

# Sales promotions Q&A: Ireland

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Ireland-specific information concerning the key legal issues to be considered when conducting a sales promotion.

This Q&A provides country-specific commentary on *Practice note, Sales promotions: Cross-border overview*, and forms part of *Cross-border commercial transactions*.

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## Regulatory Framework

1. How does national law regulate sales promotions?

Sales promotions in Ireland are regulated primarily:

- By law, through the Consumer Protection Acts 2007 and 2014 (CPA).
- By industry self-regulation, through the Code of the Advertising Standards Authority for Ireland (ASAI Code).

The CPA regulates the promotion of products by traders to consumers as well as their sale. The CPA provides that a range of unfair, misleading and aggressive trading practices are prohibited if they would be likely to cause the average consumer to make a transactional decision they would not otherwise make.

The CPA also provides that certain specified practices are always prohibited (irrespective of whether they would be likely to cause the average consumer to make a transactional decision they would not otherwise make). They include false representations that a trader is about to cease trading and false representations about a product being "free".

The ASAI is an independent self-regulatory body set up and financed by the advertising industry. The ASAI Code applies to all marketing communications, including sales promotions, issued by ASAI members. Advertisements or promotions that do not comply with the Code can be the subject of complaints to the ASAI and form the basis of an adverse decision, including a fine or suspension from the ASAI.

2. What obligations or standards do any national codes of practice for sales promotions impose upon promoters?

There are no general codes of practice in Ireland that apply specifically to sales promotions. The CPA provides that codes of practice drawn up by traders or groups of traders can be recognised and approved by the Competition and Consumer Protection Commission (CCPC). The CPA also provides that the CCPC can issue guidelines to traders.

The ASAI Code provides specific guidance on marketing communications for sales promotions, with an overarching principle to deal fairly and transparently with customers in the context of a trade promotion. Specifically, the ASAI Code provides that:

- The presentation and publicity relating to a sales promotion should not be misleading.
- Products made available to customers in a sales promotion should have regard to normal safety precautions and meet satisfactory quality standards.
- Promoters should be able to demonstrate they have made a reasonable estimate of the likely response and that they are capable of meeting that response.
- Terms and conditions of any promotion should be clear to customers and easy to understand, with any restrictions on participation clearly set out.
- Sales promotions should be conducted with adequate resources and allow sufficient time for each phase of the promotion.
- Promotions should only be described as "free" in limited circumstances, as set out below (see [Question 12](#)).
- Promotions with prizes should clearly set out the conditions of entry and publish, or make available on request, the names and county of residence of prize-winners.
- Promotions linked with a charity should identify the charity that will benefit, indicate its objectives, specify the nature of the advantage to be gained by the charity, set out any limitations on the promoters' contribution to the charity, and not limit the contributions that consumers can make to the charity.

3. What procedures exist for complaining against a sales promotion? What sanctions can be imposed for infringements of sales promotion laws and codes of practice?

A consumer can complain to the CCPC about a breach of the CPA. Anyone, including the CCPC, can apply to the Circuit Court or the High Court for an order prohibiting any practice (with some small exceptions) which is unlawful under the CPA. It is not necessary to show loss or damage as a result of the trader's actions. A trader can be convicted of an offence and can be ordered to pay damages to a consumer who has suffered loss.

A consumer can complain to the ASAI about a marketing communication for a sales promotion that does not comply with the ASAI Code. The potential consequences for an advertiser are a public decision from the ASAI, which can attract negative publicity, and potentially a fine or suspension from the ASAI.

## Lotteries, prize draws and competitions

4. Does national law permit the use of lotteries as a marketing tool?

Lotteries in Ireland are not generally permitted as a marketing tool. Lotteries are generally prohibited by the Gaming and Lotteries Act 1956, subject to limited exceptions. For the purposes of the 1956 Act a lottery is broadly defined. It comprises competitions that require consideration to participate and "involving guesses or estimates of future events or of past events the results of which are not yet ascertained or not yet generally known". This part of the definition is considered in case law to have two elements: that entry into the competition is based on a guess or estimate rather than on the exercise of skill and that prizes are distributed based on chance.

5. How does national law regulate prize competitions?

Prize competitions in Ireland often fall within the broad definition of lotteries in the Gaming and Lotteries Act 1956 and are subject to the general prohibition on lotteries (see [Question 4](#)). Prize competition organisers typically seek to avoid this prohibition by making entry to the competition free or by requiring a test of skill, either mental or physical, to win the competition (thereby ensuring that it is not a "game of chance").

The ASAI Code provides some guidance on promotions with prizes, which includes:

- Entry conditions should be clearly worded.
- Complex competition rules should be avoided.
- A closing date should be clearly stated on any advertisements, entry forms or relevant wrappers or packs.
- A low level of entries is not an acceptable basis for extending the competition or withholding prizes.
- Prize winner details should be published.
- The likelihood of success in the competition should not be exaggerated.

6. How does national law regulate prize draws?

Prize draws in Ireland often fall within the definition of "lotteries" in the Gaming and Lotteries Act 1956 and are subject to the general prohibition on lotteries (see [Question 4](#)). Prize draw organisers typically seek to avoid this prohibition by making entry into the competition free or requiring a test of skill, for example, the correct answer to a trivia question, to win the competition (thereby ensuring that it is not a game of chance).

7. How does national law regulate the use of tie-breakers in a competition?

The use of tie-breakers in competitions is not specifically regulated. However, the use of a tie-breaker to determine the winner of a draw, particularly a tie-breaker based on the exercise of a skill, is often used as a method to bring a draw outside the general prohibition on lotteries in Ireland.

## Price promotions and loss-leadership

8. How does national law control price displays and advertisements in connection with sales promotions?

There is a general requirement for retailers and service providers to display prices to customers. All prices must be in euro and inclusive of all taxes, including VAT (*Price and Charges (Tax Inclusive Statements) Order 1973, SI No 9/1973*). Where products are sold by weight, volume or measure, unit prices must also be given. Additionally, the CPA gives the Minister for Business, Enterprise and Innovation power to make regulations that require the prices of certain products to be displayed in a specific manner. However, no regulations have yet been made under this power. Additionally, all price displays and advertisements of sales promotions must comply with the CPA and not constitute a misleading, aggressive or unfair commercial practice.

In relation to advertisements for sales promotions, the ASAI Code contains relevant specific guidance. The ASAI Code requires that the presentation of such advertisements is not misleading. There are also requirements around protection of consumers in terms of safety, suitability, availability and quality of products.

9. Does national law regulate the holding of sales events? Does national law regulate the amount of permissible price reductions in sales events?

Irish law does not specifically regulate the holding of a sales event. If the sales event is an outdoor event or an event of a significant size, Irish law might require event permits to be obtained.

There is no specific regulation on the amount of permissible price reductions in sales events. However, any reductions must comply with the CPA. It is not permissible to give a misleading or false previous price.

10. Can promotion prices be compared with genuine manufacturer's recommended prices?

The primary requirement for promotional prices is that they are not false or misleading. If the manufacturer's recommended price is genuine, then a promotional price can be compared against it.

11. How does national law regulate the operation of "introductory offers"?

It is common in Ireland for businesses to introduce products at a lower price or to provide a discount on services for new customers. There are no specific Irish law regulations on introductory offers. However, the CPA prohibits unfair, misleading or aggressive commercial practices, which may arise in this context (*sections 41, 42, 43 and 52, CPA*). If an introductory offer involves a higher price after a number of months, this must be made clear to the customer.

12. How does national law regulate the use of "free offers", vouchers towards free products and money-off coupons? Does national law permit the practice of cross-couponsing?

Irish law does not specifically regulate the use of "free offers" and money-off coupons. However, these offers and coupons are subject to the CPA rules on commercial practices not being false, misleading or aggressive.

The ASAI Code provides guidance for marketing communications on "free offers". It states that an offer should only be described as free if consumers pay no more than one or more of the minimum, unavoidable cost of responding to the promotion, the actual cost of delivery, or the cost, including incidental expenses, of any travel involved if consumers collect the product or service offered. These costs should be made clear to consumers. The ASAI guidance also provides that the quality or composition of the product should not be reduced by advertisers in an attempt to recover costs.

The authors understand that cross-coupons is the cross promotion of products through the use of coupons, for example, a customer can use a coupon for nappies and be given a coupon for baby wipes from the same manufacturer. This practice is not prohibited in Ireland and is subject to the same CPA rules (see above).

13. How does national law regulate the use of currency note likenesses?

The European Central Bank (ECB) has the exclusive right to authorise the issue of banknotes by the national central banks in the euro area. All decisions on the banknote designs, denominations, and so on are taken by the ECB.

Currency note likenesses are permitted where there is no risk that the general public will mistake the notes for genuine bank notes. The ECB have listed certain situations in which the general public would not make this mistake, such as a one-sided reproduction that is half the length and width of the genuine bank note (*Decision of the ECB of 19 April 2013, No. 2013/10*). The ECB and the National Central Bank (the Central Bank of Ireland) can, on request, provide confirmation that there is no risk that the general public will mistake the reproductions for genuine bank notes.

14. How does national law regulate the giving of promotional gifts and product samples?

Irish law does not specifically regulate the giving of promotional gifts and samples but these promotions must comply with the CPA.

The ASAI Code contains guidance on promotional marketing practices. Promoters should be able to show that they have made a reasonable estimate of the likely response to the promotional gift or product sample and are capable of meeting that response. The inclusion of "subject to availability" does not relieve promoters of this responsibility. Any terms or conditions of the promotion should be clear, complete and easy for the consumer to understand. Any unsolicited gifts or samples that are distributed through a promotion should make clear that the consumer is under no obligation to buy or return the items.

15. How does national law regulate the use of value promotions?

Value promotions, which offer a free additional product or additional volume compared to a standard size, are generally permitted in Ireland. Again, the CPA requires that the promotion must not be false, misleading or aggressive.

16. How does national law regulate the operation of cashback schemes?

Cashback schemes are not specifically regulated under Irish law.

17. How does national law regulate the practice of loss-leading?

There is no prohibition on loss-leading pricing, or below cost selling, in Ireland. There is a provision in the Public Health (Alcohol) Act 2018 that would introduce minimum unit pricing on alcohol products. At the time of writing, this provision has not yet been brought into force.

18. How does national competition or anti-trust legislation regulate pricing practices?

Irish competition law, in the form of the Competition Act 2002, regulates pricing practices through a combination of:

- A prohibition on anti-competitive agreements, decisions and concerted practices, which have the effect of preventing, restricting or distorting competition in Ireland or any part of it (*section 4, 2002 Act*). These agreements, decisions and concerted practices can include those which directly or indirectly fix purchase or selling prices.

- A prohibition on the abuse of a dominant position in trade for goods or services in Ireland or any part of it (*section 5, 2002 Act*).

A breach of either of these prohibitions is a criminal offence, for which individuals as well as companies can be convicted (*sections 6 and 7, 2002 Act*). The penalties on conviction are a range of fines or a period of imprisonment or both (*section 8, 2002 Act*).

The Competition and Consumer Protection Commission (CCPC) is the independent statutory body with a mandate to enforce competition law in Ireland.

## Trading schemes and sales incentives

19. How does national law regulate pyramid-selling schemes?

Part 4 of the CPA prohibits participation in pyramid promotional schemes and inducing others to participate. The CPA also prohibits the establishment, operation or promotion of pyramid-selling schemes. The penalties for offences relating to pyramid-selling schemes involve a fine of up to EUR150,000 or a prison term of up to five years, or both. If, after being convicted of this offence, a person continues to establish, participate in, or induce others to join a pyramid promotional scheme, the person is guilty of a further offence on each day that the breach continues, and for each such offence is liable on conviction to a fine up to EUR10,000.

20. How does national law regulate trade promotions which make incentive payments to retailers based on their sales of a particular product?

Trade promotions are not specifically regulated by Irish law.

The ASAI Code requires that trade promotions and incentive schemes are designed and implemented to take account of the interests of everyone involved and should not conflict with the duty of employees to their employer, or their obligation to give honest advice to customers. It should be made clear to those benefitting from an incentive scheme that they may be liable for tax.

21. How does national law regulate trade promotions addressed to customers' employees?

Irish law does not specifically regulate trade promotions addressed to a company's employees.

The ASAI Code provides that promoters should secure the prior agreement of the employer or manager responsible if they intend to seek assistance from, or offer incentives to, any other employees. Where a trade incentive scheme has been advertised rather than individually targeted, employees should be advised in advance by the advertiser to obtain their employer's permission before participating.

## Contractual issues

22. Can a sales promotion create a contract between the promoter and the participant in a promotion?

In principle, a contract can be created between the promoter and a participant in the promotion (provided that each of the constituent elements of a contract is present). The circumstances of a sales promotion will determine whether a contract is created and its terms.

## Tax issues

23. Are there any tax issues arising specifically in connection with sales promotions that a promoter should be aware of?

There can be a VAT implication where a purchase is required to receive a free promotional gift ([www.revenue.ie/en/tax-professionals/tdm/value-added-tax/part03-taxable-transactions-goods-ica-services/Goods/goods-gifts-and-promotional-items-etc.pdf](http://www.revenue.ie/en/tax-professionals/tdm/value-added-tax/part03-taxable-transactions-goods-ica-services/Goods/goods-gifts-and-promotional-items-etc.pdf)).

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