

Full title of laws	<p>DIRECTIVE 2005/29/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive')</p> <p>Book 6 Dutch Civil Code. Title 3 Unlawful Acts; Section 3A: Unfair Commercial Practices.NL: http://wetten.overheid.nl/BWBR0005289/2017-07-01#Boek6_Titeldeel3_Afdeling3A Key Provisions in English: http://www.gregsregs.com/downloads/NLChap6.3.3ADCCUnfairCommPracWRedit.pdf</p>
Title of key section	Various; see entries below. This document assembles some issues and commentary on Pricing in advertising in the Netherlands
Context	Price indications in advertisements have previously been assessed on the basis of the UCPD (Arts 6(1)(d) and 7(4)(c)) - on a case-to-case basis from the point of view of a misleading action in the form of a factually incorrect price (Art. 193c(1d) ¹ Book 6 Civil Code) or on the basis of a misleading omission by not mentioning the final price in the context of an invitation to purchase (Art. 193(d) ² and Art. 193e(c) ³ Book 6 Civil Code
Commentary/ Notes	<ul style="list-style-type: none"> • The EU Commission, in its Guidance⁴ on the UCPD⁵, advises that "under Articles 6(1)(d) and 7(4)(c) UCPD (in Netherlands Arts 193c(1d) and 193e(c) Book 6 CC), the total price to be paid must at all times be indicated and include the applicable charges and taxes which are unavoidable and foreseeable at the time of publication/ booking, including payment surcharges" (p. 153 – in context of travel sector). And "Under Article 6(1)(d) and 7(4)(c) of the UCPD, the total price or the manner in which it is calculated must be clearly indicated, including, "where appropriate, freight, delivery or postal charges" (p. 136 – in context of comparing prices) • EU Commission also confirms, under Article 7 (4)(c) UCPD (In Netherlands: Art. 193e (c) Book 6 CC), an entry-level price (or starting price, i.e. indicating the price as 'from' a specific minimum amount) can only be permitted if the final price cannot 'reasonably be calculated in advance' due to the nature of the product (Case C-122/10 Konsumentombudsmannen/Ving Sverige AB, Judgment of 12 May 2011, para. 64): A

¹ A commercial practice is misleading if information is provided which is factually incorrect or which deceives or is likely to deceive the average consumer, whether or not due to the overall presentation of the information, such as with respect to:

d) the price or the way in which the price is calculated, or the existence of a specific price advantage

² Art. 193d (2-4)2. A misleading omission is every commercial practice where material information is omitted that the average consumer needs to be able to take an informed transactional decision and thereby causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise.

3. It shall also be regarded as a misleading omission when material information meant in paragraph 2 is hidden or supplied in an unclear, unintelligible, ambiguous or untimely way or when the commercial intent/ purpose (of the commercial practice), if not already apparent from the context, is not identified/ revealed, and where, in either case, this causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise.

4. The factual context, the limitations of the communication medium and any measures taken by the trader to make the information available to consumers by other means shall be taken into account in deciding whether material information has been omitted or hidden.

³ In the case of an invitation to purchase, if not already apparent from the context, the following information shall be regarded as material in the sense of Article 6:193d paragraph 2:

c. the price inclusive of taxes, or where the nature of the product means that the price cannot reasonably be calculated in advance, the manner in which the price is calculated, as well as, where appropriate, all additional freight, delivery or postal charges or, where these charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable

⁴ http://ec.europa.eu/justice/consumer-marketing/files/ucp_guidance_en.pdf

⁵ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:149:0022:0039:en:PDF>

travel agency indicated prices 'as from' for given flights and travel packages. The Court ruled that the UCPD does not rule out the use of entry-level prices, as long as the information provided meets the Directive's requirements, taking into account the circumstances of a real case. It held that: 'A reference only to an entry-level price may, therefore, be justified in situations where the price cannot reasonably be calculated in advance, having regard, inter alia, to the nature and characteristics of the product.

- Also note the [AG Opinion](#)⁶ from the Citroen/ZLW case, which disagrees with the Citroen judgement and which has suggested that Art. 7(4)(c) UCPD: In the case of an invitation to purchase, the following information shall be regarded as material, if not already apparent from the context: c) the price inclusive of taxes, or where the nature of the product means that the price cannot reasonably be calculated in advance, the manner in which the price is calculated, as well as, where appropriate, all additional freight, delivery or postal charges or, where these charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable; (as transposed by Art. 20(1)(c) RLD 1.2007) does not actually indicate that the price is meant to include freight costs (i.e. other components) nor mean that it must be indicated as a final, total value. A separate reference to the price on the one hand and the necessary costs/ price components on the other, would be permissible. (See paras 73,74,78 of AG Opinion)

Information obligations

- Advertising that includes price (even entry-level/ starting price – such as “from £....”) will constitute an invitation to purchase (see UCPD [Guidance](#) p. 52; definition Art. 193a(1g) Book 6 CC - [EN](#); and Case C-122/10 Ving Sverige)
- For 'invitations to purchase' Art. 193e of Book 6 Civil Code lists a number of information requirements which are regarded as material/ essential – where failing to provide them will constitute a misleading omission under Art. 193d(2-4)⁷ - if this failure is likely to cause the average consumer to take a transactional decision he would not have taken otherwise.
- This means that an advertisement that mentions price will need to include the following information if not already apparent from the context:
 - The main characteristics of the product, to an extent appropriate to the medium and the product;
 - The geographical address and the identity of the trader, such as his trading name and, where applicable, the geographical address and the identity of the trader on whose behalf he is acting;
 - The price inclusive of taxes, or where the nature of the product means that the price cannot reasonably be calculated in advance, the manner in which the price is calculated, as well as, where appropriate, all additional freight, delivery or postal charges or, where these charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable;
 - The arrangements for payment, delivery, performance and the complaint handling policy, if they depart from the requirements of professional diligence;
 - If there is a right of withdrawal or cancellation, the existence of such a right (Art. 193e(a-e) Book 6 CC)

⁶ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62014CC0476&from=EN>

⁷ Art. 193d 2.A misleading omission is every commercial practice where material information is omitted that the average consumer needs to be able to take an informed transactional decision and thereby causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise. 3. It shall also be regarded as a misleading omission when material information meant in paragraph 2 is hidden or supplied in an unclear, unintelligible, ambiguous or untimely way or when the commercial intent/ purpose (of the commercial practice), if not already apparent from the context, is not identified/ revealed, and where, in either case, this causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise.

4. The factual context, the limitations of the communication medium and any measures taken by the trader to make the information available to consumers by other means shall be taken into account in deciding whether material information has been omitted or hidden.