

Consumer Sales Promotions: Overview (Switzerland)

by **Dr. Simone Brauchbar Birkhäuser** and **Olivia Zingg**, CMS von Erlach Partners

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A Practice Note providing a general overview of the legal issues surrounding consumer sales promotions, specifically price promotions and prize promotions. The Note highlights contests and games of chance (like sweepstakes and lotteries), discounts, price comparisons, cashback, coupons and vouchers, and free offers.

Businesses typically conduct consumer sales promotions as an incentive for consumers to purchase a product or service, or to strengthen brand awareness. Consumer sales promotions may involve price discounts, including coupons and vouchers, cashback, and free offers, or the awarding of prizes through a game of chance or contest. These promotions are subject to laws and regulations typically designed to protect the consumer from deceptive and unfair practices.

Because consumer sales promotions involve advertisements for the particular product or service, the promotion itself, or a prize, they are also subject to the restrictions imposed by advertising laws and regulations, such as the prohibition of false and misleading advertising, or in the case of lotteries certain rules on gaming and betting apply. Consumer sales promotions also often involve the collection of personal information from consumers, so businesses need to comply with applicable data privacy laws and regulations.

This Note focuses on the legal issues relating to consumer sales promotions in Switzerland. It discusses:

- The legal framework governing promotions.
- Key legal issues raised by the different types of prize promotions, including:
 - lotteries (games of chance); and
 - contests (games of skill).
- Key legal issues raised by the different types of price promotions, including:
 - discounts;
 - price comparisons;
 - free offers;
 - coupons and vouchers; and
 - cashback.
- Consumer recourse and regulatory enforcement against non-compliant promotions.

This Note also provides tips and best practices for conducting compliant consumer sales promotions.

Laws and Regulations Governing Promotions

Consumer sales promotions are subject to an array of laws and regulations. These laws and regulations not only govern the conduct of the promotion itself, but also how the promotion is advertised and how personal information may be collected, shared, and used.

Regulation of Consumer Sales Promotions

For the regulation of sales promotions, the [Federal Act on Unfair Competition, 241](#) (UCA) serves as the basic framework establishing fundamental advertising principles. The UCA prohibits unfair business practices, including advertising practices, and protects good faith in business. The UCA also contains the basic rules on price indications and price comparisons. More detailed rules on price indications are contained in the [Ordinance of the Federal Council on Price Indication, 942.211](#) (PIO). In addition to the general advertising law, Switzerland has sector-specific laws and regulations for different products and services (for example, prescription drugs, tobacco, alcohol, and gambling) and some media-related regulations.

The applicable soft law in the advertising sector includes:

- The [International Chamber of Commerce Advertising and Marketing Communications Code](#) (25 September 2018) (ICC Advertising and Marketing Communications Code).
- The [Fair Commercial Communication Guidelines](#) of the [Swiss Fairness Commission](#) (SLK) (1 July 2023) (SLK Guidelines).

Fundamental Advertising Principles

Swiss law provides for general advertising principles designed to prevent any consumer deception or confusion and to ensure fairness between competitors. The main principles include:

- **Accuracy and clarity.** Advertising claims must be truthful and clear.
- **Competition integrity.** Practices must not distort the market and give unfair advantages to certain businesses.
- **Consumer safeguards.** Consumers are protected from false claims, misleading pricing, and other potentially harmful practices.
- **Competitor protection.** Competitors are protected from unfair practices such as unfair comparisons, unnecessarily disparaging statements, and the exploitation of their reputation.

Data Privacy Issues

The use of any personal data must be in accordance with the [Federal Act on Data Protection, 235.1](#) (FADP). The FADP sets out principles that govern personal data processing, including:

- **Legality.** Personal data can only be processed if it has been collected in accordance with the applicable laws.

- **Proportionality.** Personal data processing must be restricted to the extent required to achieve the designated purposes, taking into account the nature of the personal data involved and the extent and duration of the processing. Personal data must be erased or made anonymous as soon as it is no longer necessary for processing.
- **Transparency.** All data subjects must be provided with any relevant information necessary to ensure transparent data processing. This information must enable data subjects to effectively exercise their rights under the FADP.
- **Specific purpose.** Personal data can only be collected and processed for a clearly defined purpose that has been communicated or is obvious to the data subjects.
- **Data accuracy.** When processing personal data, the accuracy of the data must be ensured and necessary steps must be taken to correct, delete, or destroy incomplete or inaccurate data.
- **Data security.** The confidentiality and accessibility of personal data must be ensured through appropriate technical and organisational security measures.

Further, if goods or services are offered across international borders, the applicable foreign law must be complied with. For example, the [General Data Protection Regulation \(Regulation \(EU\) 2016/679\)](#) applies when goods or services are offered to people in the EU or when organisations monitor the behaviour of data subjects in the EU.

For additional information on privacy laws, see [Country Q&A, Data Protection in Switzerland: Overview](#).

Lotteries, Contests, and Money Games

Prize promotions, such as lotteries and contests, are commonly used to influence consumer purchasing decisions. They are strictly regulated to prevent misleading and unfair practices and excessive gambling.

The competence to legislate on matters relating to prize promotions rests with the Swiss Confederation (Article 106, [Federal Constitution of the Swiss Confederation, 101](#)). Under the Swiss governance structure, the enforcement of the regulations on prize promotions is the responsibility of the 26 cantons, which enact enforcement ordinances at the cantonal level. Therefore, both federal and cantonal legislation must be complied with.

At the federal level, the [Federal Act on Money Games, 935.51](#)(FAMG), which entered into force in 2019, serves as a framework law that regulates the admissibility, implementation, and use of gambling. The FAMG defines lotteries as games of chance, of which the outcome is determined by a random draw or similar process, and contests as games of skill. The definition of lotteries therefore is broad enough that it can encompass various games of chance, like sweepstakes and instant win games, depending on how they are designed.

However, the regulation of prize promotions is primarily based on whether they qualify as money games under the FAMG, and not on their specific categorisation.

If a promotion, regardless of whether it is a lottery or contest, is classified as a money game under the FAMG, then it is subject to the provisions of the FAMG. These promotions can only be conducted under well-defined conditions set by the FAMG. If a promotion does not meet the criteria to be classified as a money game, then it can be conducted without being subject to the FAMG's provisions.

Money games within the meaning of the FAMG are characterised by two elements, that is, the presence of a stake and the possibility of winning a prize. Both the stake and the winnings must consist of money or a monetary equivalent, which includes products as prizes. The conclusion of a legal transaction of any kind is equal to a monetary stake.

Therefore, if activities such as lotteries and contests involve a monetary stake, they fall within the category of money games and require licensing by the [Swiss Gambling Supervisory Authority](#). However, an exception to the licensing requirement exists for these activities if the following three conditions are met:

- The promotional lotteries or contests are conducted for a short duration to promote sales.
- The lotteries or contests do not involve the risk of excessive gambling.
- Participation is exclusively through the purchase of goods or services offered at prices that do not exceed market levels.

The terms "promotional," "short duration," and "risk of excessive" gambling are not defined in the legislation and must be determined by the courts on a case-by cases basis.

If a lottery or contest meets all the above conditions, it can be conducted without a licence. Further, it is not necessary to provide the opportunity to participate in the lottery or contest free of charge (that is, without making a wager or concluding a legal transaction) to be exempt from the requirement to obtain a licence. However, this relaxation does not apply to media companies (Article 1(2e), FAMG).

It is often overlooked that the UCA applies without restriction to the conduct of lotteries and contests. Therefore, the general rules of advertising, such as the principles of truth and clarity, must be observed. Among other things, these rules require that the terms and conditions (for example, how to enter or who is eligible) are clearly communicated. Consumers must not be induced to purchase products or disclose information about their consumption patterns to increase their chances of winning. This conduct may be considered unfair under Article 3(1h) of the UCA.

Official Rules as Contracts

A contractual relationship arises between the promoter of a prize promotion and the participants. The prize promotion is regarded as an offer and the application as an acceptance (Article 8, [Federal Act on the Amendment of the Swiss Civil Code, 220](#) (Federal Code of Obligations)). The official rules for promotions serve as part of the contract between the promoter and the participants. The rules outline the terms and conditions of the promotion and establish the rights and responsibilities of both parties.

To mitigate potential liability, the official rules must be clear and unambiguous. These rules should enable the participants to fully understand the terms and conditions before entering the promotion. The scope and any applicable rules of engagement should be clearly set out, including:

- The opening and closing dates of the prize promotion.
- The value of the prizes.
- The eligibility criteria.
- The entry methods.
- The method of determining the winner.
- The timing and method of prize distribution

Further, any geographic restrictions on entry should be clearly defined to ensure full compliance with local laws and regulations. It is critical that the official rules clearly describe the prizes offered in the promotion. It is also advisable to include a clause

that gives the promoters the right to terminate or modify the sweepstakes under certain circumstances, such as fraud, technical problems, or force majeure.

Additional Considerations for Prize Promotions Directed Towards Children

In Switzerland, children are defined as individuals under the age of 18. While there is no specific law that solely focuses on the protection of children, several regulations indirectly address their safeguarding. Notably, Swiss law prohibits the marketing of certain products to children, including tobacco ([Ordinance of the Federal Council on Tobacco, 817.06](#)) and alcoholic beverages ([Federal Act on Distilled Water, 680](#)). Further, the regulation of promotional activities aimed at children also falls under the provisions of the UCA.

For promotional activities aimed at children, the standard of review is the average understanding of children and that prize promotions must not exploit the inexperience of children. In general, promotions for products that are inappropriate for children must not be targeted at children.

Additional Considerations for Online Prize Promotions

In Switzerland, there is no specific law on online prize promotions. Online prize promotions are subject to the same rules and regulations as traditional or offline prize promotions. However, online games are conducted in a digital environment that involves the collection and processing of a significant amount of personal data about participants. Therefore, strict privacy rules are required to ensure that personal data is collected and processed in compliance with the FADP and other applicable privacy laws.

For additional information on privacy laws, see [Country Q&A, Data Protection in Switzerland: Overview](#).

Tax Issues Surrounding the Awarding of Prizes

Winnings from promotional lotteries or contests that do not fall under the FAMG and do not exceed CHF1,000, are exempt from Swiss income tax if the organiser is domiciled in Switzerland (Article 24(j), [Federal Act on Direct Federal Taxation, 642.11](#) (FADFT)). If the winnings exceed CHF1,000, then the entire winnings are treated as taxable income. As of January 2024, the exemption threshold will be increased to CHF1,100. If the winnings are taxable, the recipient can claim a deduction of 5% of the winnings, up to a maximum of CHF5,200 (or CHF5,300 as of January 2024), for the costs associated with participating in prize promotions (Article 33(4), FADFT).

Further, winnings from promotional lotteries or contests that do not fulfil the abovementioned conditions for tax exemption or that exceed CHF1,000 (or CHF1,100 as of January 2024), or both, are subject to withholding tax (Article 6(2), [Federal Withholding Tax Act, 642.21](#)).

Consumer Price Promotions

Businesses use a variety of price promotions to incentivise consumers to buy their products and services. Common strategies include discounts, free offers, coupons and vouchers, and cashback. When structuring a consumer price promotion, companies need to comply with applicable laws and regulations governing the price promotion itself and the advertising of pricing.

Under Swiss law, consumer price promotions must be transparent, truthful, and comply with the principles of fair competition. Businesses should accurately represent discounts, provide clear information about the duration of the promotion, and ensure the availability of promoted items. Price comparisons should be accurate and not misleading. The regulatory framework overseeing price promotions is primarily the UCA, which encompasses the PIO. Industry-specific regulations must also be followed.

Discounts

Generally, Swiss businesses are allowed to set their prices and offer discounts as they see fit, provided these practices are consistent with the principles of Swiss competition laws. It is crucial to distinguish between legitimate pricing strategies and practices that violate the law.

For example, Swiss law generally permits businesses to sell products or services at a loss, provided they comply with competition and procurement laws. However, there are specific practices that are not allowed, for example, promoting "loss leaders" (known as "*Lockvögel*" in German), and engaging in predatory pricing.

A loss leader pricing strategy involves selling certain products significantly below cost to attract customers with the anticipation of making profits from other related or complementary products or services. Sometimes, the loss leader products may not even be in stock. The overall purpose of this strategy is not to sell the loss leader products, but to draw attention to the regularly priced products. The loss leader strategy is characterised by:

- Offering selected goods at prices below their cost.
- Repeatedly making these offers.
- Giving these offers prominent attention in advertising.
- Deceiving the customer.

(Article 3(2f), UCA.)

Predatory pricing is the practice of abusing market power to deliberately set prices below cost with the intention of driving competitors out of the market or deterring potential competitors from entering the market. This practice is anti-competitive and constitutes an abuse of market power if an organisation is in a dominant position. Consequently, it is prohibited under the Swiss competition laws (Article 7(2d), [Federal Act on Cartels and other Restraints of Competition, 251](#)).

The PIO requires businesses to provide transparent and accurate information about discounted prices. Generally, price discounts are subject to the same rules as price comparisons (see [Price Comparisons](#)). For example, if a comparison is made between the discounted price and the regular price, it must accurately reflect the actual price difference. Discounts must be clearly presented, and detailed pricing information must be provided (Article 17, PIO). Further, if the discounts do not apply to the entire range of products or specific product groups, or if varying discount rates apply, then the promoter must make the price distinctions among the different products clear (Article 17(2), PIO).

Swiss law generally allows the use of "up to" discounts advertisements. However, the range indicated in up to claims must truthfully represent the discounts offered, and the highest discount should apply to a significant proportion of the products advertised as included in the promotion. It is also important to specify which products are eligible for the discount and to clearly state the final price after the discount has been applied.

Price Comparisons

In the realm of business practices and advertising in Switzerland, it is common for businesses to promote discounts by comparing prices to various other prices. These comparisons can include:

- The business' previous prices.

- The business' future prices.
- Prices offered by competitors.
- Reference prices (for example, a list price or manufacturer's suggested retail price).

However, there are regulations in place to ensure that these price comparisons are not misleading. As a general guideline, when making price comparisons, businesses in Switzerland must adhere to the PIO.

Comparisons Against Prior Price

In the case of a comparison with a prior price, the promotional price and the prior price may be compared for a maximum of two months. The business must ensure that it charged the prior price for at least twice as long as the duration of the promotional price. For example, in the case of a two-month discount promotion, the regular price must be applied for at least four months before the discounted price (Article, 16(1a), PIO).

Comparisons Against Future Price

The same time restrictions that apply to comparisons against prior price also apply to introductory prices (that is, comparing the current lower price with the future higher price). Therefore, an introductory price can only be compared to the future higher price for half the time that the higher price is to be charged, for a maximum of two months (Article 16(1b), PIO). Further, introductory prices must be clearly declared as such.

Comparisons Against Competitors' Prices

A comparison with the prices of a competitor is permissible, provided that the comparative price is actually used by the competitors for the majority of the same goods or services (Article 16(1c), PIO). It is essential that this comparison concerns the same products or services, and the price comparison is clearly indicated.

Comparisons Against List Price or Manufacturer's Suggested Retail Price

Listed or suggested retail prices published by manufacturers and made available to consumers may not in themselves serve as valid prices for comparison. Their admissibility depends on their alignment with actual market prices that meet the criteria for a meaningful competitive assessment. If these prices are artificially inflated and do not accurately reflect prevailing market conditions, they are inadmissible as comparison prices.

While list or suggested prices themselves are not inherently illegal, their application comes under close scrutiny in the context of competition law. In a landmark decision, the Swiss Federal Supreme Court qualified a non-binding price recommendation as an illegal vertical price fixing, which is punishable by a fine. The manufacturer's price recommendations were widely followed by the majority of the manufacturer's distributors, regularly updated, and automatically incorporated into their point-of-sale systems. The Court found them to be illegal, even in the absence of coercion or special incentives from the manufacturer ([Swiss Federal Supreme Court, Second Public Law Division, 4 February 2021 \(2C_149/2018\)](#)).

Since this landmark ruling, the [Swiss Competition Commission](#) and Swiss courts have further tightened their approach regarding suggested retail prices. Therefore, companies supplying retailers in Switzerland should critically review their list prices, suggested prices, and other non-binding price recommendations in light of this ruling.

Free Offers

Under Swiss law, the use of free offers are generally permitted, but there are certain restrictions to ensure fair business practices. The UCA specifies that free offers must not mislead customers about the actual value of the promotion. While there are no

explicit limitations on the price of the promotional item itself, it is essential that gifts or free offers do not come with obligations other than the payment of regular shipping costs. Unfair practices, such as temporarily inflating the price of a product to offset the cost of a related gift, are not allowed.

Further, there are specific restrictions on the types of items that can be offered for free. For example, drugs that are exclusively available in pharmacies cannot be given away for free. Similarly, the distribution of distilled spirits as gifts is prohibited. However, it is permissible to offer wine, grape juice, and other wine-based products for free, provided they are not offered to children.

There are also limitations on the intended recipients of free offers. Providing free offers to certain individuals, such as judicial members, members of other authorities, and public officials may be construed as bribery (Article 322ter, [Swiss Criminal Code, 311.0](#), (SCC)). Swiss law also extends the concept of bribery to the private sector (Article 322octies, SCC). Therefore, it is also forbidden to provide undue advantages to employees, partners, agents, or any other individuals associated with a third party in the private sector. The intention of this prohibition is to prevent any improper influence on private sector individuals, which may lead them to act in ways that go against their professional duties or discretion.

Coupons and Vouchers

Swiss law generally permits the use of coupons and vouchers that comply with the UCA. Vouchers have a defined value, which the holder can use instead of cash to make purchases. A coupon provides the consumer with a discount on products and services.

Under the UCA, coupons and vouchers must provide consumers with clear and transparent information. They must state all terms and conditions that apply to their use, including for example, minimum purchase requirements, product or service restrictions, or other limitations. To help consumers identify the source of the coupon or voucher, the provider's name and contact information must be included on the coupon or voucher. The type of discount or offer provided through the coupon or voucher must also be specified, for example, whether it is:

- A fixed amount off the price.
- A percentage off the price.
- Another special promotional price.

The coupon or voucher must further explain:

- How it can be redeemed.
- Whether it is in a physical or digital format.
- Where it can be used, such as in-store or online.
- The validity period, including the starting and expiration date.

Cashback

Cashback refers to a financial incentive provided to consumers after a purchase, where a percentage of the purchase amount is returned to them in the form of cash or credit. Cashback funds can be offered in various forms, including as:

- Direct cash refunds.
- Credits.
- Discounts on future purchases.

In principle, cashback promotions are permissible. However, clear and transparent information about the terms and conditions of the cashback promotion should be provided to consumers. This includes specifying:

- How the cashback is calculated.
- When the cashback will be provided.
- Any limitations or restrictions that apply.

Price Promotions as Contracts

Under Swiss law, a contract requires a valid offer by one party and an acceptance by the other party (Article 1, Federal Code of Obligations). An offer is valid if it is sufficiently definite and indicates an intention to be legally bound. However, an offer is not binding if a corresponding express declaration is made or if reservations arise from the circumstances of the promotion (Article 7, Federal Code of Obligations).

In the case of price promotions, it is therefore necessary to determine whether the offer is clear and unambiguous. Typically, if the offer contains all the essential terms, is made unconditionally, and is accepted by the consumer, then a binding contract is formed, resulting in contractual obligations being imposed on the promoter.

Consumer Recourse and Regulatory Enforcement

Consumers have various options for lodging complaints against a business for a price or prize promotion it has conducted. These promotions may also be subject to regulatory enforcement. Businesses may face significant penalties for conducting a promotion that does not comply with the law.

Consumer Complaints

In Switzerland, the specific procedure to file a complaint may vary depending on the nature of the complaint and the industry in question.

Typically, if a company is running a promotion that violates the UCA, consumers can report the unfair promotion directly to the [State Secretariat for Economic Affairs](#) (SECO). This process involves submitting supporting documents or evidence of the unfair promotion. Consumers can also report unfair advertising practices to the SLK. The SLK is a private foundation that deals with issues related to unfair advertising practices. If the promotion only breaches the SLK Guidelines, then the consumers can only file a complaint with the SLK. If the promotion also violates the UCA, then they can file a complaint with either the SECO or the SLK.

Another recourse for consumers is to engage with private consumer protection organisations. These organisations can offer guidance on how to go about filing a complaint regarding non-compliant promotions. Further, if a substantial number of

consumers face the same issue, then these organisations may take the initiative to file a complaint on behalf of all the affected consumers.

For complaints related to telecommunications promotions, consumers can contact the [Swiss Federal Office of Communications](#). The office has jurisdiction over the telecommunications industry in Switzerland and ensures compliance with relevant regulations.

Regulatory Enforcement

The UCA is mainly enforced through civil law. In Switzerland, in addition to consumers, the state, acting through SECO, can also take civil action against unfair promotions if it is necessary to protect public interests due to a high number of complaints (Article 10(3), UCA). SECO has the power to request a civil court to either:

- Prohibit or eliminate an unfair promotion.
- Declare that a promotion is considered unfair under the UCA.

Further, SECO is authorised to file for criminal charges. Intentional violations of the UCA can result in penalties, including imprisonment for up to three years or fines (Article, 23 UCA).

The PIO is enforced through administrative law. Enforcement responsibilities are delegated to the municipal or cantonal commercial police within the respective cantons. Consumers can report any violations to these authorities. Violations of the PIO can result in administrative fines, with a maximum penalty of CHF20,000 (Article, 24 UCA). Under Swiss law, these penalties are generally imposed on individuals rather than companies. A company is only held responsible when the specific individual responsible for the violation cannot be identified due to failures in the company's organisation (Article 102(1), SCC).

Practical Tips for Consumer Sales Promotions

When running consumer price promotions, businesses must be mindful about the relevant legal and regulatory requirements. They should also take into account the ICC Advertising and Marketing Communications Code and adhere to the SLK Guidelines. This approach ensures both compliance with the law and the successful execution of promotional campaigns.

Further, in the context of competition law, companies that supply retailers should critically review their suggested retail prices and other non-binding price recommendation strategies. This is particularly important as the Swiss Competition Commission and the Swiss courts apply strict standards according to which price recommendations can easily be regarded as unlawful agreements restricting competition.

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