments should be made to our law that would explicitly provide that the obligation to display prices of products should apply to all businesses, regardless of whether they are selling online or in physical stores.

Recommendation 2: Price display in local and foreign currency in certain circumstances

98. There are some businesses (especially duty-free shops) in Mauritius, which display the price of the products that they sell only in foreign currency including Euro or US dollar. This is so despite the fact that since 1876, the only legal tender used in Mauritius is the Mauritian Rupee consisting of bank notes and coins¹¹⁸ and there are certain laws which provide that prices of products should be displayed in Mauritian currency.¹¹⁹
99. The indication of price in foreign currency may help some tourists in Mauritius to know the value of the products that they wish to buy. However, Mauritian customers visiting those shops may feel discriminated and can easily be put off by seeing items priced in a currency that they do not use or recognise. Others might occasionally even fill their basket, but abandon the purchase at checkout when they see that they are expected to make the payment in a foreign currency. In addition, potential Mauritian customers have to put on efforts and time to convert the displayed price into Mauritian currency to know exactly how much they will be charged, which is inconvenient.

¹¹⁸ Order in Council 1876

¹¹⁹ Regulation 6 of the Consumer Protection (Price Label) Regulations 1998; Regulation 3 of the Consumer Protection (Product Advertisement and Promotion) Regulations 2012

100. In addition, customers who purchase products in those shops are charged currency conversion fees and other relevant charges that they would have otherwise not paid if the price of the products were indicated in Mauritian currency. This means that buying a product that is priced in another currency may imply that the buyer is paying more than just the purchase price.¹²⁰
101. Therefore, taking inspiration from the UK,¹²¹ the Commission is proposing that shops in Mauritius which are willing to accept foreign currency for the purchase of goods, must, in addition to displaying the prices in Mauritian currency, also: (i) give an indication of the selling price required for the product in the foreign currency in question together with any commission to be charged; or (ii) clearly identify the conversion rate on the basis of which the foreign currency price will be calculated together with any commission to be charged.

Recommendation 3: Multiple price display

102. It sometimes occurs that goods are displayed at a certain price on the shelf but has a different price when one arrives at the cashier to pay.¹²² It also happens that more than one price is concurrently displayed for one particular item.¹²³ The question then arises: which price is the consumer legally obliged to pay for the goods? Our law does not have an explicit answer to the aforementioned question.
103. Taking inspiration from Australia,¹²⁴ Seychelles,¹²⁵ and South Africa,¹²⁶ the Commission is therefore recommending that there should be a relevant provision in our law which shall provide that if a business has more than one price displayed for the same item, the business must sell the item for the lowest “displayed price” or withdraw the item for sale until the price discrepancy is fixed.

¹²⁰ European Union, ‘Pricing and payments’ <
https://europa.eu/youreurope/citizens/consumers/shopping/pricing-payments/index_en.htm >

¹²¹ Article 6(2) of the Price Marking Order 2004

¹²² JJ Marais, ‘In-store product prices and the Consumer Protection Act’ (20 August 2021) <
<https://honeyattorneys.co.za/in-store-product-prices-and-the-consumer-protection-act/> >

¹²³ *ibid*

¹²⁴ Section 47 of the Competition and Consumer Act 2010

¹²⁵ Section 21(1) of the Consumer Protection Act 2010 (Seychelles)

¹²⁶ Section 23(6) of the Consumer Protection Act 2008 (South Africa)

104. However, in order to protect certain honest business owners, according to the Commission, the law should also provide that if a price, which had previously been displayed, has since been fully covered and obscured by a new displayed price, the latter will be regarded as the valid displayed price.

105. Furthermore, in the opinion of the Commission, if the price of goods is determined by, or in terms of, any public regulation, it is not necessary to sell the good at the lowest displayed price.

Recommendation 4: Inadvertent and obvious error in displayed price

106. The current law in Mauritius provides that products should not be sold at a price higher than that displayed.¹²⁷ However, unlike the law in South Africa,¹²⁸ our law does not address frequent situations when a price which is displayed, contains an inadvertent and obvious error. For example, a new car for sale with a price of Rs. 210,000 (instead of Rs. 2,100,000) displayed is an inadvertent and obvious error.

107. Therefore, taking inspiration from South Africa, the Commission is proposing that provision should be made in our law to provide that, if a price, as displayed, contains an inadvertent and obvious error, the supplier should not be bound by it, if it has: (a) corrected the error in the displayed price; and (b) took reasonable steps to inform consumers to whom the erroneous price may have been displayed of the error and the correct price.

Recommendation 5: Displayed price altered, defaced, covered, removed or obscured by an unauthorised person

108. At times, random visitors in shops remove the price tag of one item and place it on another. This may give rise to significant difficulties as business owners in Mauritius are

¹²⁷ Section 8 of the Consumer Protection (Price and Supplies Control) Act 1998

¹²⁸ Section 23(9) of the Consumer Protection Act 2008 (South Africa)

legally bound to sell items not higher than the price displayed.¹²⁹ It is unfair to impose prices on business owners which they have neither displayed nor authorised to display.

109. Therefore, based on the law of South Africa,¹³⁰ the Commission is recommending that a business owner should not be bound by a price that has been altered, defaced, covered, removed or obscured by an unauthorised person or which has not been authorised by the owner.

Recommendation 6: Indication of both Promotional and Original Price

110. It has become an increasingly common practice for some businesses to juggle with prices and presenting fake price reductions, such as increasing the price for a short period in order to decrease it afterwards by presenting it as a (significant) price reduction that misleads consumers.¹³¹

111. Besides, in some cases, the discounts advertised on the products or shelves do not ring up as promised, and shoppers who do not notice end up paying full price.¹³²

112. Therefore, with the aim of (i) preventing businesses from artificially inflating the reference price; and (ii) ensuring that consumers actually pay less for the goods when a price reduction is announced, taking inspiration from the European Union,¹³³ according to the Commission, there should be a provision in our law that shall require traders to indicate ‘prior’ price on announcement of each price reduction. The Commission is recommending that the prior price should denote the lowest price applied by the trader during a period of time not shorter than 30 days prior to the application of the price reduction. It is to be noted that the 30-day period for setting the reference ‘prior’ price would ensure that the reference price is real and not merely a marketing tool to make the reduction seem attractive.

¹²⁹ Section 8 of the Consumer Protection (Price and Supplies Control) Act 1998

¹³⁰ Section 23(10) of the Consumer Protection Act 2008 (South Africa)

¹³¹ Donald Ngwe, ‘Fake Discounts Drive Real Revenues in Retail’ 2018 (Working Paper: Harvard Business School) pg 18

¹³² David Adam Friedman, ‘Reconsidering fictitious pricing’ (2015) 100 MLR 921

¹³³ Article 6a of the Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers

113. The Commission is also of the opinion that, on announcement of a price reduction, businesses do not have to display the prior price of: (i) goods which are “liable to deteriorate or expire rapidly”, that is, perishable goods that may need to be discounted more often in order to sell them faster due to approaching expiration dates, or (ii) goods which have been on the market for less than 30 days.

Recommendation 7: Indication of total price

114. Some businesses display only “headline” prices before additional fees and charges (which may be unavoidable) are incrementally disclosed or “dripped”.¹³⁴ It is common in airline, accommodation and ticket booking services, restaurants or in shops selling technological gadgets.¹³⁵ This can lead to customers paying more for an item than they realise.¹³⁶

115. Businesses can apply some fees and charges (like booking and service fees), however, they cannot mislead customers into paying these fees without advising up-front how much it will cost.¹³⁷

116. Therefore, in order to promote transparency and in response to growing customer concerns about hidden costs and misleading pricing practices, businesses who display or advertise prices, should always indicate the total price. The total price must include the compulsory VAT charges.

117. Nevertheless, the price does not need to include optional charges such as delivery fees. Besides, the Commission is recommending that if there are compulsory costs which cannot be calculated in advance, customers must be informed about same and the method of calculating prices must be specified.

¹³⁴ Ahmetoglu Gorkan, Furnham Adrian and Fagan Patrick ‘Pricing practices: A critical review of their effects on consumer perceptions and behaviour’ (2014) 21(5) *Journal of Retailing and Consumer Services* 696

¹³⁵ Josh Zumbrun, ‘Who’s to Blame for All Those Hidden Fees? We Are’ (*The Wall Street Journal* 16 June 2023)

¹³⁶ Thomas Robbert and Stefan Roth, ‘The flip side of drip pricing’ (2014) 23(6) *Journal of Product & Brand Management* 413

¹³⁷ *ibid*

Recommendation 8: Increased Penalty

118. As it can be observed from the relevant analysis made above, in order to severely punish offenders who do not comply with relevant price display laws, certain jurisdictions have severe penalties in place.

119. In Mauritius, any person who fails to properly indicate the selling price shall commit an offence and shall, on conviction, be liable to a fine not exceeding 300,000 rupees and to imprisonment for a term not exceeding 5 years.¹³⁸ The Commission is proposing that penalties for the offence should be increased to commensurate with the seriousness of the offence. Accordingly, it is suggested that the offence of failing to properly indicate the selling price should be punishable by a fine not exceeding 500,000 rupees and to imprisonment for a term not exceeding 7 years.

Recommendation 9: Proximity of Price Labels to Products

120. The issue with price labels not being in close proximity to their respective products in a retail setting raises several concerns from a legal, consumer protection, and commercial perspective. These concerns can be broadly categorised into the realms of consumer rights, market fairness, and legal compliance. The primary issue stems from the potential for consumer confusion. When price labels are not closely associated with their products, consumers may be misled about the actual cost of a product. This confusion can lead to unintentional purchases at undesired prices, eroding consumer trust in the retail market. From a market fairness perspective, if some retailers do not adhere to proximity requirements, it may create an uneven playing field. Retailers who adhere to best practices could be disadvantaged compared to those who benefit from consumer confusion. This situation thus contravenes the principles of fair competition.

121. Therefore, it is suggested that every seller, whether operating in a physical or digital retail environment, be obliged to ensure that price labels for goods offered for sale are

¹³⁸ Section 7(3) of the Consumer Protection (Price and Supplies Control) Act 1998

placed in close proximity to the respective goods. “Close proximity” shall mean that the price label is placed in such a manner that a reasonable consumer, under normal shopping conditions, can easily associate the label with its corresponding product without ambiguity or the need for additional assistance. In digital retail platforms, close proximity shall be construed as the display of the price label in immediate conjunction with the image or description of the product, ensuring clear and unambiguous association between the product and its price.

Recommendation 10: Prohibition of “prices on demand” practices

122. In the evolving landscape of commerce, particularly in the realm of digital marketplaces, the notion of “prices on demand” has emerged as a perplexing yet consequential anomaly. As mentioned previously, this business practice allows vendors to conceal prices until the consumer explicitly requests them, often requiring an additional layer of engagement such as direct contact or a submitted form. While superficially this may appear as a mere idiosyncrasy of modern commerce, upon closer inspection, the policy exacerbates several economic, social, and legal tensions that merit rigorous evaluation. Concealing prices until explicitly demanded by a consumer creates an unjustifiable inequality of arms, impairing the consumer’s ability to make well-informed economic decisions. This contravenes the principles of market transparency and consumer protection, foundational elements of a free and fair economy, and can lead to discriminatory practices.

123. “Prices on demand” policies heighten the imbalance of information between vendor and consumer. This skewing of knowledge disrupts the theoretical equilibrium condition posited in economics, where both parties have complete and symmetric information. These policies could deter potential consumers from engaging with a product or service, thereby diminishing market fluidity.¹³⁹ It is thus recommended to prohibit the policy of “prices on demand” both in physical retail environments and digital marketplaces.

¹³⁹ As Paul A. Samuelson argues, price serves as an “allocator of resources” in free-market capitalism. Concealing this critical data point distorts market mechanisms and impedes resource allocation.

Recommendation 11: Closer supervision and campaigns

124. Taking inspiration from the Department of Trade and Industry of the Philippines,¹⁴⁰ the Ministry of Commerce and Consumer Protection in Mauritius should be firmer in enforcing existing laws concerning the requirement of price display to ensure consumers’ right to choose quality products at reasonable prices. Besides, authorities should supervise businesses more closely to ensure compliance with existing laws regarding price display.
125. In addition, there can be campaigns funded by the Government to remind the society about the obligations to display price in the proper way.

¹⁴⁰ Department of Trade and Industry of the Philippines, ‘DTI issues national standard guidelines for e-commerce transactions’ (18 January 2021) < https://www.dti.gov.ph/archives/news-archives/e-commerce-transactions-guidelines/?TSPD_101_R0=6d517fba3a8d727f537e21448a68fe62jhs00000000000000cf199e88ffff000000000000000000000061a04a7d00e15e4f6208bb0fac92ab20004d28d486399310906c4bf336fda961b9e625fb88d8ff8473235e73e8a2ccd68f08aebcf1b10a280085c2c96e6cdd4b9ba7b0b959aa33ddf4ade91a65856fc22799bf3f3c576a52badff2ca2d79d885f3 >

E. CONCLUSION

126. Based on the analysis made above, it can be said that it is time for our laws to evolve and play catch-up with the rest of the world in order to better meet and protect consumers’ needs with regards to proper price display.
127. Therefore, by taking inspiration from the European Union, the UK, Australia, New Zealand, France, Seychelles, South Africa, Italy and the Philippines, the Commission is proposing that relevant provisions with regards to: (i) the requirement to display both promotional price and original price on announcement of a price reduction; (ii) the inclusion of all mandatory charges in the selling price for consumers to be able to see the actual price that they need to pay; (iii) how to address a situation where one single item is displayed with more than one price concurrently; (iv) inadvertent and obvious error in displayed price; (v) displayed price which has been altered, defaced, covered, removed or obscured by an unauthorised person; (vi) the display of price in both local and foreign currency in Mauritius in certain circumstances; (vii) the display of price on online platforms; (viii) the increase in penalty for the offence of failing to properly display price, should be made in our legislation; (ix) “price on demand” practices; and, (x) proximity of price labels to products.
128. While there is a wait for laws to modify and to become stricter, authorities in Mauritius should take a hard look at the commercial sector. Furthermore, businesses are reminded that adhering to regulations regarding the display of prices is not only a legal requirement for businesses in Mauritius, but it is also a good business practice. By being clear and upfront about pricing, businesses can build strong relationships with their customers based on trust and mutual respect.

ANNEXE

**THE CONSUMER PROTECTION (PRICE AND SUPPLIES CONTROL)
(AMENDMENT) BILL**

(No. of 2024)

Explanatory Memorandum

The main object of this Bill is to amend the Consumer Protection (Price and Supplies Control) Act with regards to the legal framework governing display of price.

2. Accordingly, this Bill makes provisions for, *inter alia* –

- (a) the requirement to display both promotional price and original price on announcement of a price reduction;
- (b) the inclusion of all mandatory charges in the selling price for consumers to be able to see the actual price that they need to pay;
- (c) situations where one single item is displayed with more than one price concurrently;
- (d) inadvertent and obvious error in displayed price;
- (e) displayed price which has been altered, defaced, covered, removed or obscured by an unauthorised person;
- (f) the display of price in both local and foreign currency in Mauritius in certain circumstances;
- (g) the prohibition of “price on demand” practices;
- (h) the requirement to display price on online platforms;
- (i) the increase in penalty for the offence of failing to properly display price; and
- (j) the requirement to have a proximity of price labels to products.

3. The Bill further provides for matters connected, incidental and related thereto.

.....
Minister of

..... 2024

**THE CONSUMER PROTECTION (PRICE AND SUPPLIES CONTROL)
(AMENDMENT) BILL 2024**

(No. of 2024)

ARRANGEMENTS OF CLAUSES

Clause

1. Short title
2. Interpretation
3. Section 2 of principal Act amended
4. Section 7 of principal Act amended
5. New sections 7B and 7C inserted in principal Act
6. Section 8A inserted in principal Act
7. New sections 9A, 9B and 9C inserted in principal Act
8. Commencement

A BILL

To amend the Consumer Protection (Price and Supplies Control) Act

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the Consumer Protection (Price and Supplies Control) (Amendment) Act.

2. Interpretation

In this Act –

“principal Act” means the Consumer Protection (Price and Supplies Control) Act.

3. Section 2 of principal Act amended

Section 2 of the principal Act is amended –

- (a) by inserting, in the appropriate alphabetical order, the following new definition

“selling price” includes the full price of the goods or services, including compulsory transport costs, taxes and any other fees or costs;

4. Section 7 of principal Act amended

Section 7 of the principal Act is amended –

- (a) by inserting, after subsection (2), the following new subsection –

(2A) Subsection (1) and (2) shall apply to every registered person or trader operating in physical stores or by means of electronic communication.

- (b) in subsection (3), by deleting the words “300,000 rupees”, and “5 years” and replacing them by the words “500,000 rupees”, and “7 years”, respectively.

5. New sections 7B and 7C inserted in principal Act

The principal Act is amended by inserting, after section 7A, the following new sections –

7B. Manner of indication of selling price

(1) Every seller, whether operating in a physical or digital retail environment, shall ensure that price labels for goods offered for sale are placed in close proximity to the respective goods.

(2) The indication of selling price of any goods or services shall be in Mauritian currency and in Arabic numerals.

(3) If a trader indicates his willingness to accept foreign currency in payment for a product, he shall, in addition to the required price indications in Mauritian currency:

(a) give an indication of the selling price required for the product in the foreign currency in question together with any commission to be charged; or

(b) clearly identify the conversion rate on the basis of which the foreign currency price will be calculated together with any commission to be charged; and

(c) indicate that such selling price, or conversion rate as the case may be, does not apply to transactions via a payment card to be applied to accounts denominated in currencies other than Mauritian currency, the conversion rate for which will be that applied by the relevant payment scheme which processes the transaction.

7C. Display of prior price

(1) Subject to subsections (2) and (3), any announcement of a price reduction shall indicate the prior price applied by the trader for a determined period of time prior to the application of the price reduction.

(2) Subsection (1) shall not apply to –

(a) announcements of price reductions for perishable products threatened with rapid deterioration; or

(b) products that have been on the market for less than 30 days.

(3) In this section –

(a) “prior price” means the lowest price applied by the trader during a period of time not shorter than 30 days prior to the application of the price reduction.

(b) Notwithstanding paragraph (a), in the case of successive price reductions at any point in time, the prior price shall be that charged before the application of the first price reduction.

6. Section 8A inserted in principal Act

The principal Act is amended by inserting, after section 8, the following new section –

8A. Multiple prices displayed

- (1) Subject to subsection (2) and (3), no registered person or other trader shall require a consumer to pay a price for any goods or services, if more than one price is concurrently displayed, higher than the lower or lowest of the prices so displayed.
- (2) Subsection (6) does not apply in respect of the price of any goods or services if the price of those goods or services is determined by or in terms of any regulation.
- (3) If a price that was once displayed has been fully covered and obscured by a second displayed price, that second price must be regarded as the displayed price.

7. New sections 9A, 9B and 9C inserted in principal Act

The principal Act is amended by inserting, after section 9, the following new sections –

9A. Inadvertent and obvious error in displayed price

- (1) If a price as displayed contains an inadvertent and obvious error, the trader is not bound by it after—
 - (a) correcting the error in the displayed price; and
 - (b) taking reasonable steps in the circumstances to inform consumers to whom the erroneous price may have been displayed of the error and the correct price.

9B. Displayed price altered, defaced, covered, removed or obscured by an unauthorised person

A trader is not bound by a price displayed in relationship to any goods or services if an unauthorised person has altered, defaced, covered, removed or obscured:

- (i) the price displayed or;
- (ii) the price was authorised by the trader.

9C. Prohibition of “price on demand”

- (1) All traders, irrespective of the medium of sale, shall be required to display the full price of goods and services offered to the public. This price shall include all taxes, surcharges, and any additional mandatory costs.
- (2) Traders shall be prohibited from employing a “price on demand” model which allows for arbitrary setting or negotiation of prices based on individual customers or circumstances.
- (3) Notwithstanding subsection (2), exceptions to this rule may be allowed in specific cases where price variability is a norm due to market fluctuations, or in cases of bespoke or custom-made goods and services where a standard price cannot be predetermined. In such exceptions, the basis of price calculation and the factors influencing price variability must be clearly communicated to the consumer.

8. Commencement

- (1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.
- (2) Different dates may be fixed for the coming into operation of different sections of this Act.